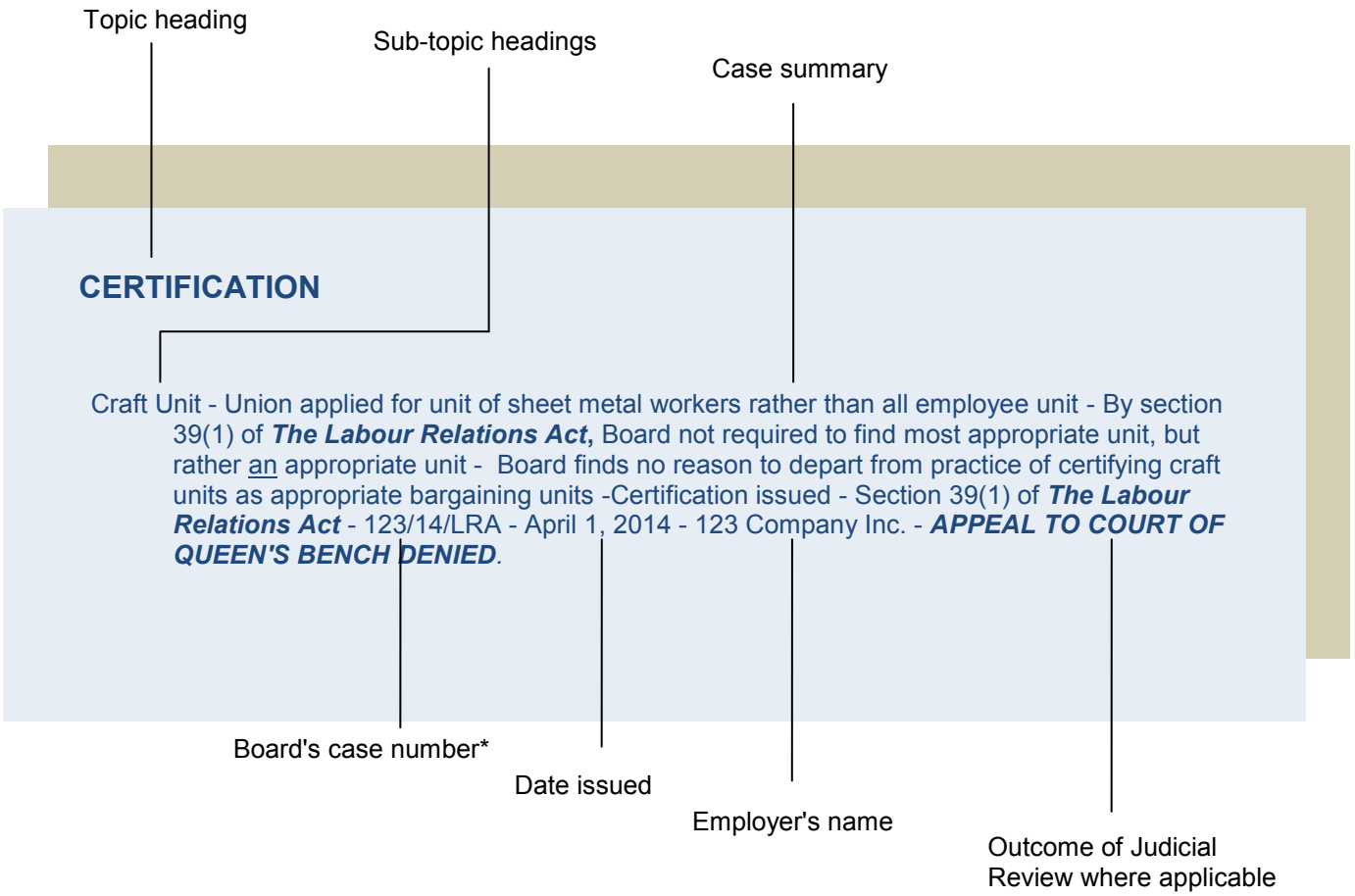
THE LABOUR RELATIONS ACT

This index includes summaries of Written Reasons for Decisions and Substantive Orders issued by the Manitoba Labour Board up to and including March 31, 2014, pursuant to ***The Labour Relations Act***.

HOW TO FIND A DECISION



To obtain further information on a specific decision, contact the Manitoba Labour Board at mlb@gov.mb.ca, 204-945-3783, or 500 - 175 Hargrave Street, Winnipeg MB R3C 3R8. The full text of Written Reasons and Substantive Orders issued since January 2007 are available on the Board's website http://www.gov.mb.ca/labour/labbrd/decision/index.html. The full text of all Board decisions are available on-line through the LexisNexis Quicklaw service. In addition, some decisions have been published in the Canadian Labour Law Reporter, in the Canadian Labour Relations Boards Reports and at CanLii.org.

* Case numbers, which are underlined, provide a hyperlink to the full text decision that has been posted on the Manitoba Labour Board's website

ABANDONMENT

Board finds that the Union by its conduct abandoned its rights to represent part-time employees - 774/83/LRA - May 4, 1984 - Winnipeg Free Press, Canadian Newspapers Company Ltd.

Bargaining unit empty for five years when cardiology technicians rehired - Five months later, Union included them into proposals prepared for laboratory technicians - Employer applied to Board to investigate whether Union abandoned its bargaining rights - Board was not prepared to say that Union must bargain for an empty unit - Union not acting diligently when technicians rehired result of an error of judgement and less than desirable standard of performance but does not amount to abandonment - Umbrella approach of rolling cardiology technicians in with laboratory technicians is assertion of bargaining rights - Application dismissed - 1031/01/LRA - September 11, 2002 - Manitoba Clinic.

ACCESS ORDER

Property of Employer - Board issues access agreement between the Union and the Employer -Substantive order - Reasons not issued - 894/95/LRA - March 15, 1996 - Canadian National Institute for the Blind.

Interference - Property of Employer - Union Representative denied access to plant floor as he refused to sign Employer's Security or Confidentiality Agreement - Issue of confidentiality dealt with in Board imposed Access Agreement - Imposing of same condition by Employer redundant - Employer ordered to cease and desist from requiring a duly authorized union representative to execute its own security agreement - 692/99/LRA - July 4, 2000 - Faroex Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; BOARD ORDER QUASHED**.

AMALGAMATION

Intermingling - School Division formed from amalgamation of four school divisions - Pursuant to subsection 56(2), Board acted on own motion to determine that employees represented by bargaining agent were intermingled with non-unionized counterparts throughout the new School Division who performed same basic job functions often side by side - Representation vote ordered and conducted - 273/03/LRA - April 30, 2004 - Border Land School Division.

Next Section (1.7-L1)

APPLICATION FOR CERTIFICATION

Union support - A temporary employee hired to work Sundays during the summer is not an affected employee for the determination of union support - R-213-1 - Undated - Rapid Cleaners Ltd.

Board asked to determine if members of Association were members in good standing if admitted before constitution adopted - No formal method for admittance provided in constitution - N-199-3 (LRA) - May 13, 1975 - Nelson River Construction Ltd.

Date of application for certification determined to be the effective date for the determination of union support - Subsection 30(1)(a) of ***The Labour Relations Act*** considered - No Number - May 26, 1976 - Ronald I.G.A.

Laid-off employees not eligible to vote on certification - 195/76/LRA - June 28, 1976 - Alpine Roofing & Building Contractors Ltd.

Union membership - Board determines that membership in good standing is established by the signing of a membership card and the payment of $1.00 notwithstanding other obligations imposed by the Association's constitution - Section 49 of ***The Labour Relations Act*** considered - No Number - February 4, 1977 - Macleods Division of Macleods Stedman Ltd.

Employer interference - Company causes the formation of an Association for the purpose of defeating a union organization campaign - Subsection 34(1) and Sections 31 and 7 of ***The Labour Relations Act*** considered - No Number - February 4, 1977 - Macleods Division of Macleods Stedman Ltd.

Contract employees of temporary government program considered an appropriate unit for bargaining - 759/76/LRA - March 15, 1977 - Province of Manitoba.

Fragmentation - Board refuses to fragment existing bargaining unit - 84/77/LRA - May 3, 1977 - Dauphin Consumers' Co-Operative Limited.

Build up - Board orders a new vote to determine union support due to influx of employees between date of application for certification and date of the hearing into the application - Rules 31 and 32 of Manitoba Regulation 223/76 and Section 50 of ***The Labour Relations Act*** considered - 250/77/LRA - May 20, 1977 - Metrico Enterprises Co. Ltd.

Board orders vote to determine application for certification though union had 60 percent membership at the time of application for certification - 502/77/LRA - September 22, 1977 - Dominion Stores Limited.

APPLICATION FOR CERTIFICATION

Carve Out - Board refuses to carve out a unit of employees from an existing bargaining unit to avoid multiplicity of collective bargaining - 330/78/LRA - June 12, 1978 - University of Manitoba.

Employer argues that the applicant was not a "union" within the meaning of ***The Labour Relations Act*** and therefore lacked status to apply for certification - No Number - April 28, 1978 - Tudor House Limited.

Board considers an application for certification for Legal Aid articling students - Board examines Subsections 31(a-d) of ***The Labour Relations Act*** - 554/81/LRA - June 10, 1982 - Legal Aid Services Society of Manitoba.

Board asked to consider a date other than the date of application for certification in determining membership support - "Build down" principle - Lay-offs occurring between the date of application and the date of certification hearing - 64/83/LRA - April 20, 1983 - Mrs. K's Food Products Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH DENIED; APPEAL TO COURT OF APPEAL GRANTED; BOARD ORDER QUASHED.**

International Representative of a union has authority to make an application for certification on behalf of the applicant - 64/83/LRA - April 20, 1983 - Mrs. K's Food Products Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH DENIED; APPEAL TO COURT OF APPEAL GRANTED; BOARD ORDER QUASHED**

Board considers an Application for certification where employees would suffer substantial and irremediable loss if Board refused to entertain the Application - Section 27 of ***The Labour Relations Act*** considered - 283, 292, 392/83/LRA - October 24, 1983 - Deer Lodge Centre Incorporated.

Board finds that the Union abandoned its rights to represent part-time employees, having seemingly redefined, by their conduct, the scope of the existing unit - However, the Board found no reason to deny part-time employees the right to bargain collectively and accordingly issued a certificate for "all part-time employees" - 774/83/LRA - May 4, 1984 - Winnipeg Free Press, Canadian Newspapers Company Ltd.

Date of the filing of an Application for Certification is the paramount date for determining employee wishes - Sections 31, 36 and 38 of ***The Labour Relations Act*** considered - 74/85/LRA - April 3, 1985 - Perimeter Lumber, Fin Mac Lumber Limited.

Significance of a Petition of Objection on an Application for Certification discussed - Voluntariness of Petition of Objection examined - Sections 31, 36 and 38 of ***The Labour Relations Act*** considered - 74/85/LRA - April 3, 1985 - Perimeter Lumber, Fin Mac Lumber Limited.

Employees who had previously signed union membership cards, file a petition of objection to an Application for Certification - Employees allege union misconduct in solicitation of union membership - Subsections 36(1) and 36(4) of ***The Labour Relations Act*** considered - 898/85/LRA - December 11, 1985 - Conquist Nursing Home Ltd.

APPLICATION FOR CERTIFICATION

Board alters its criteria of voter eligibility for a certification application to those employees within the bargaining unit and on the payroll up to and within two weeks of a vote ordered subsequent to the application - 190/85/LRA - February 28, 1986 - University of Manitoba.

Alteration of membership card alleged - Termination of membership in union prior to date of application for certification discussed - Subsection 36(2) of ***The Labour Relations Act*** considered - 231/86/LRA - July 24, 1986 - Kodiak Industries Ltd.

Board orders representation vote upon reviewing its decision with respect to unfair labour practice allegations - Subsection 39(1) of ***The Labour Relations Act*** applied - 132/86/LRA - Dec. 17, 1986 - Ross Foods and 41185 Manitoba Ltd.

Failure to submit proper documentation - Counsel for a group of objecting employees denied status at certification hearing - 132/86/LRA - December 17, 1986 - Ross Foods and 41185 Manitoba Ltd.

Application for certification of part-time sessional lecturers employed by Faculty of Arts dismissed - Relevant principles when determining an appropriate bargaining unit discussed - Subsections 30(1), (2) and (3) of ***The Labour Relations Act*** considered - 490/86/LRA - December 31, 1986 - University of Manitoba.

Board considered its discretion to order a vote pursuant to Subsection 39(1) of ***The Labour Relations Act*** - 846/86/LRA - December 31, 1986 - University of Manitoba.

Membership in union considered evidence of support for certification application - Date of application determined to be critical date when determining support for certification application - Effect of unfair labour practice on certification application discussed - 110/87/LRA - April 16, 1987 - Springhill Farms Limited.

Application for Certification for Employees of the Legislative Assembly Management Commission not within Board's jurisdiction - 567/87/LRA - February 24, 1988 - Legislative Assembly Management Commission – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Board determines the status of a group of objecting employees in an application for certification - Subsections 45(4) and 47(2) of ***The Labour Relations Act*** considered - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

Employer's status before Board on application for certification limited - Subsection 47(1) of ***The Labour Relations Act*** considered - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

APPLICATION FOR CERTIFICATION

Board outlines the extent of the inquiries, in lieu of personal knowledge required of a person who signs a statutory declaration in support of an application for certification - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

Union applies for certification at time when membership in bargaining unit fraction of normal size due to seasonal nature of employment - Subsection 40(1) of ***The Labour Relations Act*** considered - 1159/88/LRA - July 25, 1989 - Paddlewheel Riverboats Ltd.

Educational support staff apply for certification and merger with pre-existing bargaining unit of clerical workers - 514/89/LRA - August 15, 1989 - St. Vital School Division, No. 6.

Board refuses certification for lone stagehand temporarily employed by special arrangement for travelling production - Rule 28 of Board's **Rules of Procedure** applied - 1322/88/LRA - September 29, 1989 - Manitoba Theatre Centre.

Supervisors do not exert effective control - Treated as employees - Section1 of ***The Labour Relations Act*** considered - 238/89/LRA - October 20, 1989 - Health Sciences Centre.

Supervisory and office staff not chiefly performing management functions - Only one individual excluded due to employment of a confidential nature - 336/89/LRA - October 20, 1989 - Dominion Malting Ltd.

Intervenor not properly constituted union and agreement between Employer and Intervenor not collective agreement as defined in ***The Labour Relations Act*** - Intervenor has no status in application for certification proceedings - Reasons not issued - 1139/89/LRA - February 26, 1990 - Bogardus Wilson Ltd.

Employee defined - Assistant Managers and Thirds, though performing limited managerial functions, deemed to be employees - 346/88/LRA - March 9, 1990 - Kittson Investments, Singleton's Professional Family Hair Care.

Individuals working in the offices of the Caucus were employees of the Legislative Assembly Management Commission rather than the political party - Employee/employer relationship fell outside the jurisdiction of ***The Labour Relations Act*** - Application for certification dismissed - 42/90/LRA - August 29, 1990 - New Democratic Party Caucus, The Legislative Assembly Management Commission.

Fraud discussed - Employee misinterprets statements made by Union representative who did not intentionally mislead him - Applicant did not improperly obtain list of employees - Application to set aside certification disallowed - Subsections 19(b), 45(4), 47(1)&(2) and 52(c)&(d) of ***The Labour Relations Act*** considered - 626 & 738/90/LRA - May 10, 1991 - Intelicom Ltd. t/a Trojan Security Services.

APPLICATION FOR CERTIFICATION

Nucleus of "employees", who were expected to work hours as scheduled, considered regularly scheduled employees for the purpose of Application for Certification - Applicant achieves support in excess of 55% - Automatic certification granted - **Rules of Procedure, Manitoba Regulation 184/87R** considered - 470/91/LRA - October 30, 1991 - P & H Foods, Division of Parrish & Heimbecker Limited.

Board denied Applicant's argument that the Supervisory position it originally agreed to exclude was different from position currently held by incumbent - Supervisor's duties primarily managerial - Position properly excluded from unit - 470/91/LRA - October 30, 1991 - P & H Foods, Division of Parrish & Heimbecker Limited.

Almost all employees discharged or suspended soon after certification - Board need not consider merits of discipline, but was entitled to draw inferences from circumstantial evidence - Too much coincidence existed as employees bad disciplinary record occurred after application for certification, and warning notices sent three months after fact- Held the Employer motivated by anti-union bias - 384, 404, 420/91/LRA - Jan. 13, 1992 - Juniper Centre Inc.

"Transitional" period for amended **Labour Relations Act** - Section 40 of the **Act**, as it existed at date application filed, governs the determination of support level for an application for certification - 1103/92/LRA - February 5, 1993 - Gourmet Baker Inc.

Health Care sector - Board finds not all classifications in health care sector automatically have community of interest in collective bargaining sense - Unit of health care aides, while not best unit, appropriate and would not result in fragmentation in this case - Board bound by Section 39 of ***The Labour Relations Act*** to certify unit - 843/92/LRA - April 15, 1993 - Middlechurch Home of Winnipeg.

Consolidation - Two applications for certification filed for same health care facility - Board reluctant to apply evidence mutatis mutandis without consent of parties - Decides to hear first application and adjourn second - 843/92/LRA - April 15, 1993 - Middlechurch Home of Winnipeg.

Board held that there were no employees within the applied for unit as per Rule 28 of the **Rules of Procedure** as all personnel were either casual or part-time and were employed on an on call basis - Application for Certification dismissed - Substantive Order - Case No. 217/93/LRA - June 9, 1993 - Royal Crown Dining Room.

Union applied for two certificates for a unit of pathologists employed by the Faculty of Medicine and for a unit of pathologists employed by the Hospital - Found pathologists jointly appointed by the University and Hospital - Clinical and academic duties could not be separated so Employers could not be viewed as separate - Two separate units inappropriate - Applications dismissed - 10/94/LRA - September 20, 1995 - Health Sciences Centre & University of Manitoba.

APPLICATION FOR CERTIFICATION

Fragmentation - Community of Interest - Union applied for certification of two separate unit of pathologists - Held pathologists share community of interest with other specialists covered under same employment agreement - Board's practice is to avoid certification based on medical speciality or by university faculty which could result in the fragmentation or proliferation of bargaining units - Applications dismissed - 10/94/LRA - September 20, 1995 - Health Sciences Centre & University of Manitoba.

Employer objects to application claiming no employees described in the unit were on its payroll - Employer attempting to mislead the Board as to the identity of the employer by having another contractor pay Employee's salary - Employer offered Employee job, paid for his tools and had him report to its project supervisor at job site - Held Employee employed by Employer - Application for Certification granted - 605/94/LRA - October 26, 1995 - TNL Industrial Contractors Ltd.

Employer argued Employee hired for eight day project could not be considered employee for application under ***Rule 28 - Rule*** not applicable in the construction industry given short-term employment is the norm and casual employees are not an issue in this sector - 605/94/LRA - October 26, 1995 - TNL Industrial Contractors Ltd.

Craft unit - Millwrights performing work for short-term projects at isolated hydro station - Board does not sway from previous decisions to issue province-wide certification in the construction industry when determining most appropriate unit - 814/93/LRA - January 4, 1996 - Getsco Technical Services Inc.

Young student received appropriate information regarding union membership during organizational campaign, but she did not understand the nature of her actions - Her membership to be disregarded in determining employees' wishes - 360/95/LRA - February 8, 1996 - Greenberg Stores Limited – **LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

All Employee Unit - Fragmentation - Employer argued proposed unit represented only part of services it provided, so unit applied for not appropriate because of potential fragmentation of workplace - Board held answering telephones and geographic proximity of the two units not evidence enough to establish a clear interdependence and exchange of the workforce - Wishes of the majority of the employees could not be dismissed because of the potential for proliferation and fragmentation. Unit applied for appropriate - Certification ordered - 117/95/LRA - February 16, 1996 - Salvation Army Addictions and Rehabilitations Services.

All Employee Unit - "First" certification - Section 39 of the Act required "an" appropriate unit, not the "most" appropriate unit -.117/95/LRA - February 16, 1996 - Salvation Army Addictions and Rehabilitations Services.

Craft Unit - Union applied for unit of sheet metal workers rather than all employee unit - By section 39(1) of ***The Labour Relations Act*****,** Board not required to find most appropriate unit, but rather an appropriate unit - Board finds no reason to depart from practice of certifying craft units as appropriate bargaining units -Certification issued - Section 39(1) of ***The Labour Relations Act*** - 189/95/LRA - May 30, 1996 - Harstone Heating and Air Conditioning Ltd.

APPLICATION FOR CERTIFICATION

Bar - Collective agreement -Employer submitted certification of Union barred because it was a party to a "collective agreement" with Intervenor Union - Board held ratification vote suspect - Collective agreement not valid - Union having support of more than 65% of employees certified as bargaining agent - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc.- **APPEAL TO COURT OF QUEEN'S DISCONTINUED**

Security Officer - Employer sought to exclude security officers from all employee unit as they were involved with internal security matters - Security duties not significant to create conflict with other bargaining unit members - Held Security officers to be included in proposed unit - 206/96/LRA - September 6, 1996 - 3322785 Manitoba Ltd. t/a The Sheraton Hotel.

Automatic - No evidence that any member had taken steps to terminate membership at the time of or prior to the date of application for certification - Union has required support for automatic certification - Certification issued - 650 & 738/96/LRA - February 14, 1997 - East Side Ventilation. – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; COURT OF APPEAL REVERSED DECISION OF COURT OF QUEEN'S BENCH; LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**

Status - Applicant did not meet definition of "union" as set forth in Section 1 of *The Labour Relations Act* and *Regulations* and did not satisfy the criteria for establishment of unions - Substantive Order - Reasons not issued - 596/98/LRA - October 13, 1998 - City of Winnipeg (Winnipeg Ambulance Service).

Newspaper Carriers - Employer has relatively high degree of control over the work, customers served, hours and manner paper must be delivered, route that is taken - Carriers could not refuse to deliver advertisements and carriers economically dependent on Employer - Board ordered and certified bargaining unit of newspaper carriers who are under written arrangement and assigned specific routes - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Amendments - Parties signed a Memorandum of Settlement stating Sales Representatives would be included in the bargaining unit while Key Account - Sales Representatives would be excluded - Employer submitted certificate should not be amended, as it was not specifically noted or agreed in the settlement that it would be amended and any agreement reached was on a temporary basis pending negotiations - Board held plain and simple meaning of the Memorandum of Settlement was that sales representatives are to be included in the bargaining unit - Board follows usual practice to grant amendments to certificates when there has been agreement between the parties - 657/98/LRA - January 10, 2000 - Pepsi-Cola Canada Beverages (West).

APPLICATION FOR CERTIFICATION

Zone Distributors not restricted from delivering for other media outlets, purchase delivery vehicles for their use, and hire and fire their own staff - Only control Employer exercised related to the performance of the contract - Held Zone Distributors were not employees for the purposes of *The Labour Relations Act* - Application dismissed - 298/99/LRA - September 25, 2000 - Thomson Distribution Services (Div. of Thomson Canada).

General rule that an employer is entitled to exclude at least one employee who provides secretarial or administrative support even if individual not employed in a confidential capacity in matters relating to labour relations as a regular and major part of job function applicable only if individual employed in confidential capacity in some not insignificant degree - Employer did not demonstrate that Administrative Assistant to Operations Manager was employed in a confidential capacity in matters related to labour relations - Classification included in bargaining unit - Substantive Order - Reasons not issued - 438/02/LRA - May 5, 2003 - IKO (Manitoba).

Automatic - Management - Despite job title being "Piping Superintendent" incumbent did not supervise any other persons as he was only employee in the applied for unit - Board not persuaded individual exercised management functions primarily - Union had 100 percent support and met required minimum support for certification without a representation vote - Application for certification granted - 732/01/LRA **-** October 7, 2003 - Sperling Industries Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

Application for certification dismissed because Union failed to meet requirements as set out in Rule 7(3) of the *Manitoba Labour Board Rules of Procedure* when it failed to submit confirmation as to the adoption of the Union's Constitution - Substantive Order - Reasons not issued - 42/04/LRA - February 2, 2004 - Xpotential Products.

Community of Interest - Bargaining unit restricted to warehouse employees possessed a community of interest and was viable for collective bargaining - Three employees who occasionally worked in the warehouse but came from other business units were excluded as their inclusion did not make labour relations sense - 14/04/LRA - June 1, 2004 - UAP INC., carrying on business as Napa Auto Parts.

Fragmentation - Employer argued granting warehouse bargaining unit was first step towards undue fragmentation - Board concluded potential for future bargaining units not sufficient to render bargaining unit of warehouse employees inappropriate - 14/04/LRA - June 1, 2004 - UAP INC., carrying on business as Napa Auto Parts.

APPLICATION FOR CERTIFICATION

Unit Supervisors not subject to managerial exclusion as they performed management duties within standardized guidelines and exercised discretion within limited range and subject to direction from senior management - Confidentiality exclusion not satisfied because, while Supervisors had access to personnel files, they did not use information for labour relations matters - Supervisors giving opinions during negotitations did not constitute membership on the Employer's bargaining team - Held unit supervisors' duties consistent with front line supervisors and that they were "employees" under *The Labour Relations Act* - Application for certification granted - 721/03/LRA - August 26, 2004 - Ten Ten Sinclair Housing Inc.

Fact that an employer may not employ any employees in a bargaining unit after the Board issues a certificate does not affect validity of certificate - Certificate continues to be operative in event employer does employ employees falling within scope of bargaining unit - Substantive Order - 351/06/LRA - June 9, 2006 - B & M Land Company JV.

Petition - Employer Interference - Union claimed supervisor whose name did not appear on Voter List and who was not eligible to be a union member circulated anti-union petition - Board found she was not a manager or supervisor and she was included on the Voter List under a new surname - Held petition was product of employees and it was not initiated by Employer - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

Captive Audience - Freedom of Expression - Reservations Clerk reminded employees to vote and bring identification - Held comments made by Clerk did not amount to an interrogation as per section 25(1) of *The Labour Relations Act* and her comments fell within realm of protected freedom of expression as per section 32(1) - At a second alleged captive meeting, General Manager only made statements of fact which did not an constitute unfair labour practice - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

Carve Out - Fragmentation - Skilled Trades employees dissatisfaction and frustration with Union regarding handling of collective bargaining, ratification, and grievances, did not demonstrate inadequate or ineffective representation or reasons sufficient to justify "carving out" of a smaller skilled trades unit from the larger integrated production and skilled trades unit - Application for Certification dismissed - 646/06/LRA & 649/06/LRA - March 28, 2007 - Griffin Canada.

APPLICATION FOR CERTIFICATION

Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing foreign workers were aliens and therefore within federal jurisdiction as per Section 91 of the Constitution Act, 1867 - Provincial labour relations legislation applies to aliens as they were employed on vegetable farm which is an industry within legislative authority of provincial legislature to regulate - Application properly before provincial board - 595/06/LRA - June 26, 2007 - Mayfair Farms (Portage) - **APPEAL TO COURT OF QUEEN'S BENCH ABANDONED**.

Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing migrant seasonal workers were not employees within the meaning of *The Labour Relations Act* - Held workers did not fall under any exclusions set out in the *Act* - Board ordered certification to issue - 595/06/LRA - June 26, 2007 - Mayfair Farms (Portage) - **APPEAL TO COURT OF QUEEN'S BENCH ABANDONED**.

Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing terms and conditions of employment were set by the governments of Canada and Mexico through federal program and unalterable employment agreement - Held while Employer's discretion was somewhat fettered by Employment Agreement, it was decision-maker with respect to fundamental aspects of the work performed - Board ordered certification to issue - 595/06/LRA - June 26, 2007 - Mayfair Farms (Portage) - **APPEAL TO COURT OF QUEEN'S BENCH ABANDONED**.

First Nation band was direct employer of nurses providing health services on reserve to primarily aboriginal clients - Provision of health care services primarily for Indian beneficiaries not ordinary commercial activity found to be within provincial jurisdiction - Board satisfied provincial labour relations legislation did not apply and it did not have jurisdiction over labour relations of the Employers - Applications for certification dismissed - 480/07/LRA & 522/07/LRA - August 29, 2008 - Norway House Cree Nation and Pinaow Wachi Inc. Personal Care Home.

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 - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

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 - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

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 - 289/09/LRA - February 5, 2010 - Performing Arts Consortium of Winnipeg Inc. t/a Pantages Playhouse Theatre.

Casual Employee – Automatic – Employee Wishes - Employer submitted employees in proposed bargaining unit hired on casual basis and worked "as, if and when" needed on an "on call" arrangement and did not work on regular recurring basis week by week – Board held requirements of Rule 28 of *Manitoba Labour Board Rules of Procedure* satisfied by virtue that majority of affected employees appear on an "on-call" work schedule and have actually performed tasks during the scope of that schedule by reference to date of filing of application - Employees who did not regularly appear on "on-call" schedule or who did not work at all during relevant period by reference to date of filing of application did not meet criteria of Rule 28 and were excluded from Board's consideration for determining employee support – Substantive Order – 218/09/LRA – January 8, 2010 – Government of Manitoba, Family Services and Housing.

Casual Firefighters - Union applied for certification of firefighters employed by Municipality – Held bargaining unit of firefighters shared community of interest and appropriate unit for collective bargaining - Board could not deny certification of employees appropriate for collective bargaining because they may exercise statutory right to strike - Rule 28 of Board's *Rules of Procedure* modified to include those firefighters paid for at least one attendance at an accident or fire scene in each month during twelve week period preceding date of application - Applying modified formula under Rule 28, more than 65% of employees wished to have Union represent them – Certification granted – 107/10/LRA – Sept. 10, 2010 – R.M. of Springfield - **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

APPLICATION FOR CERTIFICATION

Rule 28 - While agreement of Union and Employer on criteria which constituted satisfactory modification of Rule 28 of Board's Rules of Procedure was relevant consideration, agreement between parties not binding on Board - Board ruled, given unique and special circumstances relating to employment relationship, application of Rule 28 was modified for purpose of calculating employee support on date Application was filed - Any employee on list of names who were employed on date of Application and who had performed any work during three of six pay periods in twelve-week period prior to filing Application were included for determining support for Application - Applying modified formula under Rule 28, Board satisfied that at least 40 percent but fewer than 65 percent of employees in unit wished to have Union represent them - Majority of eligible employees who voted in representation vote wished to have Union represent them - Certification granted - Substantive Order - 105/11/LRA - July 12, 2011 - University Of Winnipeg.

Fragmentation - Unions filed three separate applications covering different groups of employees of Employer - Employer submitted that applications proposed bargaining units that were within scope of larger unit which had been recently decertified and which remained viable and only appropriate bargaining unit - It argued Unions attempting to fragment already appropriate bargaining unit - Board held "open field" was created when former unit ceased to exist and any bargaining agent was entitled to apply for unit of employees claimed to be appropriate for collective bargaining - Principles regarding fragmentation did not apply because bargaining unit no longer existed and employees affected by applications were unrepresented at time applications filed - Substantive Order 179/10/LRA, 182/10/LRA & 224/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

Community of Interest - Scope - Union applied for certification of surveillance technicians and surveillance supervisors unit - Board considered surveillance technicians and supervisors work independently, with little interchange with other staff - Also practice in gaming/casino industry was to separate surveillance units given nature of duties - Establishment of separate bargaining unit for surveillance technicians and supervisors was reflective of their distinct community of interest - Unit appropriate for collective bargaining - Certification granted - Substantive Order - 179/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

Scope - Community of Interest - Union applied for certification of employees performing installation, maintenance, integrity and compliance of electronic gaming devices - Board determined that classifications of hotline technician and inventory clerk, given their daily interaction with gaming technicians, fell within proposed unit - Held proposed unit constituted group of employees with sufficiently coherent community of interest - Board ordered ballots cast in representation vote be counted - Substantive Order - 182/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

APPLICATION FOR CERTIFICATION

Scope - Union applied for certification of administrative and technical staff except for classifications included in certification applications filed at same time by IBEW and Teamsters - Since proposed bargaining unit included majority of classifications of recently decertified unit, Board satisfied that unit constituted "an" appropriate bargaining unit - Board ruled that the classifications of hotline technicians and inventory clerk properly belonged within bargaining unit IBEW proposed - Subject to that ruling, Board satisfied bargaining unit proposed in CUPE Application represented viable bargaining unit - Board ordered ballots cast in representation vote be counted - Substantive Order - 224/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

Representation - Employer submitted Union represented it would not seek to certify employees when it agreed to exclude employees from collective agreement – Held estoppel could not be relied upon to prevent exercising of statutory right or to release party from statutory obligation – Substantive Order - 1/11/LRA - August 12, 2011 - Government of Manitoba, Manitoba Ombudsman.

Technical Error - Bar - Previous application - Union filed review application requesting Board to allow it to file new application for certification for same bargaining unit within 30 days of dismissal of first application - It relied on subsections 8(14) and 8(15) of the *Manitoba Labour Board Rules of Procedure* under which Board can waive standard six month waiting period where prior application had been rejected for technical error or omission - It submitted error associated with timing of seasonal layoffs and miscommunication within Union regarding number of layoffs and status of workforce - Held application for certification dismissed as Board not satisfied union had support of required percentage of employees - Failure to meet threshold requirement of subsection 40(1) of *The Labour Relations Act* could not be characterized as technical error or omission - Application for Review and Reconsideration dismissed - Substantive Order - 406/11/LRA - January 13, 2012 - Bayview Construction Ltd. and Rocky Road Recycling Limited.

Union filed application for bargaining unit of stagehands employed by concert promoter - Held manner in which stagehands were hired, disciplined, supervised, directed, and controlled during exceptionally brief period of their engagement, lead inexorably to conclusion promoter not employer - Made little labour relations sense to grant certification where union would be required to negotiate with entity that did not hire, discipline, control or direct employees in meaningful manner - Such conditions unlikely to yield viable collective bargaining relationship - Application dismissed - 202/10/LRA - February 27, 2012 - AEG Live Canada.

APPLICATION FOR CERTIFICATION

Rule 28 - Union filed application for certification to represent research assistants and student assistants - Board accepted circumstances of case reflect “unique employment situation” to modify requirements of Rule 28 to reflect "all employees in the proposed bargaining unit who were employees on the date of application and performed work at least once in the twelve weeks preceding filing of Application" - After applying modified formula under Rule 28 to the agreed upon bargaining unit, Board satisfied requirements of section 40(1)2 of *The Labour Relations Act* had been met, in that, as of date of filing of Application, more than 40 percent but less than 65 percent of employees in unit wished to have Applicant represent them - Based on results of the representation vote, majority of eligible employees who voted, wished to have Applicant represent them as their bargaining agent - Board ordered certification to be issued - Substantive Order - 109/12/LRA - October 22, 2012 - Brandon University.

Revocation - Prior to date of application for certification, Employee sent email to individual who was acting on behalf of Union to conduct organizing drive, withdrawing her support for Union, having previously signed membership card - As per section 45(2) of *The Labour Relations Act*, an employee may, prior to date of application for certification, terminate membership in Union by taking “reasonable and unequivocal steps to do so” - Best practice to terminate membership is in writing to Union and to copy correspondence to Board - However, Board satisfied that email sent prior to date of application constituted reasonable and unequivocal step taken to terminate membership in Union - Membership evidence with respect to Employee not accepted - Substantive Order - 360/12/LRA - June 21, 2013 - Jobworks Employment Education Programs.

Revocation - Prior to date of application for certification, Employee took steps to terminate her membership, including attending at Union’s office, leaving voice mail message with senior Union official, and meeting with individual who was acting on behalf of Union to conduct organizing drive and advising him numerous times she wished to have membership card that she signed returned to her - As per section 45(2) of *The Labour Relations Act*, an employee may, prior to date of application for certification, terminate membership in Union by taking “reasonable and unequivocal steps to do so” - Best practice to terminate membership is in writing to Union and to copy correspondence to Board - Board satisfied, while Employee did not seek to terminate her membership in writing, she took reasonable and unequivocal steps to do so prior to date application for certification was filed - Membership evidence with respect to Employee not accepted - Substantive Order - 360/12/LRA - June 21, 2013 - Jobworks Employment Education Programs.

APPLICATION FOR CERTIFICATION

Defects/ Irregularities - Employees testified they were not provided with information required under section 45(3.1) of *The Labour Relations Act* - Board was satisfied their signatures on membership cards acknowledging they were provided with information regarding initiation fees and membership dues and how they were determined, constituted proof of compliance with section 45(3.1) - Substantive Order - 360/12/LRA - June 21, 2013 - Jobworks Employment Education Programs.

Constitutional - Indian Act - Union applied for certification as bargaining agent for nursing unit - Employer questioned Board's jurisdiction submitting that care home was located on Cree Nation reserve and, by the *Indian Act,* matter would be under federal jurisdiction - Board applied “functional test” to nature, habitual activities and daily operations of care home, found nature of operation is to provide residential care for the elderly and infirm members of the community - Board satisfied activities of Employer do not constitute federal undertakings - Fact that care home operated by an entity constituted by “Band By-Law” passed and enacted pursuant to a statutory authority contained in section 81 of the *Indian Act* and was “derivative entity” of Opaskwayak Cree Nation did not alter conclusion - Labour relations of Employer subject to provincial regulation and application for certification properly advanced under *The Labour Relations Act* - Certification granted - Substantive Order - 129/13/LRA - June 21, 2013 - Rod McGillivary Memorial Care Home.

APPLICATION FOR REVIEW OF CERTIFICATION

Board varies certificate to avoid uncertainty as to who would be included in the bargaining unit - Subsection 121(2) of ***The Labour Relations Act*** applied - 637/83/LRA - June 25, 1985 - The City of Winnipeg.

(Next Section: Sec. 1.11)

APPROPRIATE BARGAINING UNIT

Board rules that despite the dissolution of the Districts and merger with the Division, that an obligation to bargain with the certified bargaining agent still existed - However, existing bargaining units no longer appropriate - Vote ordered to determine new agent - Subsections 10(1(d)) and 12 of ***The Labour Relations Act*** considered - S-267-1 - July 13, 1967 - Assiniboine North School Division, No. 2.

Fragmentation - Board determines that registered nurses are an appropriate bargaining unit despite the fragmentation of bargaining units in hospitals - No Number - August 14, 1972 - Winnipeg General Hospital.

Board establishes a unit of Legal Aid counsel separate and apart from a unit of Crown Attorneys - L-160-1/LRA - July 25, 1975 - Legal Aid Services Society of Manitoba.

Board considers whether the bargaining units of two printing companies should be merged when one printing company purchases the assets of another - Section 36 of ***The Labour Relations Act*** considered - #G-2-9 - Undated - The Garry Press Ltd.

In determining whether an employee is within a bargaining unit the Board considers the employees actual functions as opposed to the title assigned to them - 378/76/LRA - Undated - The City of Winnipeg.

Board determines the appropriate bargaining unit for the employees of an optical dispensing company - 469/76/LRA - Undated - Central Optical Company.

Private secretary outside of the scope of the unit for which had been applied - 829/76/LRA - Undated - Allied Farm Equipment (Manitoba) Ltd.

Foremen determined to be employees and therefore included in the bargaining unit - Subsections 1(k) and 2(2) of ***The Labour Relations Act*** considered - 829/76/LRA - Undated - Allied Farm Equipment (Manitoba) Ltd.

Definition - Supervisor of Maintenance, though having some managerial/supervisory functions, determined to be an "employee" within the meaning of Section 1(k) of ***The Labour Relations Act*** - No Number - February 9, 1977 - The Convalescent Home of Winnipeg.

Contract employees of temporary government program considered an appropriate unit for bargaining - 759/76/LRA - March 15, 1977 - Province of Manitoba.

Fragmentation - Board refuses to fragment existing bargaining unit - 84/77/LRA - May 3, 1977 - Dauphin Consumers' Co-Operative Limited.

Carve Out - Board refuses to carve out a unit of employees from an existing bargaining unit to avoid multiplicity of collective bargaining - 330/78/LRA - June 12, 1978 - University of Manitoba.

APPROPRIATE BARGAINING UNIT

Board considers an application for certification for Legal Aid articling students - Board examines Subsections 31(a-d) of ***The Labour Relations Act*** - 554/81/LRA - June 10, 1982 - Legal Aid Services Society of Manitoba.

Board excludes Stock Counters from warehouse employees bargaining unit - 852/84/LRA - January 24, 1985 - Amesco (1967) Ltd., Division of Westburne.

Principles for determining what constitutes an appropriate bargaining unit discussed - Subsections 29(1) and 29(2) of ***The Labour Relations Act*** considered - 741/84/LRA - June 7, 1985 - Western Grocers, Westfair Foods Ltd.

Board denies application to "carve out" a smaller bargaining unit from an existing larger unit - Policy governing the revision of the scope of existing bargaining units discussed - 308/85/LRA - 892/84/LRA - April 29, 1986 - St. Boniface General Hospital.

Application for certification of part-time sessional lecturers employed by Faculty of Arts dismissed - Relevant principles when determining an appropriate bargaining unit discussed - Subsections 30(1), (2) and (3) of ***The Labour Relations Act*** considered - 490/86/LRA - December 31, 1986 - University of Manitoba.

Board reviews its decision as to the appropriateness of a bargaining unit restricted to the Faculty of Arts - 846/86/LRA - December 31, 1986 - University of Manitoba.

Employees of predecessor employer intermingled with employees of company to whom the business is sold - Appropriate bargaining unit determined - 243/87/LRA - November 26, 1987 - Sterling Stall Group; Lantry Leather.

Factors relevant to the determination of whether supervisory unit within management exclusion discussed - Subsection (1)(k)(i) of ***The Labour Relations Act*** considered - 1207/87/LRA - March 17, 1988 - Provincial Auditor, Province of Manitoba.

The Board, in determining the appropriate bargaining unit, separates production/blue collar workers from clerical/white collar workers - 481/87/LRA - September 8, 1988 - Blackwood Beverages Ltd.

Members of one bargaining unit performing same functions transferred to location under jurisdiction of different union - Applicability of terms in creation certificate - Section 142(5)(d) and (e) of ***The Labour Relations Act*** considered - 1367/88/LRA - July 7, 1989 - Manitoba Hydro.

Employer requests Board not to approve Union as such approval would create situation whereby managers and workers belong to same union - Subsections 39(1) and 39(2) of ***The Labour Relations Act*** considered - 336/89/LRA - Oct. 20, 1989 - Dominion Malting Ltd.

APPROPRIATE BARGAINING UNIT

Foremen performing supervisory functions determined to be "employees" and, therefore, eligible for collective bargaining - Chief Engineer, Quality Control and Purchasing Managers performing management functions - Excluded from bargaining unit - Subsection 1 and 2(2) of ***The Labour Relations Act*** considered - 110/89/LRA - May 2, 1990 - Labatt's Manitoba Brewery.

Nursing Co-ordinators excluded from bargaining unit as they were extensively involved in the hiring process - Assistant to Nursing Director excluded because she would often act for the Director - Nursing Supervisors not excluded as they perform tasks within strict guidelines - 1143/89/LRA - October 18, 1990 - Bethesda Health & Social Services, Bethesda Personal Care Home Inc.

Petitions of Objection dismissed for failure to allege or substantiate Union misconduct regarding membership support - Subsections 45(4) and 47(2) of ***The Labour Relations Act*** considered - 414/90/LRA - March 18, 1991 - Perth Services Ltd. & Perth Cleaners Launderers and Furriers Ltd. – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

To meet criteria of employment, incumbent required to maintain professional certification which required employment in the practice of nursing - Board determined that when the position was performed by a qualified nurse it fell within the Applicant's bargaining unit- 512/89/LRA - March 21, 1991 - Health Sciences Centre.

Bargaining Agent aware for 21 years that positions existed and what duties were performed - Although incumbents were employees as defined in ***The Labour Relations Act***, bargaining agent's inactivity in pursuing representation results in tacit agreement to exclude them from bargaining unit - Reasons not issued - 1139/91/LRA - May 7, 1992 - Thompson General Hospital.

Head Nurses - Nursing Unit Managers were first line supervisors performing within strict guidelines allowing little or no discretion - Position likely created to form layer of management which could perform bargaining unit work during a work stoppage - Held Unit Managers were employees within the meaning of ***The Labour Relations Act***, and were included in the bargaining unit - 1141/89/LRA - Oct. 14, 1992 - Victoria General Hospital – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Head Nurses - Incumbent possesses high degree of independent decision making authority in hiring process and in the disciplining or terminating of employees - Functions affect economic livelihood of subordinates - Excluded from the bargaining unit - 638/92/LRA - December 22, 1992 - Flin Flon General Hospital.

Management - Health Care - Duties of Chief of Staff of small rural hospital included planning, budgeting, approving work schedules, and imposing limited discipline. Duties not particularly significant with respect to overall duties as physician - Until by-law and job description finalized, no basis to exclude Chief of Staff for confidential or managerial functions - 599/92/LRA - April 6, 1993 - Notre Dame De Lourdes Health District.

APPROPRIATE BARGAINING UNIT

Health Care sector - Board finds not all classifications in health care sector automatically have community of interest in collective bargaining sense - Unit of health care aides, while not best unit, appropriate and would not result in fragmentation in this case - Board bound by Section 39 of ***The Labour Relations Act*** to certify unit - 843/92/LRA - April 15, 1993 - Middlechurch Home of Winnipeg.

Intermingling - Substantive Order - Transfer of schools between school divisions resulted in intermingling of employees represented by the Union and those who were not unionized - Pursuant to Section 56(d) of ***The Labour Relations Act***, Board determined affected employees constituted two separate and appropriate bargaining units which would include unionized and non-unionized employees - Reasons not issued - 1023/92/LRA - May 10, 1993 - Pembina Valley School Division, Turtle Mountain School Division.

Management - Health Care - Chief of Staff's participation on hospital committees, which resulted from his expertise as physician and not as manager, and degree of economic control over other physicians insufficient to warrant exclusion from bargaining unit - 600/92/LRA - Aug. 11, 1993 - Lynn Lake Hospital Dist. No. 38.

Head Nurse - Resident Care Managers did not primarily perform management functions and were treated as caregivers for budgetary purposes - Board determined position should be included in the bargaining unit - Staff Development Co-ordinator/Assistant Director of Nursing affected the economic livelihood of subordinates - Board held position should be excluded from the bargaining unit - 958/92/LRA - October 18, 1993 - Maples Personal Care Home.

Management - Health Care - Duties of Manager of Laboratory Services did not include technical hands on analysis as contemplated by the certificate - Incumbent and Union aware duties had not changed for many years - Held classification primarily management and not employee as per ***The Labour Relations Act*** - Properly excluded for bargaining unit - 343/93/LRA - April 21, 1994 - The Pas Health Complex.

Community of Interest - Health Care - Bed Utilization Manager position appropriate for inclusion in nursing unit as health care background required to effectively perform job - However, responsible for decisions on bed closures which affect the economic well-being of the bargaining unit members, and Union had not questioned the excluded status of position for years, so excluded as per ***The Labour Relations Act*** - 655/93/LRA - June 19, 1995 - Seven Oaks General Hospital.

Community of Interest - Health Care - Coordinator Injured Workers Program position appropriate for inclusion in nursing unit as health care background required to effectively perform job - Although incumbent indicates possible abuse of program by bargaining unit members, found not to be a conflict of interest to justify exclusion - 655/93/LRA - June 19, 1995 - Seven Oaks General Hospital.

APPROPRIATE BARGAINING UNIT

Admissibility - Employer presents evidence on events occurring after date of application claiming positions evolving - Positions not created within six months prior to date of application so Board would not allow exception to normal rule of using date of application as evidentiary cut-off date - 655/93/LRA - June 19, 1995 - Seven Oaks General Hospital.

Union applied for two certificates for a unit of pathologists employed by the Faculty of Medicine and for a unit of pathologists employed by the Hospital - Found pathologists jointly appointed by the University and Hospital - Clinical and academic duties could not be separated so Employers could not be viewed as separate - Two separate units inappropriate - Applications dismissed - 10/94/LRA - September 20, 1995 - Health Sciences Centre & University of Manitoba.

Fragmentation - Community of Interest - Union applied for certification of two separate unit of pathologists - Held pathologists share community of interest with other specialists covered under same employment agreement - Board's practice is to avoid certification based on medical speciality or by university faculty which could result in the fragmentation or proliferation of bargaining units - Applications dismissed - 10/94/LRA - September 20, 1995 - Health Sciences Centre & University of Manitoba.

Health Care - Head Nurse - Board finds no "significant change" occurred in the degree of hands- on nursing performed by the Nursing Unit Coordinator from the date of certification until the evidentiary cut-off date - Position remained excluded from bargaining unit - Substantive Order - Reasons not issued - 217/95/LRA - November 30, 1995 - Pembina-Manitou Health Centre – **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Craft unit - Millwrights performing work for short-term projects at isolated hydro station - Board does not sway from previous decisions to issue province-wide certification in the construction industry when determining most appropriate unit - 814/93/LRA - January 4, 1996 - Getsco Technical Services Inc.

Union claimed employees of newly opened Club store fell within scope of its bargaining unit rather than bargaining unit of Superstore employees - Board concluded differences in operations of the Club and Cash & Carry not substantial - Cash & Carry store and the Club were more closely allied than the Club and the Superstore - Held employees of the Club were included in the bargaining unit of the Union - 449/95/LRA - January 25, 1996 - Westfair Foods Ltd.

All Employee Unit - Fragmentation - Employer argued proposed unit represented only part of services it provided, so unit applied for not appropriate because of potential fragmentation of workplace - Board held answering telephones and geographic proximity of the two units not evidence enough to establish a clear interdependence and exchange of the workforce - Wishes of the majority of the employees could not be dismissed because of the potential for proliferation and fragmentation. Unit applied for appropriate - Certification ordered - 117/95/LRA - February 16, 1996 - Salvation Army Addictions and Rehabilitations Services.

APPROPRIATE BARGAINING UNIT

All Employee Unit - "First" certification - Section 39 of the Act required "an" appropriate unit, not the "most" appropriate unit -.117/95/LRA - Feb. 16, 1996 - Salvation Army Addictions and Rehabilitations Services.

Association filed displacement application which expanded on unit of truck drivers by inclusion of owner-operators - Board does not allow application as filed as it could be used to uproot Incumbent Union which was in the midst of lengthy strike and owner-operators shared little community of interest with unit members - As per discretion given in Section 39 of ***The Labour Relations Act***, Board splits unit into two - Certification issued for Association to represent unit of owner-operators - Certification application dismissed for other unit as less then 40% supported Association - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Status -Incumbent Union has clear interest in determination of voting constituency - Has status to present argument for determination of unit for purpose of calculating support for Association - However, Employer had no part in proceedings with respect to consent issue under Section 35(5) of ***The Labour Relations Act*** - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Craft Unit - Union applied for unit of sheet metal workers rather than all employee unit - By section 39(1) of ***The Labour Relations Act*****,** Board not required to find most appropriate unit, but rather an appropriate unit - Board finds no reason to depart from practice of certifying craft units as appropriate bargaining units -Certification issued - Section 39(1) of ***The Labour Relations Act*** - 189/95/LRA - May 30, 1996 - Harstone Heating and Air Conditioning Ltd.

Security Officer - Employer sought to exclude security officers from all employee unit as they were involved with internal security matters - Security duties not significant to create conflict with other bargaining unit members - Held Security officers to be included in proposed unit - 206/96/LRA - September 6, 1996 - 3322785 Manitoba Ltd. t/a The Sheraton Hotel.

Community of Interest - For employees to share a community of interest, an element of correlation must exist not only with work done, but also with responsibilities attached to the position, with skills, abilities, and relevant experience, benefits received, and regularity of work - Casual employees of arena could not realistically be considered to share community of interest with full-time employees - 126/97/LRA - Dec. 2, 1997 - Winnipeg Enterprises Corporation.

Subsequent to issuing certificate, chief engineer sought management exclusion from bargaining unit - Board denied his request as it could not amend the certificate until the Employer acquiesced or provided submissions to the contrary . - 126/97/LRA - Dec. 2, 1997 - Winnipeg Enterprises Corporation.

APPROPRIATE BARGAINING UNIT

Confidential Personnel - Employer contested inclusion of executive secretaries who deal with confidential correspondence and messages - Board found they were simply conduits for the distribution of information and have no involvement in policy formulation or implementation - Confidentiality of material questioned since other bargaining unit members were allowed to type or file same - Secretaries' minimal involvement in labour relations limited to typing and filing - Typing and posting of job advertisements, receiving employment applications, and typing and filing or disciplinary reports do not constitute grounds for exclusion from the bargaining unit - Held duties did not prevent executive secretaries from being included in the bargaining unit - 724/97/LRA - October 30, 1998 - Transcona-Springfield School Division No. 12.

Health Care - Home Care Case Co-ordinators required to be a nurse with an active registration in M.A.R.N., the provincial nurses' professional association - Board determined classification properly included in nursing bargaining unit, as opposed to the Technical/Professional Paramedical unit - Substantive Order - Reasons not issued - 412/99/LRA - November 23, 1999 - Nor-Man Regional Health Authority.

Health Care - Unit of Occupational Therapists, Physiotherapists, and Speech Language Pathologists determined to be "tag end" as per Board's *Review of Bargaining Unit Appropriateness in Manitoba's Urban Health Care Sector* - Unit appropriate for collective bargaining as it represented remaining non-unionized classifications within technical/professional paramedical unit - Representation vote held on a classification-by-classification basis - Majority of Occupational Therapists and Physiotherapists wished to have Union represent them - Certificate issued including all Occupational Therapists and Physiotherapists employed at the facility - 272/99/LRA - February 13, 2000 - Deer Lodge Centre Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Confidential capacity - Protection Officers who frequently investigate matters relating to accidents and internal security issues do not have significant independent authority in labour relations - Level of investigation limited to gathering of information and following supervisor's directives - Not employed in confidential capacity to support exclusion from bargaining unit - 400/99/LRA - June 12, 2000 - Brandon Regional Health Authority.

Community of Interest - Employer demonstrated that certain classifications shared a significant community of interest so as to include them with the applied for unit - However, counter sales staff, parts employees, and office staff not found to share community of interest with service personnel - Board considered that Section 39 of *The Labour Relations Act* requires "an" appropriate unit, not "the most appropriate" unit - 0019/00/LRA - September 8, 2000 - Hertz Certified/Hertz Equipment Rentals.

APPROPRIATE BARGAINING UNIT

Manger of Physical Plant Services - Hiring of single employee and no on-site supervisor not sufficient to meet threshold test - Duties more in line with front-line supervisor - Position included in the bargaining unit - 53/00/LRA - September 20, 2000 - Regional Health Authority - Central Manitoba Inc.

Health Care - Facility Patient Care Managers have authority on a facility wide basis to exercise independent judgement and discretion which has economic impact on the livelihood of bargaining unit employees and creates a conflict of interest with bargaining unit status - Same authority not given to charge nurses - Limited personal hiring done by FPCM did not alter her performance of managerial functions - Board practice that appropriate bargaining unit for nurses was all nurses practising the profession of nursing - FPCM did not perform clinical duties - Held FPCM were not employees within the meaning of *The Labour Relations Act,* and were not covered in nurses' bargaining unit - 258/00/LRA - June 6, 2002 - Seven Oaks General Hospital.

Health Care - Nurses' Union requested that classification of home care case coordinator be moved out of the technical/professional unit represented by the MGEU and into the nurses bargaining unit - Board found MGEU's certificate excluded "nurses" but meant nurses "practising the profession of nursing" - Held coordinators not "practising the profession of nursing" as an essential part of their job functions and should remain in the technical/professional paramedical unit - 675/01/LRA - January 16, 2003 - Marquette Regional Health Authority.

Health Care - Classifications within Rehabilitation Engineering and Biomedical Engineering categories determined to fall within maintenance and trades unit rather than technical/professional paramedical unit as they were not involved to any significant degree in direct patient care and training not dissimilar to others who achieve recognition in a trade - 143/00/LRA - April 28, 2003 - Winnipeg Regional Health Authority (Health Sciences Centre).

Automatic - Management - Despite job title being "Piping Superintendent" incumbent did not supervise any other persons as he was only employee in the applied for unit - Board not persuaded individual exercised management functions primarily - Union had 100 percent support and met required minimum support for certification without a representation vote - Application for certification granted - 732/01/LRA **-** October 7, 2003 - Sperling Industries Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**

Carve Out - Board held distinct and significant differences existed between vacant Building Services in Charge ("BSIC") position in Applicant Union's bargaining unit and Facilities Maintenance Coordinator ("FMC") position so that FMC should not be included in its unit- However most duties of BSIC job swallowed by FMC - Carve-out could be accomplished however Board could not overrule Employer and direct it to revise its organizational structure - 771/02/LRA - Oct. 27, 2003 - City of Winnipeg.

APPROPRIATE BARGAINING UNIT

Intermingling - School Division formed from amalgamation of four school divisions - Pursuant to subsection 56(2), Board acted on own motion to determine that employees represented by bargaining agent were intermingled with non-unionized counterparts throughout the new School Division who performed same basic job functions often side by side - Representation vote ordered and conducted - 273/03/LRA - April 30, 2004 - Border Land School Division.

Community of Interest - Bargaining unit restricted to warehouse employees possessed a community of interest and was viable for collective bargaining - Three employees who occasionally worked in the warehouse but came from other business units were excluded as their inclusion did not make labour relations sense - 14/04/LRA - June 1, 2004 - UAP INC., carrying on business as NAPA AUTO PARTS.

Fragmentation - Employer argued granting warehouse bargaining unit was first step towards undue fragmentation - Board concluded potential for future bargaining units not sufficient to render bargaining unit of warehouse employees inappropriate - - 14/04/LRA - June 1, 2004 - UAP INC., carrying on business as NAPA AUTO PARTS.

Management - Supervisors - Security Supervisors, Surveillance Supervisors, Customer Services Supervisor, Kitchen Supervisor and Restaurant Supervisor excluded from bargaining unit of employees as they exercised management functions although limited - Casino Shift Supervisor and Gift Shop Supervisor did not exercise significant management functions that would preclude them from being included in bargaining unit - 592/03/LRA - June 15, 2004 - Aseneskak Casino.

Proposed unit of substitute teachers appropriate for collective bargaining - For determination of employee support, Board modified Rule 28 of *Manitoba Labour Board Rules of Procedure* to meet the circumstances of the particular case - Board ruled that it would include any teacher, (1) whose name appeared on the Division's list of substitutes on the date of application, and (2) who had worked at any time during the 12 weeks prior to date of application, excluding Christmas break from the 12 week period - 776-778/03/LRA & 149/04/LRA - December 6, 2004 - Portage La Prairie School Division, Flin Flon School Division, Pine Creek School Division & Swan Valley School Division.

Board held that physicians deemed to be independent contractors by the Employer were employees under *The Labour Relations Act* as the Employer supplied facilities and equipment for the physicians and controlled the patient load through the appointment booking process – 199/04/LRA – April 27, 2005 – Burntwood Regional Health Authority.

APPROPRIATE BARGAINING UNIT

Apprentices - Possibility of apprentices employed on date of application for certification not being "registered apprentices" within the meaning of *The Apprenticeship and Trades Qualification Act* did not, in and of itself, render the bargaining unit inappropriate - Substantive Order - 351/06/LRA - June 9, 2006 - B & M Land Company JV.

Certified Bargaining Unit included Electrician-Welders among other classifications - Employer did not employ any Electrician-Welders on date of filing of application for certification - Fact that there may be no employees in one or more classifications covered by the certificate did not render the bargaining unit inappropriate - Substantive Order - 351/06/LRA - June 9, 2006 - B & M Land Company JV.

Confidential Personnel - Management - Six positions Union claimed should to be included in the bargaining unit were same positions submitted in a previous application that Union and Employer agreed would be excluded - Held changes to organization and to titles of positions were not material and significant changes sufficient to conclude that excluded positions should be included in bargaining unit - Substantive Order - 394/05/LRA - January 10, 2007 - University of Manitoba.

Burden of Proof - Where position has historically been excluded from bargaining unit covered by successive collective agreements, onus of proof rests with Union who must satisfy Board that material and significant changes have occurred sufficient to conclude that excluded positions ought to be from then on included in bargaining unit - Substantive Order - 394/05/LRA - January 10, 2007 - University of Manitoba.

Confidential Personnel - Fact that incumbents had access to "confidential" information in general sense and were expected to maintain confidentiality under their duty of fidelity to the Employer not sufficient to exclude positions from bargaining unit - Access to and the processing of salary information or disciplinary notices not reason to exclude on confidentiality criterion - Held Benefit Support Clerk and Payroll Clerk were included in the bargaining unit - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

Board did not accept that Union had agreed to exclusion of positions historically not covered by successive collective agreements - Parties were addressing restructuring of support unit in parallel discussions outside of the collective bargaining process - Unfair to apply "significant/material change" principle - Determination of whether positions ought to be excluded must be decided as a case of first instance and by reference to current duties - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

Confidential Personnel - Human Resources Clerk performed duties of Human Resource Administrative Assistant when incumbent was absent - Administrative Assistant worked directly for and reported to the Director of Human Resource Services prepared and processed correspondence for the Director - Unfair to include Human Resources Clerk in support unit as employed in confidential capacity in matters relating to labour relations to such a degree that position ought to be excluded - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

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 - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

Casual Employee – Automatic – Employee Wishes - Employer submitted employees in proposed bargaining unit hired on casual basis and worked "as, if and when" needed on an "on call" arrangement and did not work on regular recurring basis week by week – Board held requirements of Rule 28 of *Manitoba Labour Board Rules of Procedure* satisfied by virtue that majority of affected employees appear on an "on-call" work schedule and have actually performed tasks during the scope of that schedule by reference to date of filing of application - Employees who did not regularly appear on "on-call" schedule or who did not work at all during relevant period by reference to date of filing of application did not meet criteria of Rule 28 and were excluded from Board's consideration for determining employee support – Substantive Order – 218/09/LRA – January 8, 2010 – Government of Manitoba, Family Services and Housing.

Casual Firefighters - Union applied for certification of firefighters employed by Municipality – Held bargaining unit of firefighters shared community of interest and appropriate unit for collective bargaining - Board could not deny certification of employees appropriate for collective bargaining because they may exercise statutory right to strike - Rule 28 of Board's *Rules of Procedure* modified to include those firefighters paid for at least one attendance at an accident or fire scene in each month during twelve week period preceding date of application - Applying modified formula under Rule 28, more than 65% of employees wished to have Union represent them – Certification granted – 107/10/LRA – Sept. 10, 2010 – R.M. of Springfield - **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

Fragmentation - Unions filed three separate applications covering different groups of employees of Employer - Employer submitted that applications proposed bargaining units that were within scope of larger unit which had been recently decertified and which remained viable and only appropriate bargaining unit - It argued Unions attempting to fragment already appropriate bargaining unit - Board held "open field" was created when former unit ceased to exist and any bargaining agent was entitled to apply for unit of employees claimed to be appropriate for collective bargaining - Principles regarding fragmentation did not apply because bargaining unit no longer existed and employees affected by applications were unrepresented at time applications filed - Substantive Order 179/10/LRA, 182/10/LRA & 224/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

APPROPRIATE BARGAINING UNIT

Community of Interest - Scope - Union applied for certification of surveillance technicians and surveillance supervisors unit - Board considered surveillance technicians and supervisors work independently, with little interchange with other staff - Also practice in gaming/casino industry was to separate surveillance units given nature of duties - Establishment of separate bargaining unit for surveillance technicians and supervisors was reflective of their distinct community of interest - Unit appropriate for collective bargaining - Certification granted - Substantive Order - 179/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

Scope - Community of Interest - Union applied for certification of employees performing installation, maintenance, integrity and compliance of electronic gaming devices - Board determined that classifications of hotline technician and inventory clerk, given their daily interaction with gaming technicians, fell within proposed unit - Held proposed unit constituted group of employees with sufficiently coherent community of interest - Board ordered ballots cast in representation vote be counted - Substantive Order - 182/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

Scope - Union applied for certification of administrative and technical staff except for classifications included in certification applications filed at same time by IBEW and Teamsters - Since proposed bargaining unit included majority of classifications of recently decertified unit, Board satisfied that unit constituted “an” appropriate bargaining unit - Board ruled that the classifications of hotline technicians and inventory clerk properly belonged within bargaining unit IBEW proposed - Subject to that ruling, Board satisfied bargaining unit proposed in CUPE Application represented viable bargaining unit - Board ordered ballots cast in representation vote be counted - Substantive Order - 224/10/LRA - July 14, 2011 - Manitoba Lotteries Corporation.

All employee unit - Geographic scope - Health care - Employer developed new facility in Brandon - Union applied for certification of all employees of Employer employed outside Winnipeg - Employer objected to certificate alleging, through voluntary recognition, parties agreed not to treat existing certifications as being limited to Winnipeg - Board held collective agreement defined to mean agreement in writing - Oral understandings to follow a particular collective agreement did not constitute collective agreement - Board concluded no collective agreement in writing existed regarding employees employed at Brandon facility except for physics associate meaning Application properly before it - Not appropriate to certify Union for all employees outside of Winnipeg as Union signed up more than 65 percent of Brandon employees as members in good standing as of date of filing of application - Certification of all employee unit limited to Brandon facility constituted appropriate unit particularly when physicians, nurses, office and clerical staff were excluded - Certification issued - Substantive Order - 17/11/LRA - August 12, 2011 - CancerCare Manitoba.

APPROPRIATE BARGAINING UNIT

Union filed application for certification for all employee unit in office of Ombudsman - Employer objected to particular unions representing employees - Board does not decide which union employees should choose - Board satisfied applied for unit appropriate for collective bargaining and ordered ballots cast in representation vote be counted – Substantive Order - 1/11/LRA - August 12, 2011 - Government of Manitoba, Manitoba Ombudsman.

Union filed application for certification for all employee unit in office of Ombudsman - Employer contested appropriateness of bargaining unit – Board held *The Civil Service Act* did not expressly limit or restrict Board's jurisdiction to deal with collective bargaining rights of employees in applied for unit; did not expressly contemplate there may be only one bargaining unit and one collective agreement for all employees of Province; did not contain any provision that would prevent group of previously excluded individuals from seeking to have Union represent them - Evidence did not support applied for unit not appropriate because employees may investigate decisions, acts or omissions of other members of Union - Suggestion employees would be compromised by association with Union was not reasonable - Board did not believe public would reasonably conclude employees' investigations would be compromised if Union was bargaining agent - Suggestion senior executives might be reluctant to provide highly sensitive information was conjecture and must not thwart right of employees to seek Union as bargaining agent - Board satisfied applied for unit appropriate for collective bargaining and ordered ballots cast in representation vote be counted – Substantive Order - 1/11/LRA - August 12, 2011 - Government of Manitoba, Manitoba Ombudsman.

Board certified Union as bargaining agent for all employees of Employer employed in City of Brandon - Union requested Board rescind certificate and issue new certificate for bargaining unit encompassing all employees in Province of Manitoba - Union argued Board not empowered to vary description of bargaining unit and Board's jurisdiction limited to determining question as to whether or not bargaining unit proposed by Union was appropriate for collective bargaining - Held subsections 39(1) and 39(2) of *The Labour Relations Act* authorized Board to alter description of any proposed bargaining unit - Application did not reveal sufficient cause why Board should review or reconsider original decision - Application dismissed - Substantive Order - 294/11/LRA - October 27, 2011 - CancerCare Manitoba.

New evidence - Board certified Union as bargaining agent for all employees of Employer employed in City of Brandon - Employer requested Board review and reconsider its decision submitting Board erred in determining that existing collective agreement was not a collective agreement within meaning of *The Labour Relations Act* in respect of employees in Brandon - Employer asserted certifying Union for unit already covered by a collective agreement between same parties was inconsistent with the *Act* - Held Employer's submissions were reiteration and reformulation of arguments advanced at original hearing - Disagreement with Board's findings on evidence submitted did not, standing alone, constitute grounds for varying, rescinding, or dismissing order - Application for Review and Reconsideration dismissed - Substantive Order - 296/11/LRA - October 27, 2011 - CancerCare Manitoba.

APPROPRIATE BARGAINING UNIT

Management Exclusion - Onus - Union filed application for Board Determination on whether Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Employer acknowledged position originated from position that had been included in bargaining unit - Employer determined position should be removed from bargaining unit without consulting Union - As position not new, Employer bore onus to demonstrate significant and material changes occurred to justify exclusion from bargaining unit of previously included position - Substantive Order - 32/11/LRA - August 17, 2012 - University of Manitoba.

Management Exclusion - Union filed application for Board Determination on whether Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Board determined that, although Manager MED IT has some additional responsibilities, Board was not satisfied evidence established changes were material and significant to sustain conclusion that previously included position should be excluded from bargaining unit nor that position performed management functions primarily - Essence of position was development, implementation and maintenance of Information Technology and project management - Occasional performance of some managerial functions did not justify exemption - Not unfair to include position in bargaining unit as prior position specifications contemplate Information Technologist may have "full supervisory responsibilities" and some may spend "majority of time supervising staff - Manager MED IT was "employee" under the *Act* and was included in bargaining unit - Substantive Order- 32/11/LRA - August 17, 2012 - University of Manitoba.

Health Care - Union filed application for certification for unit of all protective services officers - Employer submitted that applied for unit not appropriate for collective bargaining based on Board's report of its Review of Bargaining Unit Appropriateness in Urban Health Care Sector conducted during 1998 - Employer asserted affected security classifications should be treated as "tag end" unit - Board considered whether it should treat matter as stand-alone application for certification or should question of appropriateness be decided pursuant to principles expressed in 1998 report - While 1998 report still provided relevant guidelines on question of appropriateness and could be used when assessing application for certification, procedures outlined in 1998 report, given passage of time, did not constitute mandatory predetermination of whether particular bargaining unit was an appropriate bargaining unit - Board ruled bargaining unit comprised of protective service officers did constitute appropriate bargaining unit - Fact that these employees had been unrepresented for many years satisfied Board that application should be treated as stand-alone application and that unit was appropriate for collective bargaining - Certification granted - Substantive Order - 277/12/LRA - May 7, 2013 - Seven Oaks General Hospital.

APPROPRIATE BARGAINING UNIT

Scope - Union applied to amend Board certificate for all medical doctors employed by Employer to include classification of physician assistants - Board ruled physician assistants not "medical doctors" and did not fall within scope of bargaining unit - Application for amended certificate not proper avenue for adding classification of previously non-certified employees to bargaining unit - Substantive Order - 14/13/LRA - May 16, 2013 - Winnipeg Regional Health Authority, Deer Lodge Centre Site.

Mootness - Union filed application seeking Board Determination that individuals in classification of clinical specialist – radiation oncology systems were employees as contemplated by *The Labour Relations Act* and fell within scope of certificate and collective agreement - Employer advanced preliminary motion that application be dismissed on basis matter was moot because clinical specialist classification had been permanently discontinued resulting from *bona fide* operational changes - Board satisfied matter lacked live controversy as tangible and concrete dispute had disappeared - Board satisfied that once classification was permanently eliminated, adversarial context also ceased to exist - Board satisfied issue with respect to classification was narrow one, resolution of which no longer had effect on rights of parties - No compelling rationale for Board (or parties) to devote scarce resources to resolve an issue regarding classification that no longer existed - Board should not determine question, Union raised whether employees should be in bargaining unit by reason of certain required qualifications, in absence of proper factual context involving classification that actually existed - Board satisfied that no reasonable labour relations purpose served by having parties argue over a moot point - Substantive Order - 126/11/LRA - October 24, 2013 - CancerCare Manitoba.

ARBITRATION

Union withdraws employee's grievance from arbitration - Duty of fair representation discussed - Section 20 of ***The Labour Relations Act*** considered - 304/88/LRA - March 23, 1989 - Province of Manitoba, Manitoba Health.

Board dismissed application to determine whether collective agreement was in full force, because same question already determined by an arbitrator through the grievance procedure - Matter should be determined by the court - 334/90/LRA - July 17, 1990 - Blackwoods Beverages Ltd.

Consolidation - Although same parties involved in expedited arbitration referral, facts of two grievances not related - Not appropriate case for consolidation - Reasons not issued - 718 & 740/91/LRA - August 6, 1991 - Canada Packers.

Union claimed change to travel policy violation of Section 10(4) of ***The Labour Relations Act*** - Employer submitted Board should defer matter to arbitration under section 140(7) of the **Act** - Held arbitration preferable forum if issue was interpretation of the collective agreement - However, at issue was whether choice of travel agent was a condition of employment - 318/94/LRA - September 13, 1996 - University of Manitoba.

Suspended Employee pursued matter diligently and seriously on her own behalf with essentially no assistance from Association - Held gross dereliction of duty committed by the Association - Association ordered to submit grievances to arbitration and engage counsel jointly chosen with Employee - Employer to process grievances without objection to timeliness or other deficiency arising from delay - Intent of ruling not to restrict arbitration board from considering issue of delay - 770/97/LRA - September 28, 1998 - Salisbury House of Canada.

Deferral to - Employees file unfair labour practice applications - Board defers matter to arbitration process as grievances had been commenced pursuant to collective agreement - Substantive Order - Reasons not issued - 400 & 401/04/LRA - July 21, 2004 - Motor Coach Industries

Res judicata - Jurisdiction - Deferral To - Employee's complaints addressed in prior, binding and final disciplinary proceedings through grievance and arbitration provisions - Based on doctrine of *res judicata* or alternatively issue estoppel, Board lacked jurisdiction to consider application - Application dismissed pursuant to Sections 140(7) and 140(8) of *The Labour Relations Act* - Substantive Order - 91/06/LRA - April 7, 2006 - Manitoba Lotteries Corporation - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Deferral to - Union filed an unfair labour practice application alleging Employer interfered with Union's right and ability to represent bargaining unit members due to Employer's plan to make French language proficiency a required job qualification for many nursing positions - Board declined to hear application because matters raised in the Application could be raised in grievance and arbitration procedure - Application dismissed and matter deferred to arbitration process pursuant to Section 140(7) of *The Labour Relations Act* - Substantive Order - 536/06/LRA - Oct. 23, 2006 - St. Boniface General Hospital - **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

ARBITRATION

Scope - Deferral to Arbitration - Employer filed Application for Board Determination confirming that cafeteria employees were not within scope of bargaining unit - Parties had referred matter to arbitration and date for hearing had been adjourned - Board refused to hear Application because substantive matter of Application could be adequately determined under arbitration provisions - Matter deferred to arbitration as per Section 140(7) of *The Labour Relations Act* - Substantive Order - 665/06/LRA - Dec. 27, 2006 - Maple Leaf Fresh Foods.

Deferral to - Employee filed application for unfair labour practice asserting Employer had imposed discipline upon her in a manner contrary to the Collective Agreement - Grievance and arbitration process is proper forum for the resolution of a dispute involving improper/unjust discipline - Substantive Order - 191/07/LRA - June 6, 2007 - Assiniboine Regional Health Authority.

Employee asserted collective agreement was contrary to Human Rights Code and asserted Employer and Union violated agreement - Board declined to adjudicate matter arising from an interpretation of the agreement as such assertions were properly subject of formal grievance and arbitration procedure - Substantive Order - 472/077/LRA - November 20, 2007 - Seven Oaks School Division.

Deferral to - At labour/management meeting, Employees as members of Union executive raised concerns pertaining to a Staff Sergeant who then filed formal harassment complaint against Union and Employees - Employer investigated complaint and issued a report - Held Association has the right to challenge the propriety of report, particularly as may affect any future investigation or imposition of discipline, however, such concerns could be addressed under grievance procedure - Substantive Order - 200/08/LRA - June 11, 2008 - City of Brandon.

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- 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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 - 120/08/LRA - July 24, 2009 - Assiniboine Regional Health Authority.

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 - 120/08/LRA - July 24, 2009 - Assiniboine Regional Health Authority.

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 - 241/09/LRA - September 16, 2009 - Burntwood Regional Health Authority.

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 - 169/09/LRA - December 16, 2009- Real Canadian Wholesale Club and Cash & Carry Division of Westfair Foods Ltd, Western Grocers, Division of Westfair Foods – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Deferral to - Exercising legislated rights - Union contended Employer's statement that Employee would be subject to disciplinary action if he did not provide medical certificate constituted threat to deny his right under The Health Services Insurance Act to select medical practitioner whom he wished and was contrary to subsection 17(a)(iii) of The Labour Relations Act - No facts were pleaded that Employer denied or threatened to deny Employee any pension rights or benefits to which he was entitled because he exercised right conferred upon him under any act of Legislature - Board satisfied application did not disclose any facts which arguably constituted a prima facie case under subsection 17(a)(iii) of the Act - Collective agreement provided doctor's certificate must be presented upon request - Any dispute of request that Employee provide medical certificate should be resolved pursuant to grievance procedure contained in collective agreement - Application dismissed - Substantive Order - 56/11/LRA - April 7, 2011 - City of Brandon (Brandon Fire and Emergency Services).

Deferral to - Interference - Union asserted Employer interfered with representation of its members by introducing, without Union's input, data entry policy which included disciplinary consequences for failing to meet accuracy expectations - Employer promulgating new policy did not, standing alone, constitute breach of subsection 6(1) of The Labour Relations Act - Union's concerns regarding manner Employer may have promulgated policy and how enforcement of policy may adversely affect Union members from disciplinary perspective could be raised in grievance and arbitration procedure - Board does not function as surrogate arbitration board - Matter ought to be deferred to grievance and arbitration process - Application dismissed - Substantive Order - 86/11/LRA - April 7, 2011 - City of Brandon (Brandon Fire and Emergency Services).

ARBITRATION

Deferral - Interference - Union filed unfair labour practice application asserting Employer acted contrary to subsections 6(1) and 17(b)(ii) of *The Labour Relations Act* by issuing verbal warning to union president for circulating e-mail to union membership regarding what was said and what took place during safety committee meeting attended by representatives of Union and Employer - Employee was given non-disciplinary warning for what Employer asserted were false statements - Held, regardless of whether or not Employee held office with bargaining agent, his alleged actions provided proper and sufficient cause for Employer's action and were consistent with collective agreement - Board determined matters raised in Application could be adequately determined under provisions of collective agreement - Application dismissed - Substantive Order - 92/11/LRA - April 7, 2011 - City of Brandon (Brandon Fire and Emergency Services).

Deferral - Employer submitted that Union had elected to use grievance arbitration provisions set out in collective agreement and, as a result, Board did not have jurisdiction to hear matter - Board found grievances referred to in Application were either partially completed, were completed pending receipt of decision from arbitrator or had been advanced to arbitration board to be scheduled for hearing - Application and three most recent grievances addressed same or essentially same matters - Given nature of remedial relief claimed in grievances, Board satisfied arbitration forum may adequately determine substance of matters raised in Application - Board declined to hear Application and deferred matters to grievance and arbitration provisions - Substantive Order - 291/11/LRA - March 30, 2012 - Burntwood Regional Health Authority and T.L.

BARGAINING

Board examines an employer's direct communications with his employees during negotiations and a strike - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

Extent of duty to bargain in good faith examined where parties reach an impasse as a result of hard bargaining - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

A bargaining unit, though voluntarily participating in joint bargaining, retains the right to determine how it wishes to proceed with collective bargaining - 537, 538/88/LRA - June 20, 1988 - Molsons Manitoba Brewery Ltd., & Associated Beer Distributors.

Management communicates with striking employees directly during the collective bargaining process - Union contends correspondence is in violation of Subsection 6(1) and Section 36 of ***The Labour Relations Act*** - 745/88/LRA - October 3, 1988 - Fisons Western Corp.

Manitoba Government Employees' Association not prohibited from becoming bargaining agent for individuals who are not in the Civil Service - 791/88/LRA - January 31, 1989 - Manitoba Lotteries Foundation, Province of Manitoba.

Board determines that bargaining was not at an impasse as numerous meetings had recently taken place and a grievance had been referred to arbitration - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

Preliminary Issue - Board satisfied that the collective bargaining process did not fall within the meaning of Section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - Reasons not issued - 746/02/LRA - April 22, 2003 - Borreson Trucking and Tolko Industries.

BARGAINING AGENT

Employees hired by Minister under contract not covered by the Manitoba Government Employees' Association - 759/76/LRA - March 15, 1977 - Province of Manitoba.

Manitoba Government Employees' Association not prohibited from becoming bargaining agent for individuals who are not in the Civil Service - 791/88/LRA - January 31, 1989 - Manitoba Lotteries Foundation, Province of Manitoba.

Union claimed employees of newly opened Club store fell within scope of its bargaining unit rather than bargaining unit of Superstore employees - Board concluded differences in operations of the Club and Cash & Carry not substantial - Cash & Carry store and the Club were more closely allied than the Club and the Superstore - Held employees of the Club were included in the bargaining unit of the Union - 449/95/LRA - January 25, 1996 - Westfair Foods Ltd.

Employer claimed employees represented by UFCW, but Board ruled that Retail Wholesale Canada (Union) was bargaining agent - Prior to Board Order, Employer remitted dues to UFCW, but thereafter, remitted dues to Union - Union claimed it was entitled to retroactive dues from period before Board Order - Board ruled that although Union was bargaining agent, the other union provided services during that time while the Union did not - Ordering Employer to remit an equal amount of dues would be improper - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

Exclusive Bargaining Authority - Employer negotiates agreement with another union - Board held Employer's actions not illegal and done under apparent "colour of right" - Employer did not prevent its employees from being represented by a proper bargaining agent - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

Health Care - Majority of employees chose to become members of bargaining agent who did not have a presence in personal care home - Board determined that the bargaining agents who already represented other classifications within the unit had no status to appear on the ballot being utilized in representation vote to determine wishes of the affected employees - 272/99/LRA - February 13, 2000 - Deer Lodge Centre Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

BARGAINING RIGHTS

Board finds that the Union abandoned its rights to represent part-time employees, having seemingly redefined, by their conduct, the scope of the existing unit - However, the Board found no reason to deny part-time employees the right to bargain collectively and accordingly issued a certificate for "all part-time employees" - 774/83/LRA - May 4, 1984 - Winnipeg Free Press, Canadian Newspapers Company Ltd.

Bargaining unit empty for five years when cardiology technicians rehired - Five months later, Union included them into proposals prepared for laboratory technicians - Employer applied to Board to investigate whether Union abandoned its bargaining rights - Board was not prepared to say that Union must bargain for an empty unit - Union not acting diligently when technicians rehired result of an error of judgement and less than desirable standard of performance but does not amount to abandonment - Umbrella approach of rolling cardiology technicians in with laboratory technicians is assertion of bargaining rights - Application dismissed - 1031/01/LRA - September 11, 2002 - Manitoba Clinic.

Termination - Decision - Board ordered bargaining rights terminated but declined Applicant's request for Board to exercise its discretion to depart from its usual practice to deem that the bargaining rights of the Union has ceased to a date other than date of Board Order - Substantive Order - 11/07/LRA - April 12, 2007 - AAA Electric (1988).

Regulations/Rules - Applicant filed application seeking cancellation of certification - Board noted Application filed on Form VIII, which contemplated cancellation of certification but Application contained no reference to any certificate nor did it contain any description of bargaining unit - Union clarified Application concerned voluntarily recognized clerical bargaining unit - Board accepted Application and treated it as an application filed pursuant to Section 49(1) of *The Labour Relations Act* to terminate bargaining rights - Board satisfied that more than 50 percent of employees in unit supported Application and ruled bargaining rights of Union be terminated - Substantive Order - 231/12/LRA - April 12, 2013 - Rural Municipality of Birtle.

BARGAINING UNIT

Board determines whether certain classifications in dispute are covered by the collective agreement - Subsection 121(1)(d) of ***The Labour Relations Act*** applied - 737/83/LRA - July 10, 1984 - R.M. of Strathclair.

Graphic Arts students employed on a special project not covered by the collective agreement - 402/84/LRA - July 17, 1984 - Health Sciences Centre.

Board varies certificate to avoid uncertainty as to who would be included in the bargaining unit - Subsection 121(2) of ***The Labour Relations Act*** applied - 637/83/LRA - June 25, 1985 - The City of Winnipeg.

A "unit" for the purpose of final offer selection properly referred to as a "bargaining unit" - 537/538/88/LRA - June 20, 1988 - Molsons Manitoba Brewery Ltd., and Associated Beer Distributors Ltd.

Application to merge two units where one is newly certified and the other is governed by a collective agreement, dismissed - 544/88/LRA - January 31, 1989 - Deer Lodge Centre.

Appropriateness of a larger merged unit - The concept of merging doctors with other employees discussed - 544/88/LRA - January 31, 1989 - Deer Lodge Centre.

Board ruled sale of business and intermingling occurred - As at date of hearing, the ultimate operating name of the successor employer had yet to be finalized - Unit determined by the Board to be appropriate for collective bargaining deemed to include the name finally chosen - Substantive Order - Reasons not issued - 802/95/LRA - March 8, 1996 - Cottrell Transport Inc. & Cottrell Freight Systems Inc.

Part-time employees included in bargaining unit if fit within parameters of **Rule 28** of the ***Manitoba Labour Board Rules of Procedure***.- 126/97/LRA - December 2, 1997 - Winnipeg Enterprises Corporation.

Casual - *Public Schools Act* defined teachers as those employed with written contracts - Substitute teachers were not employed under written contracts and therefore were not deemed employees for the purpose of inclusion in bargaining units covering "all teachers employed" - 223/02/LRA - 246/02/LRA - Nov. 13, 2003 - Winnipeg School Division No 1 et al - **APPEAL TO COURT OF QUEEN'S BENCH WITHDRAWN.**

Appropriate Bargaining Unit - Professional Employee defined - Sessional Lecturers employed in the School of Music who were, or who were entitled to be, a member of the Manitoba Registered Music Teachers' Association, created under legislation were not professional employees for the purposes of The Labour Relations Act - 408/03/LRA - February 5, 2004 - University of Manitoba - **APPEAL TO COURT OF QUEEN'S BENCH WITHDRAWN**.

BARGAINING UNIT

Owner/Operator - Held truck owner/operators operating through a corporation were not excluded from bargaining unit - Each individual and his corporation were considered as one employee and were entitled to engage in collective bargaining - 459/05/LRA - May 16, 2006 - Tolko Industries, Manitoba Solid Wood Division.

Fact that an employer may not employ any employees in a bargaining unit after the Board issues a certificate does not affect validity of certificate - Certificate continues to be operative in event employer does employ employees falling within scope of bargaining unit - Substantive Order - 351/06/LRA - June 9, 2006 - B & M Land Company JV.

Scope - Deferral to Arbitration - Employer filed Application for Board Determination confirming that cafeteria employees were not within scope of bargaining unit - Parties had referred matter to arbitration and date for hearing had been adjourned - Board refused to hear Application because substantive matter of Application could be adequately determined under arbitration provisions - Matter deferred to arbitration as per Section 140(7) of *The Labour Relations Act* - Substantive Order - 665/06/LRA - Dec. 27, 2006 - Maple Leaf Fresh Foods.

Confidential Personnel - Fact that incumbents had access to "confidential" information in general sense and were expected to maintain confidentiality under their duty of fidelity to the Employer not sufficient to exclude positions from bargaining unit - Access to and the processing of salary information or disciplinary notices not reason to exclude on confidentiality criterion - Held Benefit Support Clerk and Payroll Clerk were included in the bargaining unit - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

Board did not accept that Union had agreed to exclusion of positions historically not covered by successive collective agreements - Parties were addressing restructuring of support unit in parallel discussions outside of the collective bargaining process - Unfair to apply "significant/material change" principle - Determination of whether positions ought to be excluded must be decided as a case of first instance and by reference to current duties - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

Confidential Personnel - Human Resources Clerk performed duties of Human Resource Administrative Assistant when incumbent was absent - Administrative Assistant worked directly for and reported to the Director of Human Resource Services prepared and processed correspondence for the Director - Unfair to include Human Resources Clerk in support unit as employed in confidential capacity in matters relating to labour relations to such a degree that position ought to be excluded - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

BARGAINING UNIT

Confidential Personnel - Union sought ruling that positions historically excluded in Libraries Administration Office be included - In accordance with long-standing principle where position covered by successive collective agreements, Applicant must satisfy Board that material and significant changes have occurred - While some changes to titles of positions and individuals who filled the positions, changes were not material and significant to conclude contested excluded positions ought to be included in bargaining unit - 394/05/LRA - August 2, 2007 - University of Manitoba.

Appropriate Bargaining Unit - Amalgamation - Board determined classification of Home Care Case Co-ordinators were practicing profession of nursing as essential part of their job functions and properly fell with the Manitoba Nurses Union bargaining unit - Board ordered Home Care Case Co-ordinators who were still within Technical/Professional Paramedical bargaining unit be removed from the Manitoba Government and General Employees' Union bargaining units and be placed within the MNU bargaining unit - Substantive Order - 474/06/LRA - September 6, 2007 - Assiniboine Regional Health Authority.

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 - 289/09/LRA - February 5, 2010 - Performing Arts Consortium of Winnipeg Inc. t/a Pantages Playhouse Theatre.

BUILD UP PRINCIPLE

Build up - Board orders new vote to determine union support due to influx of employees between the date of application for certification and the date of the hearing into the application - Rules 31 and 32 of Manitoba Regulation 223/76 and Section 50 of ***The Labour Relations Act*** considered - 250/77/LRA - May 20, 1977 - Metrico Enterprises Co. Ltd.

Union applies for certification at time when membership in bargaining unit fraction of normal size due to seasonal nature of employment - Subsection 40(1) of ***The Labour Relations Act*** considered - 1159/88/LRA - July 25, 1989 - Paddlewheel Riverboats Ltd.

Ratification vote conducted with four individuals even though substantial number of tradespeople were due to arrive in a couple of days - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc. – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

(Next Section: Sec. 3.0)

CHARTER OF RIGHTS AND FREEDOMS

Section 12 of ***The Labour Relations Act*** allowing employees to refuse to handle "hot" products, demonstrably justified in a free and democratic society - 739/85/LRA - October 18, 1985 - Winnipeg Free Press, Canadian Newspaper Company Ltd.

Freedom of Speech - Employer Communications - Captive Audience - Employer Interference - Expanded panel confined its role to defining and clarifying policy issues on employer communications to employees and to what extent employer's freedom of speech is fettered by the provisions of *The Labour Relations Act* - 624/00/LRA - September 28, 2001 - Marusa Marketing Inc.

Official Language - Employee filed Review Application asserting she had the right to be heard in French - Initial application filed in English, hearing evidence and argument presented in English and right to be heard in French not asserted until after Dismissal Order issued - Request to be heard in French not timely - Review application dismissed - 295/04/LRA - June 9, 2005 - Burntwood Regional Health Auhtority.

Official Language - Authorities submitted and Brief of the Attorney General of Manitoba do not support Employee's argument that the Board's staff obligated to actively offer services in French - 295/04/LRA - June 9, 2005 - Burntwood Regional Health Auhtority.

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- 34/09/LRA - October 2, 2009 - Triple Seal t/a Northwest Glass Products.

As result of mail-in representation vote, MGEU was selected as certified bargaining agent for intermingled employees of technical/professional paramedical classifications of amalgamated Regional Health Authority - MAHCP filed application seeking Review and Reconsideration of certificate - Board addressed MAHCP's grounds for seeking review - Board acted within its jurisdiction and applied relevant provisions of *Freedom of Information and Protection of Privacy Act (FIPPA)* in refusing to provide residential addresses of employees, a position supported by Manitoba Ombudsman - Board was within its jurisdiction when it ordered representation vote be conducted by mail-in ballot - Pursuant to section 48(2) of *The Labour Relations Act*, Board has authority to make arrangements and give directions it considered necessary for proper conduct of vote - Board found MAHCP's position that telephone, post or possibly email was only effective means of communication overlooked additional means of communicating with employees - Crux of MAHCP's position is Board ought to facilitate

CHARTER OF RIGHTS AND FREEDOMS

communication by providing addresses - Board concluded section 2(b) *Charter* arguments Union advanced that Board abridged its rights to freedom of expression, did not meet “low threshold” of constituting serious issue to be tried - Further, submission that employees who voted for MAHCP without democratically held election were deprived of section 2(d) *Charter* rights to freedom of association founded upon unsupported assertion representation vote did not afford fair opportunity to employees to express their wish as to their choice of bargaining agent - Board satisfied vote conducted in fair and proper manner and submission with respect to section 2(d) of *Charter* was expression of dissatisfaction with vote result which did not constitute breach of freedom of association - Union’s submission Board failed to follow its own procedure, as set by section 26(1) of the *Manitoba Labour Board Rules of Procedure*, by not affording Unions opportunity to examine the lists of employees’ names and addresses was fundamental misreading of the *Rules* - Section 26(1) did not refer to provision of employees’ addresses to unions involved in representation vote - Board acknowledged that it did not conduct oral hearings to determine issues regarding provision of addresses; decision to conduct mail-in vote; and MAHCP's refusal to sign fair vote certificate, but Board not required to conduct an oral hearing and Courts have repeatedly acknowledged that it was within Board's jurisdiction to make determinations under the *Act* without conducting oral hearing - Therefore, Board dismissed application seeking Review and Reconsideration - Substantive Order - 113/13/LRA - August 16, 2013 - Prairie Mountain Health; 114/13/LRA - August 16, 2013 - Southern Health - Santé Sud - **PENDING BEFORE COURT OF QUEEN’S BENCH.**

CHECK-OFF

Employees of dissolved districts not covered by the collective agreement of the Union representing the Division's employees - Thus, Division not bound to collect union dues from those employees on behalf of the Union - S-267-1 - July 13, 1967 - Assiniboine North School Division, No. 2.

Union increases union dues in order to augment strike fund - Non-union member employee objects to increases, alleges violation of Subsection 68(1)(a) of ***The Labour Relations Act***, and seeks to prosecute - 736/84/LRA - March 5, 1985 - Michael Valentine Ward.

Employer claimed employees represented by UFCW, but Board ruled that Retail Wholesale Canada (Union) was bargaining agent - Prior to Board Order, Employer remitted dues to UFCW, but thereafter, remitted dues to Union - Union claimed it was entitled to retroactive dues from period before Board Order - Board ruled that although Union was bargaining agent, the other union provided services during that time while the Union did not - Ordering Employer to remit an equal amount of dues would be improper - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

COLLECTIVE AGREEMENTS

Definition - Board determines whether a collective agreement has been entered into - No Number - July 8, 1976 - The Piling Contractors Association of Manitoba Incorporated and Subterranean (Winnipeg) Ltd.

Interpretation - Board examines the duties of security guards and determines that they are covered by a collective agreement - No Number - August 3, 1976 - Hydro Projects Management Association.

Board reviews and interprets a collective agreement and determines that the Applicant union had contracted out its bargaining rights - Section 119 of ***The Labour Relations Act*** applied - No Number - Undated - Metropolitan Investigation & Security (Canada) Ltd.

Union led Employer to believe collective agreement had been ratified - Union estopped from denying collective agreement had been entered into - No Number - Undated - Manitoba Forestry Resources Ltd.

Company hires security firm to operate loading ramp - Board determines certificate and collective agreement did not cover employees of security firm - 911/76/LRA - March 18, 1977 - Shell Canada Limited.

Notice to commence bargaining terminates collective agreement - Application to revoke certification found to be timely - Subsection 54(2) of ***The Labour Relations Act*** considered - 29, 90/77/LRA - April 7, 1977 - White Truck Sales Manitoba Ltd.

Employer applies to terminate a collective agreement after the cancellation of the union's certificate - Section 48(2) of ***The Labour Relations Act*** considered - 142/77/LRA - April 28, 1977 - Gateway Construction Company Ltd.

Expiration - Board gave consent under Section 74(1) of ***The Labour Relations Act*** for renewed agreement to be effective for a period of 364 days to coincide with actual bi-weekly pay period - Letter Decision - Reasons not issued - 211/80/LRA - March 12, 1980 - Manitoba Hydro.

Expiration - Board gave consent under Section 74(1) of The Labour Relations Act for renewed agreement to be effective for a period of less than one year to coincide with the expiry date of the majority of collective agreements in the health care sector for which the Union was the bargaining agent - Letter Decision, Reasons not issued - 347/82/LRA - May 9, 1982 - Seven Oaks General Hospital.

Whether collective agreements entered into pursuant to federal legislation are collective agreements within the meaning of ***The Labour Relations Act*** - 283, 292, 392/83/LRA - October 24, 1983 - Deer Lodge Centre Inc.

Employer during the statutory freeze period altered the terms of employment contained in the collective agreement - Subsection 10(4) of ***The Labour Relations Act*** considered - 347, 342/84/LRA - Jan. 11, 1985 - Tan Jay Co.

COLLECTIVE AGREEMENTS

Board considers that matter could be adequately determined under the provisions of the collective agreement - Subsection 142(5)(e) of ***The Labour Relations Act*** considered - Substantive Order; Reasons not issued - 215/85/LRA - May 22, 1985 - Winnipeg Convention Centre.

Time Limits - Change in working conditions - Board grants 45 day extension to 90 day period restricting changes in working conditions as per Section 10(3) of ***The Labour Relations Act*** - Substantive Order - Reasons not issued - 860/85/LRA - November 6, 1985 - Versatile Corporation t/a Versatile Farm Equipment Company.

Requirement to hold formal hearing - Held submissions from parties in initial applications provided sufficient information to deal with application for extension under Section 10(3) without conducting formal hearing - Substantive Order - Reasons not issued - 860/85/LRA - November 6, 1985 - Versatile Corporation t/a Versatile Farm Equipment Company.

Board examines Master Agreement between the Manitoba Government and the Manitoba Government Employees' Association - Manitoba Lotteries Foundation employees not included in Master Agreement - 791/88/LRA - January 31, 1989 - The Manitoba Lotteries Foundation, Province of Manitoba.

Board settles terms and conditions of first collective agreement for doctors - 849/88/LRA - January 31, 1989 - The Victoria General Hospital.

Board dismissed application to determine whether collective agreement was in full force, because same question already determined by an arbitrator through the grievance procedure - Matter should be determined by the court - 334/90/LRA - July 17, 1990 - Blackwoods Beverages Ltd.

Board determined in an earlier decision that golf course employees were covered under collective agreement between Province and Union - Situation had not changed since expiry of agreement - Employers were still considered to be common employers and employees covered by new agreement - 315/92/LRA - April 26, 1993 - Province of Manitoba, Venture Manitoba Tours Ltd.

Existence - Union contends parties agreed collective agreement to include increase to hourly wage - Employer's negotiator refuses to sign agreement arguing error was made and increase should be on annual salary - From evidence, Board held error was not a mistake in law and negotiator had given every indication that an agreement had been reached until he received conflicting view from head office - Employer required to sign and execute collective agreement - 1108/92/LRA - June 30, 1993 - ISM Information Systems Development Manitoba Corporation.

COLLECTIVE AGREEMENTS

Effect - Termination - Employer's notice of termination given under Subsection 63(4) of ***The Labour Relations Act***, not given within time limits provided for in collective agreement - Also subsection 63(4) of ***Act*** inapplicable because no re-opener clause in collective agreement - As per Subsection 63(2), notice to bargain collectively not deemed to be notice of termination of the collective agreement because collective agreement did not provide otherwise - Held notice of termination untimely, misconceived and of no effect - Collective agreement remained in full force and effect - 469/93/LRA - October 27, 1993 - Venture Manitoba Tours Ltd.

Six years after Revocation Order issued, Board finds Employer interfered during decertification process - Certificate reinstated and old collective agreement deemed in full force and effect, except where current conditions more generous - Employer ordered to commence good faith bargaining, to pay the Union $2,000, to allow the Union to meet with employees during work time on Employer's premises, to compensate the Union for expenses incurred in conducting the meetings; and to post one copy of Order at workplace and to send copy of Order by certified mail within 10 days of receipt to each employee - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Craft Unit - Board found collective agreement covering all trades contrary to its practice of recognizing individual craft units - Also members in good standing can only ratify portions of collective agreement which apply to their craft - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc. – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Exclusive Bargaining Authority - Employer negotiates agreement with another union - Board held Employer's actions not illegal and done under apparent "colour of right" - Employer did not prevent its employees from being represented by a proper bargaining agent - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

Union held ratification vote within 30 days of reaching agreement as per Section 69(1) of ***The Labour Relations Act***, but employees refused to vote - Union argued as no complaints filed under Section 70(4) on its failure to comply with voting requirements, Board should declare collective agreement in effect - Board held Section 70(4) did not apply to case where no votes were cast - Application dismissed - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Employees refuse to vote at ratification meeting - Union requests Board use its discretion under Section 50(4) of ***The Labour Relations Act*** to declare the collective agreement was binding - Held Section 50(4) only applied to application for decertification - Request denied - 806/96/LRA - Aug. 26, 1997 - Anixter Canada Inc.

Doctors previously employed by Clinic entered into an independent fee-for-service contract with Clinic - Board found contracts were contracts of employment and did not constitute a successorship situation or a sale of a business - Clinic continued to be bound by terms and conditions of the collective agreement - 391 & 417/96/LRA - Aug 29, 1997 - Shoal Lake Strathclair Health Centre/Drs. Muller, Venter, Krawczyk.

COLLECTIVE AGREEMENTS

Retroactive Pay - Employee voluntarily terminated full-time employment and converted to casual status prior to settlement being reached on new collective agreement - Applicant not an employee pursuant to newly signed collective agreement so as to be eligible for retroactive pay - Prima facie case not established - Application dismissed - 455/03/LRA - September 18, 2003 - Salvation Army Haven.

Termination - Certification - Issuance of merged certificate did not constitute, either directly or by implication, a termination of the two collective agreements that were in full force and effect between the Employer and the two original bargaining units - Substantive Order - 178/05/LRA - July 18 & Nov. 30/05 - Frontier School Division.

Subsequent collective agreement - Board was not in a position to make determinations required by Section 87.1(3) of *The Labour Relations Act* within the mandated 21-day period, based solely on material filed - Board exercised its discretion under Section 87.1(4) and delayed making the determination required under Section 87.1(3) until it was satisfied that the party making the application has bargained sufficiently and seriously with respect to those provisions of the collective agreement that were in dispute between the parties - Substantive Order - 85/07/LRA - May 15, 2007 - Fort Rouge and Imperial Veterans Legion.

Subsequent collective agreement - Following consideration of material filed, evidence and argument presented at hearing, Board determined Employer was not bargaining in good faith and Union was bargaining in good faith, sufficiently and seriously - Held parties unlikely to conclude collective agreement within 30 days - Board ordered Employer immediately terminate lockout, reinstate employees who were locked out and settle a collective agreement either by an arbitrator within 60 days or failing an agreement between the parties on an arbitrator by the Board within 90 days of the date of the Order - Substantive Order - 85/07/LRA - May 15, 2007 - Fort Rouge and Imperial Veterans Legion.

Subsequent Collective Agreement - As parties did not agree on a term for the Subsequent Collective Agreement for period longer than one year, pursuant to Section 87.3(5.1) of The Labour Relations Act, Board was restricted to settling Agreement for fixed term of six months following date of settlement - Substantive Order - 85/07/LRA - August 7, 2007 - Winnipeg South Osborne Legion Branch #252.

Subsequent Collective Agreement - Board determines which articles deemed to be appropriate for inclusion in the Subsequent Collective Agreement - Substantive Order - 85/07/LRA - August 7/07 - Winnipeg South Osborne Legion Branch #252.

COLLECTIVE AGREEMENTS

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 - - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

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 - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

COMMON EMPLOYER

Associated or related companies - Board determines whether four construction companies are a single employer for the purpose of certification - Section 119.1 of ***The Labour Relations Act*** considered - 250/77/LRA - May 20, 1977 - Metrico Enterprises Co. Ltd.

Proper test for determining whether entities are carrying on associated or related activities or business discussed - 1023/88/LRA - June 22, 1988 - Rideau Park Personal Care Home Inc., Province of Manitoba.

Common control or direction - Two entities, operating under control of the Department of Health, considered one employer - ***The Labour Relations Act***, Subsection 50(1) considered - 1023/88/LRA - June 22, 1988 - Rideau Park Personal Care Home Inc.

Board determines sale of business takes place when contract won by union shop owned by father transferred to non-union shop owned by son - Subsections 59(1) and 142(5) of ***The Labour Relations Act*** considered - 1019/88/LRA - October 30, 1989 - Peter's Mechanical & Installation Ltd., Daplex Plumbing and Heating Ltd., Peter's Plumbing and Heating Ltd.

Work transferred from provincial government department to crown corporation under control of same minister deemed to be associated activities under common control and direction - Subsection 56(1), 59(1) & 142(5)(a), (e) and (g) considered - 282/89/LRA - February 28, 1990 - Province of Manitoba, Venture Manitoba Tours Ltd.

Subcontracting - Community college contracts out operation of food services - Parties not carrying on associated or related activities or business under common control or direction so as to constitute one employer pursuant to Subsection 59(1) of ***The Labour Relations Act*** - 995/91/LRA - July 30, 1992 - Province of Manitoba, Red River Community College, and VS Services Ltd. t/a Versa Food Services.

Labour Relations Purpose - Union claimed Province, school and social service agency considered one employer for purposes of ***The Labour Relations Act*** for services provided to student requiring extensive daily nursing care - Board held school did not direct or control activities of nurse, but that Province and agency were carrying out associated or related activity under common control and direction - Section 59 of ***The Labour Relations Act*** considered - 1149/91/LRA - March 8, 1993 - Province of Manitoba, Manitoba Health Continuing Care, Home Care Program; Child & Family Services of Central Manitoba; White Horse Plains School Division, No. 20

Board determined in an earlier decision that golf course employees were covered under collective agreement between Province and Union - Situation had not changed since expiry of agreement - Employers were still considered to be common employers and employees covered by new agreement - 315/92/LRA - April 26, 1993 - Province of Manitoba, Venture Manitoba Tours Ltd.

COMMON EMPLOYER

Union applied for two certificates for a unit of pathologists employed by the Faculty of Medicine and for a unit of pathologists employed by the Hospital - Found pathologists jointly appointed by the University and Hospital - Clinical and academic duties could not be separated so Employers could not be viewed as separate - Two separate units inappropriate - Applications dismissed - 10/94/LRA - Sept. 20, 1995 - Health Sciences Centre & University of Manitoba.

Control and Direction - Union claims the City and operators providing wheelchair passenger service under a detailed contract were carrying on associated businesses and constituted one employer - City exercising quality control over the contractor's activities or retaining right to remove unsuitable employees not evidence of common control or functional interdependence - 403-405/96/LRA - June 3, 1997 - City of Winnipeg, Gull Wing Transit, Duffy's Taxi and A.E. Crundwell.

Machining aspect of business sold - Ability to interchange employees, common corporate officers and directors, common ownership, and the mandatory reporting procedure to same individual indicate common control or direction - Held companies were one employer and employees of both companies included in the bargaining unit - 356/99/LRA - September 13, 1999 - KT Industries Ltd. and KT Machining Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Subsequent to Union being certified bargaining agent for employees of Freed & Freed International, Down Room was incorporated - Employers consented to issuance of common employer declaration but submitted that Board should not declare that certificate should be amended to reflect both businesses as singular employer; that both employers were parties to and bound to collective agreement and that employees of both employers were included in certified bargaining unit - Board of view that declarations was inconsistent with Employers' agreement to common employer declaration - Such declarations are granted as normal consequence of issuing common employer declaration under Section 59(1) of *The Labour Relations Act* - Declaration effective date when Down Room was incorporated - Substantive Order - 49/12/LRA - August 28, 2012 - Freed & Freed International Ltd. and The Down Room Inc.

CONSENT TO INSTITUTE PROSECUTION

Board grants consent to institute prosecution to union as Employer failed to comply with a previous reinstatement/compensation order - 876, 886/77/LRA - December 13, 1977 - Wasylyshen Enterprises Ltd.

Union increases union dues in order to augment strike fund - Non-union member employee objects to increases, alleges violation of Subsection 68(1)(a) of ***The Labour Relations Act***, and seeks to prosecute - 736/84/LRA - March 5, 1985 - Michael Valentine Ward.

CONSTRUCTION INDUSTRY

Employer objects to application claiming no employees described in the unit were on its payroll - Employer attempting to mislead the Board as to the identity of the employer by having another contractor pay Employee's salary - Employer offered Employee job, paid for his tools and had him report to its project supervisor at job site - Held Employee employed by Employer - Application for Certification granted - 605/94/LRA - October 26, 1995 - TNL Industrial Contractors Ltd.

Employer argued Employee hired for eight day project could not be considered employee for application under ***Rule 28 - Rule*** not applicable in the construction industry given short-term employment is the norm and casual employees are not an issue in this sector - 605/94/LRA - October 26, 1995 - TNL Industrial Contractors Ltd.

Craft unit - Millwrights performing work for short-term projects at isolated hydro station - Board does not sway from previous decisions to issue province-wide certification in the construction industry when determining most appropriate unit - 814/93/LRA - January 4, 1996 - Getsco Technical Services Inc.

Craft Unit - Union applied for unit of sheet metal workers rather than all employee unit - By section 39(1) of ***The Labour Relations Act*****,** Board not required to find most appropriate unit, but rather an appropriate unit - Board finds no reason to depart from practice of certifying craft units as appropriate bargaining units -Certification issued - Section 39(1) of ***The Labour Relations Act*** - 189/95/LRA - May 30, 1996 - Harstone Heating and Air Conditioning Ltd.

Craft Unit - Board found collective agreement covering all trades contrary to its practice of recognizing individual craft units - Also members in good standing can only ratify portions of collective agreement which apply to their craft - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc. – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Apprentices - Possibility of apprentices employed on date of application for certification not being "registered apprentices" within the meaning of *The Apprenticeship and Trades Qualification Act* did not, in and of itself, render the bargaining unit inappropriate - Substantive Order - 351/06/LRA - June 9, 2006 - B & M Land Company JV.

Certified Bargaining Unit included Electrician-Welders among other classifications - Employer did not employ any Electrician-Welders on date of filing of application for certification - Fact that there may be no employees in one or more classifications covered by the certificate did not render the bargaining unit inappropriate - Substantive Order - 351/06/LRA - June 9, 2006 - B & M Land Company JV.

Layoff - Union contended Employer refused to reinstate Employee following end of strike based on his seniority - Held parties reached an agreement that Employer retained discretion to determine whether work was available and, if so, which employees would be required to perform that work without regard to seniority - Board accepted that Employee not recalled on account of lack of work and decision based on valid business reasons - Substantive Order - 376/07/LRA - Nov. 2, 2007 - Able Movers.

CONSTRUCTION INDUSTRY

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 - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

(Next Section: Sec. 4.0)

DECERTIFICATION

Application to revoke certification determined to be untimely - Collective agreement provided for the continuation of agreement while negotiations continued - #S-67-19 - Undated - The Winnipeg School Division No. 1.

Employer allows an employee to prepare and circulate petition for decertification on his premises - Sections 6 and 14 of ***The Labour Relations Act*** considered - 57/77/LRA - March 3, 1977 - West Hotel.

Notice to commence bargaining terminates collective agreement - Application to revoke certification found to be timely - Subsection 54(2) of ***The Labour Relations Act*** considered - 29, 90/77/LRA - April 7, 1977 - White Truck Sales Manitoba Ltd.

Interference - Board orders a new vote to be taken to determine revocation application upon determining conduct of management amounted to interference - 495/77/LRA - October 3, 1977 - Crawley & McCracken Company Limited.

Revocation decision determined to be in Board's prerogative despite outcome of vote - Section 38 and Subsection 47(2) of ***The Labour Relations Act*** considered - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

Application for cancellation of Union's Certificate - Prima facie case of 50 percent employee support not established - Subsection 4(1) of ***The Labour Relations Act*** applied - 202/85/LRA - June 21, 1985 - Freed and Freed of Canada Inc. and Cambrian Clothing Ltd.

Board declined to dismiss technically defective petition because employees were not professional union representatives and intent of document clear - However, Board required sworn viva voce evidence to prove employees supported application - 960/92/LRA - February 18, 1993, Western Egg Co. Ltd.

Employer interference - Evidence showed Employer was not aware that excluded office staff had typed petition or that Applicant employee delivered petition during working hours - Ruled Employer did not influence or encourage application - 960/92/LRA - February 18, 1993, Western Egg Co. Ltd.

Application filed under Section 49(1) of ***The Labour Relations Act*** - Reference made to Section 49(3), but no evidence adduced with respect to that section - Board finds application untimely - Application dismissed - 410 & 741/93/LRA - August 26, 1993 - Linda Tyndall t/a 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Application for review and reconsideration of dismissal of decertification application denied as no new evidence submitted to support need to review - 410 & 741/93/LRA - August 26, 1993 - Linda Tyndall t/a 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

DECERTIFICATION

Individuals not hired as per the hiring hall provisions of the collective agreement not bona fide employees and hold no status to file application under Section 49(1) of ***The Labour Relations Act*** - Application for termination of bargaining rights dismissed - 221/94/LRA - January 23, 1995 - Linda Tyndall, 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; MATTER RETURNED TO THE BOARD.**

Six years after Revocation Order issued, Union filed application for review alleging Employer committed unfair labour practices during decertification process - Employer submitted application untimely as issue regarding allegations settled at first hearing - Board found matter not settled as applications seeking remedy for alleged unfair labour practice not filed at first hearing - Board not precluded from dealing with the allegations of an unfair labour practice - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Six years after Revocation Order issued, Board finds Employer interfered during decertification process - Certificate reinstated and old collective agreement deemed in full force and effect, except where current conditions more generous - Employer ordered to commence good faith bargaining, to pay the Union $2,000, to allow the Union to meet with employees during work time on Employer's premises, to compensate the Union for expenses incurred in conducting the meetings; and to post one copy of Order at workplace and to send copy of Order by certified mail within 10 days of receipt to each employee - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Objecting Employees file Application for cancellation of certificate of Union involved in lengthy strike with Employer - As per Section 35(6) of ***The Labour Relations Act***, individuals who were laid off, employed on seasonal basis, or hired as replacement workers after strike began were not employees for purposes of application - Employees who retired after strike began and owner/operators represented by another bargaining agent did not have continuing interest in outcome of the proceedings - However, individuals terminated during strike and individual terminated prior to strike but reinstated through arbitration had continuing interest in proceedings - 56/96/LRA - Oct. 18, 1996 - Building Products & Concrete Supply.

Objecting Employees file Application for cancellation of certificate of Union involved in lengthy strike with Employer - Applicant claims that individuals classified as redi-mix drivers prior to strike did not have continuing interest in strike because during strike classification became redundant and was replaced by owner/operators - Board held continued existence of classification valid bargaining issue during strike so redi-mix employees on strike have continuing interest in outcome of application - 56/96/LRA - October 18, 1996 - Building Products & Concrete Supply.

Applicant did not have status to file an application to cancel the certificate of the Union as he was employed through an individual contract and was not an employee within the bargaining unit as at the date of application - Application under Subsection 49(1) dismissed - 622/96/LRA - August 20, 1997 - Intelicom Inc./ Trojan Security Services.

DECERTIFICATION

Application filed seeking cancellation of certificate pursuant to Section 49(3) of ***The Labour Relations Act*** - Applicants failed to satisfy Board they would suffer substantial and irremediable damage or loss if application denied - Application dismissed - Substantive Order, full Reasons not issued - 59/98/LRA - May 14, 1998 - Hardy Electric Ltd.

Application to cancel certificate dismissed as Applicant failed to file a From "A" in accordance with Rule 2(1) of *the Manitoba Labour Board Rules of Procedure* - Substantive Dismissal - Reasons not issued - 125/99/LRA - April 9, 1999 - Northern Inn and Steak House.

Employees - Board ruled employees, who were on lay-off and who had recall rights under the collective agreement at the date of filing the decertification application, were employees for the purposes of determining the level of support pursuant to Section 49 of *The Labour Relations Act* - Substantive Order - Reasons not Issued - 374/99/LRA - May 17, 2000 - Aspen Industries Manitoba.

Employees - Board not persuaded to amend description of bargaining unit to exclude Registered Distribution Operators on the basis that collective agreement did not apply to them and terms and conditions of their employment were governed differently from other bargaining unit members - Found Employer and Union intended that they should be treated as a separate group, but not a separate unit for bargaining purposes - Board reluctant to impose a different view of what is appropriate where an Employer and a Union have agreed on the description of the bargaining unit – 61/98/LRA – June 18, 2001 – Dairyworld Foods.

Employer Interference - Union claimed demotion of floor managers and their speedy return to bargaining unit as senior supervisors 11 days after decertification application filed was for them to promote decertification - Demotions suspicious, but no evidence that Employer instigated, encouraged or improperly influenced the return to bargaining unit - 100/00/LRA & 136/00/LRA - December 12, 2001 - Integrated Messaging Inc.

Voluntariness of petition - Senior supervisors demoted from out-of-scope manager positions were not considered management in terms of unfair labour practice allegations, but given nature of their jobs, other employees may perceive them to be management - Supervisors' signatures discounted from petition as well as any employee signing after them as they could have inferred petition was endorsed by management - 100/00/LRA & 136/00/LRA - December 12, 2001 - Integrated Messaging Inc.

DECERTIFICATION

Bargaining unit empty for five years when cardiology technicians rehired - Five months later, Union included them into proposals prepared for laboratory technicians - Employer applied to Board to investigate whether Union abandoned its bargaining rights - Board was not prepared to say that Union must bargain for an empty unit - Union not acting diligently when technicians rehired result of an error of judgement and less than desirable standard of performance but does not amount to abandonment - Umbrella approach of rolling cardiology technicians in with laboratory technicians is assertion of bargaining rights - Application dismissed - 1031/01/LRA - September 11, 2002 - Manitoba Clinic.

Board could not satisfy itself that a majority of the employees supported the decertification application as the document containing the employee signatures was undated, did not contain a statement of purpose, did not appoint a Representative and did not include witness signatures - Application dismissed - Substantive Order - Reasons for Decision not issued - 504/03/LRA - August 29, 2003 - Emerald Foods t/a Bird's Hill Garden Market IGA.

Prima facie – Applicant alleged Shop Steward unfairly attempted to compel or induce him to oppose and not support an application for decertification – Held reasonable employee would not view Steward's statements that wages would be cut and jobs were in jeopardy to be intimidation, fraud or coercion – *Prima facie* case not established – Application dismissed - 18/02/LRA - December 4, 2003 - Faroex Ltd.

While Applicant Employee disagreed three employees be included on nominal roll, Employer and Union in best position to know who is considered an employee - Maintenance employee included as Employer and Union recognized him as being in bargaining unit although his position excluded - Also two individuals on Workers Compensation included as Employer had taken no action toward their employment status - Application dismissed as it had less than fifty per cent support - 1010/01/LRA - December 4, 2003 - Faroex Ltd.

Board has no authority to order vote in decertification application in absence of specific language in Labour Relations Act - 1010/01/LRA - December 4, 2003 - Faroex Ltd.

Timeliness - Preliminary Objections - Certified Bargaining Agent contested revocation application on grounds that it was filed in an untimely manner - Held the application was filed within the open periods under both Sections 35(2)(d) and (e) of the *Act* and, accordingly, was filed in a timely manner and a hearing would continue to address the remaining issues - Substantive Order - 178/05/LRA - July 18 & Nov. 30/05 - Frontier School Division.

DECERTIFICATION

Voluntariness - Application - Applicant shown as witness to all signatures on Petition but she did not witness every employee who signed Petition - No other evidence before the Board as to date or place each individual signed Petition and that an individual witnessed an employee signing it - Also number of employees signed Petition under Applicant's mistaken belief that collective agreement would continue for a period of time after any decertification was issued - As well, Employee failed to swear Statutory Declaration before Commissioner of Oaths or other authorized person - Application dismissed as Board not satisfied that 50 percent or more of the employees in the unit supported the Employee - Substantive Order - 508/07/LRA - April 15, 2008 - Betel Home Foundation.

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 - 227/09/LRA - August 28, 2009 - Buhler Trading.

Employees – One month after effective date of collective agreement, Employee filed application seeking cancellation of certificate – Employee relied on Section 49(3) of *The Labour Relations Act* submitting he would incur losses over next six months by having to continue to remit union dues pursuant to Collective Agreement - Board satisfied Application untimely pursuant to Section 35(2) and 49(2) of the *Act* and reasons advanced in respect of Section 49(3) of the *Act* did not constitute "substantial and irremediable damage or loss" within the meaning of Section 49(3) - Application dismissed - Substantive Order – Reasons not issued – 28/11/LRA – February 25, 2011 – R.M. of East St. Paul.

Voluntariness - Union submitted petition filed with decertification application did not represent true wishes of majority of employees - Employee who filed Application submitted evidence as to origination and preparation of petition - All signatories to petition, including Employee who signed petition and who was present when other employees signed, emphasized they understood what petition represented and that they signed voluntarily - Employee established, on balance of probabilities, that petition represented voluntary wishes of signatories - Conversely, Union did not submit any evidence that established Employer did anything that influenced employees who signed petition, or interfered with voluntary expression of their true wishes in relation to cancellation of certificate - Employee established prima face case under subsection 50(2) of The Labour Relations Act - Ballots cast in representation vote to be counted - Substantive Order - 43/11/LRA- July 14, 2011- McAsphalt Industries Ltd.

Voluntariness - Employee satisfied onus that petition filed in support of Application seeking cancellation of certificate represented voluntary wishes of employees who signed petition - Circumstances of origination, preparation, circulation and signing of petition met requirements of Board - All signatories to petition understood what petition represented and they signed voluntarily - Conversely, Union failed to satisfy Board petition did not reflect voluntary wishes of employees - Applicant established prima facie case under subsection 50(2) of The Labour Relations Act - Ballots from representation vote to be counted to determine issue - Substantive Order- 38/11/LRA - July 26, 2011 - City of Steinbach.

DECERTIFICATION

Employee filed application seeking cancellation of Certificate MLB-6705 (Case No. 38/11/LRA) - Union filed unfair labour practice application pursuant to Subsection 6(1) of The Labour Relations Act - Board satisfied Employer did not interfere with formation, selection or administration of Union or representation of employees by Union - Application dismissed - Substantive Order - Reasons not issued - 62/11/LRA - July 26, 2011 - City of Steinbach.

Standing - Collective Agreement - Employees filed application for decertification alleging Union lost support of majority of employees in bargaining unit because it was unable to assist members with pension concerns - Employer filed Reply asserting grounds stated by employees insufficient and contrary to principles of collective bargaining - Employer submitted Board should order current collective agreement binding on members of Union for its entire term; was to remain in full force and effect for its entire term; and that provisions relating to pension plan and pension contribution rates were terms of employment until collective agreement expired - Board determined resolution of issues raised by Employer not matter over which Board had jurisdiction - Section 54 of *The Labour Relations Act* provides where certification of bargaining agent cancelled, employer not required to bargain collectively with bargaining agent and subject to clause 44(c) any collective agreement in force and effect between parties was terminated - Based on provisions of the *Act*, Board could not entertain orders sought by Employer which had no role in determining whether or not employees wish to be represented by Union - Substantive Order - 244/12/LRA - Dec. 6, 2012 - Manitoba Teachers' Society.

Scope - Voluntariness - Employees filed application for decertification alleging Union lost support of majority of employees in bargaining unit because it was unable to assist members with pension concerns - Employer and Union opposed application - Board held neither Union nor Employer advanced specific grounds contesting voluntariness of petition - Unless some illegality or conduct contrary to *The Labour Relations Act* disclosed, and as long as material filed in support of application for decertification disclosed more than 50 percent of employees in bargaining unit voluntarily support application, Board does not inquire into reasons why employees wish to decertify rights of bargaining agent - Such subjective inquiries beyond scope of Board's role under the *Act* - Board satisfied more than 50 percent of employees in unit voluntarily supported Application - Board directed ballots cast in representation vote be counted - Substantive Order - Substantive Order - 244/12/LRA - Dec. 6, 2012 - Manitoba Teachers' Society.

DECERTIFICATION

Discretion to Dismiss - Applicant filed application seeking cancellation of Certificate - Union submitted Board should exercise discretion under subsection 50(4) of The Labour Relations Act to dismiss Application claiming Employer failed or refused to make efforts in good faith, with result collective bargaining process had been frustrated - Board noted Employer acknowledged that it cancelled six negotiating meetings due to ill health of executive director and asked to reschedule bargaining sessions to accommodate schedule of legal counsel - Employer participated in conciliation and, at each session, additional provisions of first collective agreement had been agreed upon - Conciliation officer did not notify Board that parties not likely to conclude collective agreement for purpose of subsection 87(1) of the Act - Neither party filed an application seeking imposition of first collective agreement - Union had not filed application alleging any unfair labour practice by Employer nor had it discussed any concerns with Employer that it may have had regarding good faith efforts by Employer - Board satisfied Employer did not fail or refuse to bargain collectively in good faith and make every reasonable effort to conclude collective agreement - Board ordered ballots cast in representation vote be counted - Substantive Order - 208/13/LRA - December 16, 2013 - Native Clan Organization.

DECLARATIONS

Board's jurisdiction to interpret collective agreements or declare rights examined - Section 121 of ***The Labour Relations Act*** examined - No Number - July 8, 1976 - The Piling Contractors Association of Manitoba Incorporated and Subterranean (Winnipeg) Ltd.

Board's jurisdiction to make declaratory judgements discussed - Board refuses to determine whether a person is an employee so as to be included in a previously issued certificate - Section 121 of ***The Labour Relations Act*** considered - No Number - February 22, 1978 - Thompson General Hospital, Flin Flon General Hospital.

DEPENDENT CONTRACTOR

Definition - Board determines whether contractors or employees hauling wood for the company are dependent contractors within Section 1(i) of ***The Labour Relations Act*** - #C-283-19 - Undated - Manitoba Forestry Resources Ltd.

DISCHARGE

Employer releases non-productive employees during a strike - Statutory return to work protocol, Subsection 11(1)(f) of ***The Labour Relations Act*** discussed - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

Union refuses to refer dismissal grievance to arbitration - Subsection 16(a)(ii) of ***The Labour Relations Act*** considered - 20/86/LRA - March 13, 1986 - The Health Sciences Centre.

Reasonable care - Union's duty to fairly represent an employee examined - Section 16 of ***The Labour Relations Act*** considered - 1091/86/LRA - February 13, 1987 - Department of Highways, Manitoba Government.

Almost all employees discharged or suspended soon after certification - Board need not consider merits of discipline, but was entitled to draw inferences from circumstantial evidence - Too much coincidence existed as employees bad disciplinary record occurred after application for certification, and warning notices sent three months after fact- Held the Employer motivated by anti-union bias - 384, 404, 420/91/LRA - January 13, 1992 - Juniper Centre Inc.

Reinstatement - Employer dismissed long-term Employees convicted of criminal mischief on picket line - Section 12(2) of ***The Labour Relations Act*** requires reason for dismissal to be unrelated to lockout - Board ordered reinstatement without monetary relief - 723/94/LRA - April 6, 1995 - Trailmobile Canada, Div. of Gemala Industries.

Definition - Employees discharged during lockout for criminal conduct still employees when lockout ended - Scope of section 13 of ***The Labour Relations Act*** not restricted to those currently employed to do work - Sections 7 and 13 of the **Act** considered - 723/94/LRA - April 6, 1995 - Trailmobile Canada, Div. of Gemala Industries.

Refusal to work - Held Employee was terminated for refusing to work Sundays in contravention of Section 7 of ***The Labour Relations Act*** - Employer ordered to reinstate Employee, to compensate him for loss of income and other employment benefits, including profit sharing entitlement, and to cease and desist from any activity which interfere with the Employee's statutory right pursuant to **The Employment Standards Act** to refuse work on Sundays - Substantive Order - Reasons not issued - 664/94/LRA - March 28, 1995 - W.A Hutchison Ltd., Canadian Tire Associate Store 270.

Discrimination - Held Employee not discharged for filing claim for Workers Compensation Benefits but rather for failing to submit medical certificate as requested - Employer discharges onus under Section 7 of ***The Labour Relations Act*** - 99/96/LRA - June 18, 1996 - Gerri Sylvia/Sylvia Personnel Services Ltd.

Failure to Refer Grievance to Arbitration - Applicant discharged for refusing duties - Prior to deciding not to proceed to arbitration, Union attempted to have Employer accommodate her in spite of medical restrictions and had her work a lengthier training period than provided in the collective agreement - Union acted in prudent, reasonable manner - Decision not to arbitrate not unfair - 590/97/LRA - April 29, 1998 - Cara Operations Ltd. - LEAVE TO APPEAL TO COURT OF APPEAL DENIED.

DISCHARGE

Refusal to Work - Exercising Legislated Rights - Termination of employee who refused to work overtime suspicious - Employer did not satisfy onus to rebut *prima facie case* - Employee compensated for loss of income – 379/00/LRA – March 7, 2001 – Dynavest Corp.

Discriminatory Action - Exercising Legislative Rights - Employee alleged termination due to requests he made to have access to WHMIS documents - Employer countered that termination was result of insubordination; one of the days Employee alleged to have requested materials was a non-working day; and amended Workplace Safety and Health Order removed item dealing with availability to all employees of certain material - Held Employee failed to establish a *prima facie* case - Application dismissed - 292/02/LRA & 293/02/WSH - September 17, 2002 - Crosstown Dental Laboratory Ltd.

DISCHARGE FOR UNION ACTIVITY

Employer fails to establish employee was not terminated for union involvement - Board orders reinstatement of employee - Section 7 of ***The Labour Relations Act*** considered - 37/77/LRA - March 17, 1977 - The Rural Municipality of Ste. Anne.

Employees laid-off during a union organizational campaign - Allegations of unfair labour practice examined - Section 7 of ***The Labour Relations Act*** considered - 163, 166/77/LRA - June 3/77 - G.A. Junkin (1976) Co. Ltd.

Employee claims termination was motivated by anti-union animus - Sections 5, 6 and 7 of ***The Labour Relations Act*** considered - 327/77/LRA - July 4, 1977 - Province of Manitoba.

Employer alters terms of employment and terminates a number of employees during organizational campaign - Sections 5, 6, 7 and 9 of ***The Labour Relations Act*** considered - 220, 279, 414/83/LRA - June 21/83 - Valdi Inc.

Elimination of bargaining unit positions with non-unionized positions essentially rid the Employer of the collective agreement - Actions were anti-union - Board orders reinstatement and compensation of Teaching Assistants - Sections 5, 6, 7, 26, 62, & 82 of ***The Labour Relations Act*** considered - 644/87/LRA - November 30, 1990 - University of Manitoba.

Anti-union animus - Allegations that Employer discharged Handi-transit Co-ordinator because of involvement in organizing operators offset by rehiring him as taxi driver - Application under Section 7 and 9 of ***The Labour Relations Act*** denied - 158/93/LRA - Feb. 7/94 - Unicity Taxi Ltd.

Days after Application for Certification, General Labourer refused to sign note agreeing to comply with Workplace Safety & Health regulations - Union claimed requirement to sign change in working condition contrary to Section 10 of ***The Labour Relations Act*** - When Employee lost job because of refusal, Union claimed discharge motivated by anti-union animus - Board held Employee quit not discharged and requirement to sign note not change in working condition - Claim dismissed - 555/94/LRA - Feb. 3, 1995 - Logan Iron and Metal Co. Ltd.

Crane Operator claimed he was terminated days after Application for Certification due to his involvement during organizational campaign - Employer claimed his services were no longer required when it rehired long-time experienced employee he was hired to replace - Employer explanation reasonable - Application for unfair dismissed - 555/94/LRA - February 3, 1995 - Logan Iron and Metal Co. Ltd.

Onus - Union claimed timing of terminations suspiciously close to Application for Certification presumes motivated by anti-union animus - Board stated reverse onus does not put absolute liability on Employer, but must present reasonable and plausible explanation to satisfy onus - Fairness of decision not a consideration in Board's determination of claim - 555/94/LRA - February 3, 1995 - Logan Iron and Metal Co. Ltd.

DISCHARGE FOR UNION ACTIVITY

Discharged employee was not doing his job properly and had received numerous written warnings about his work performance and that his position was in jeopardy - Other employee fired for incompetence - No evidence of unfair labour practice - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc.

DISCRETIONARY CERTIFICATION

Pursuant to Employer's consent and that the unit is appropriate for collective bargaining, Board issues discretionary certificate as per Section 41 of ***The Labour Relations Act*** - Substantive Order - Reasons not issued - 84/97/LRA - June 20, 1997 - Sobering Security Limited.

Board finds Employer committed unfair labour practices so that true wishes of affected employees not likely to be ascertained - Ballots cast in representation vote not counted - Union provided evidence of adequate membership support, and unit appropriate for collective bargaining - Board exercises discretion to certify the Union as bargaining agent - Substantive Order - Reasons not issued - 713 & 758/97LRA & 13/98/LRA - September 16, 1998 - Airliner Motor Hotel (1972) Ltd.

Freedom of Expression - Board dismissed unfair labour practice application filed by the Employer against Union - However, Board found the Union did not come before it with "squeaky clean hands" because of remarks made by its representative cautioning employees of possible physical violence by the owners and possible association of owners with criminal elements - Request for discretionary certification declined as conduct of both parties questionable, therefore, in the circumstances, a representation vote should be held - 528, 595, & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Pursuant to joint request of the parties, Board issues discretionary certificate under Section 41 of *The Labour Relations Act* - Substantive Order, full Reasons not issued - 35/99/LRA - March 23, 1999 - Faroex Ltd.

Anti-union animus - Employer Interference - Employer does not come before Board with "squeaky clean hands" - Employer's speech given at captive meeting was threat to job security and thwarted true wishes of employees - As well, lay-offs and terminations imposed two days after organizational campaign tainted by anti-union animus - Ordered employees be reinstated with back pay, Employer pay Union $2,000 for interfering with its rights - Discretionary certificate issued - 813 & 814/98/LRA - February 29, 2000 - Canadian Anglo Machine and Ironwork Inc.

Employer Interference - Employer sent letter to employees, which went beyond providing information pertaining to conduct of vote - Employer claimed letter sent because of staff's inability to access the posting on their day off - Board questioned Employer's intent given letter sent to all 70 employees rather than the 10 who would be off and no evidence produced that employees were confused about voting procedure - Employer's credibility further questioned because Union member overheard him commenting negatively about the Union and the certification process - Held sole purpose of sending letter was to interfere with the formation and selection of the Union - Employer's conduct affected the results of the representation vote - Discretionary certification issued - 479/00/LRA & 561/00/LRA - July 5, 2001 - Emerald Foods Ltd. t/a Bird's Hill Garden Market IGA - **APPEAL TO COURT OF QUEEN BENCH GRANTED; BOARD'S ORDER AND CERTIFICATE QUASHED;MOTION FOR STAYED DENIED; APPEAL TO COURT OF APPEAL GRANTED, BOARD ORDER RESTORED.**

DISCRETIONARY CERTIFICATION

Intimidation - Employees who returned to work as remedy for unfair labour practices required to take breaks with supervisor on the day before and the day of representation vote - They also were assigned work different from what they had performed prior to their lay-off and in isolation from other employees - Purpose of keeping Employees isolated was to limit opportunity to talk to other employees and to influence how other employees voted - True wishes of the employees could not be ascertained by representation vote and Union had evidence of adequate membership support - Discretionary certificate issued – 631/00/LRA & 183/01/LRA – November 20, 2001 – J.C. Foods.

Employer Interference - Employer's letter to employees; attachment, and Power Point presentation was clearly directed at employees in an attempt to interfere with formation and selection of a union - Employer's actions intended to and had a "chilling effect" on organizing drive - Discretionary certificate issued – 171 & 172/05/LRA – October 27, 2005 – Praxair Canada.

DUTY OF FAIR REPRESENTATION

Applicant alleges that the Association failed to take reasonable care to represent his interests - Subsection 16(a)(ii) of ***The Labour Relations Act*** considered - 178/85/LRA - May 24, 1985 - Versatile Mfg. Co.

Union refuses to refer dismissal grievance to arbitration - Subsection 16(a)(ii) of ***The Labour Relations Act*** considered - 20/86/LRA - March 13, 1986 - The Health Sciences Centre.

Dismissal Grievance - Standard of care when representing the rights of employees discussed - Section 16 of ***The Labour Relations Act*** considered - 1034/85/LRA - April 28, 1986 - People's Co-Operative Ltd.

Union's duty of fair representation with respect to individuals on matters which arise when they are employed and are a member of the bargaining unit do not cease upon termination of employment - Section 16 of ***The Labour Relations Act*** considered - 1033/85/LRA - June 30, 1986 - People's Co-Operative Ltd.

Reasonable care - Union's duty to fairly represent an employee examined - Section 16 of ***The Labour Relations Act*** considered - 1091/86/LRA - February 13, 1987 - Department of Highways, Manitoba Government.

Union withdraws employee's grievance from arbitration - Duty of fair representation discussed - Section 20 of ***The Labour Relations Act*** considered - 304/88/LRA - March 23, 1989 - Province of Manitoba, Manitoba Health.

Union refuses to pursue Employee's grievance to arbitration - Duty of fair representation discussed - Section 20 of ***The Labour Relations Act*** considered - 588/88/LRA - October 13, 1989 - Supercrete.

Union refuses to represent both grievor and successful applicant in same dispute - Conflict of interest - Section 20(b) of ***The Labour Relations Act*** considered - 642/89/LRA - February 28, 1990 - Manitoba Department of Family Services, Civil Service Commission.

Undue Delay - Applicant made intentions known to Union a year earlier that grievance would not proceed, and had access to legal representation during time period in question - Held undue delay in filing of application of unfair labour practice under Section 20 of ***The Labour Relations Act*** - Application dismissed pursuant to Section 30(2) of the **Act** - Reasons not issued - 217/92/LRA - May 4, 1992 - E.H. Price Ltd.

Union's refusal to compensate affected employee for independent legal fees incurred in arbitration not unfair labour practice - 37/92/LRA - August 19, 1992 - Salvation Army Grace Hospital, N. Embuldeniya.

Arbitrary Conduct - Employee's disapproval of Union's handling of arbitration case did not build prima facie case of proof Union failed to provide fair representation - Application dismissed - 501/93/LRA - February 9, 1994 - Coldstream Products Canada Ltd.

DUTY OF FAIR REPRESENTATION

Although summer students have right to become members of Union, Board not satisfied Applicant was an employee of the Employer or was an employee at time application filed - Applicant did not have status to file under Section 20 ***The Labour Relations Act*** which contemplates application must be filed by employee - Substantive Order - No Reasons issued - 269/94/LRA - June 9, 1994 - Abitibi-Price Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH.**

Board satisfied Applicant was aware of Respondent's intention not to proceed with grievance at least 7 months prior to filing application - Application dismissed for undue delay - Substantive Order - Reasons not issued - 186/94/LRA - September 29, 1994 - University of Manitoba.

Failure to Refer Arbitration Award for Judicial Review - Application filed 8 months after Applicant aware of Union's intention not to proceed with Motion to quash arbitration award - Applicant failed to present evidence regarding reasons for delay - Application dismissed as Applicant unduly delayed filing of application - Substantive Order - Reasons not issued - 580/94/LRA - Dec. 19, 1994 - Abitibi-Price - **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

Undue delay - Filing of application 28 months after termination extreme undue delay - Obtaining poor advice and ignorance of law no excuse - Application dismissed for extreme undue delay - 497/94/LRA - February 6, 1995 - Domtar Inc.

Particulars - Employee alleged Union unfairly decided not to refer grievance to arbitration - Board aware of 7½ month delay in filing application, but dismissed application on basis *prima facie* case not made out for failure to provide particulars to support application - Rule 3(1) and 3(2) of ***Manitoba Labour Board Rules of Procedure*** - 207/95/LRA - July 25, 1995 - Gemini Fashions of Canada, Dudnath Sumar.

Union's decision not to refer reclassification grievance to arbitration not breach of Section 20 of ***The Labour Relations Act*** unless actions arbitrary, discriminatory or in bad faith - Material filed by Employees did not disclose that Union acted in such a manner - Application dismissed on basis *prima facie* case not made out - 168/95/LRA - Sept. 28, 1995 - City of Winnipeg, Marlene Guyda, Larry Wilson.

Applicant files claim for unfair labour practice twelve months after Union informed him of decision not to proceed with his grievance - Claim dismissed for absence of *prima facie* case and delay in filing application - 40/97/LRA - March 24/97 - Andrzej Bal.

Contract Administration - Failure to Refer Grievance to Arbitration - Union's determination that Employee's grievance could not be sustained and decision not to proceed to arbitration made after careful consideration of collective agreement, facts and case law - Union not bound by law to take every case to arbitration - Application dismissed - 829/96/LRA - May 12, 1997 - Winnipeg Hydro.

DUTY OF FAIR REPRESENTATION

Failure to Refer Grievance to Arbitration - Employee refused to accept settlement offers for her two grievances, but Union would not refer grievances to arbitration - Employee filed unfair labour practice - Board found Union carried out extensive investigation by interviewing Employee and other witnesses, obtaining a medical opinion, seeking legal advice and bringing the matter to a vote after giving the Employee an opportunity to put forward her position to the Local - Union not required by law to take every grievance to arbitration - Union did not fail to take reasonable care to represent Employee - Application dismissed - 232/97/LRA - August 12, 1997 - George N. Jackson Ltd.

Applicant filed claim almost a year after he signed "Last Chance Agreement" negotiated by Union - Board's normal practice not to entertain complaints filed more than six months beyond facts complained of - Applicant's concerns appear to focus on perception his discharge was unjust - Failed to submit facts that would establish prima facie case in his favour - Application dismissed without need for hearing - 549/97/LRA - February 10, 1998 - Motor Coach Industries.

Failure to Refer Grievance to Arbitration - Applicant discharged for refusing duties - Prior to deciding not to proceed to arbitration, Union attempted to have Employer accommodate her in spite of medical restrictions and had her work a lengthier training period than provided in the collective agreement - Union acted in prudent, reasonable manner - Decision not to arbitrate not unfair - 590/97/LRA - April 29/98 - Cara Operations Ltd. - **LEAVE TO APPEAL TO COURT OF APPEAL DENIED.**

Board believed Applicant wanted Board to deal with her grievance about the training she received, rather than Union's decision not to arbitrate - Board has no jurisdiction to deal with adequacy of training - 590/97/LRA - April 29, 1998 - Cara Operations Ltd. **- LEAVE TO APPEAL TO COURT OF APPEAL DENIED**.

Applicant discharged after videotape evidence showed substantial periods when Employee absent from work station - Decision not to process to arbitration followed Union reviewing evidence, negotiating a settlement, seeking legal advice, and putting matter to its executive and membership - Union acted to "reasonable standard" mandated by *The Labour Relations Act* - Claim dismissed - 240/97/LRA - August 27, 1998 - Manitoba Rolling Mills, a Division of Gerdau MRM Steel - **APPEAL TO COURT OF APPEAL DENIED**.

Suspended Employee pursued matter diligently and seriously on her own behalf with essentially no assistance from Association - Held gross dereliction of duty committed by the Association - Association ordered to submit grievances to arbitration and engage counsel jointly chosen with Employee - Employer to process grievances without objection to timeliness or other deficiency arising from delay - Intent of ruling not to restrict arbitration board from considering issue of delay - 770/97/LRA - September 28, 1998 - Salisbury House of Canada.

DUTY OF FAIR REPRESENTATION

Application does not disclose action or conduct supporting allegations that Union acted in manner which was arbitrary, discriminatory or in bad faith - Prima facie case not established to warrant hearing - 469/98/LRA & 575/98/LRA - Nov. 9, 1998 - Coca-Cola Bottling - **APPEAL TO COURT OF QUEEN'S BENCH DENIED; LEAVE TO APPEAL TO COURT OF APPEAL DENIED.**

Contract Administration - Failure to refer grievance to arbitration - Rather than grieve termination, Employee instructed Union to submit letter of resignation - Employee changes mind, but does not inform Union - Union not obliged to file a grievance that an employee did not want to have filed, especially when the employee did not want to return to the place of employment- Application dismissed - 314/98/LRA - January 8, 1999 - Deer Lodge Centre.

Contract Administration - Failure to Refer Grievance to Arbitration - Union decides not to refer termination grievance to arbitration after Employee rejects last chance agreement to return to work - Employee failed to establish prima facie case that Union acted in bad faith - Application dismissed - 12/99/LRA - March 25, 1999 - Motor Coach Industries.

Failure to Refer Grievance to Arbitration - Based on legal opinion, Union notified Employee that a recommendation would be made to the executive to not proceed to arbitration - Employee was notified of the meeting and chose of his own accord not to attend even after being informed that any decision made at the meeting would be final and binding - Union conducted the handling of the grievance diligently - Application dismissed - 649/99/LRA - January 7, 2000 - City of Winnipeg.

Independent Legal Opinion - Based on legal opinion, Union does not submit grievance to arbitration - Applicant does not agree with decision but fails to establish that Union actions were arbitrary, discriminatory or in bad faith - Prima facie case not met - 47/99/LRA - January 20, 2000 - Manitoba Hydro.

Failure to Process Grievance - Employee on LTD terminated as he was unlikely to return to active duty - Association decides filing a grievance was pointless - Unions have wide discretion to decide to proceed with a grievance - Board's mandate only to ensure minimum standard of care observed and has no authority to assess merits of grievance or quality of representation - Board held Association acted expeditiously, appropriately and sensitively - Application dismissed - 70/99/LRA - March 15, 2000 - Winnipeg Police Service.

Practice and Procedure - Applicants fail to establish prima facie case - Grievances should be filed with the Bargaining Agent before commencing an application for duty of fair representation - Letter Decision, Reasons not issued - 572/00/LRA - November 14, 2000 - Kraft Construction Co. Ltd.

DUTY OF FAIR REPRESENTATION

Contract Administration - Delay in processing grievance - Employee alleged Union failed to follow grievance procedures with respect to his health problems and complaints of harassment by co-workers and discrimination by the Employer – Board found the Applicant's expectations of others to not always be reasonable and that he was excessively distrustful - Application dismissed because Applicant failed to establish that Union acted, in breach of Section 20, in a manner which was arbitrary, discriminatory or in bad faith - 735/98/LRA - April 11, 2001 - Powell Equipment.

Based on review of written submissions and Applicant's own supporting documentation Board finds Union took more than reasonable care in respect of Employee's complaints - Allegations would not, if proved, disclose a prima facie case to allow the matter to proceed to oral hearing - Application dismissed – 773/01/LRA – November 15, 2001 – Winnipeg Hydro.

Prima facie - Applicant failed to file supporting particulars - Prima facie case not established - Application alleging unfair labour practice contrary to Section 20(a)(ii) of The Labour Relations Act dismissed - Board Reasons not issued - 390/02/LRA - July 8, 2002 - Union Centre Inc. - **APPEAL TO COURT OF QUEEN'S BENCH DENIED - APPEAL TO COURT OF APPEAL DENIED.**

Discharge - Negligence - Union Representative erred in advising Applicant that he only had to work one shift within six-month period to maintain his employment status - Applicant discharged as collective agreement provided that the period was four months - Held Union refusal to proceed with grievance not breach of duty of fair representation as Applicant failed to provide critical information to Union, failed to check collective agreement himself as suggested and failed to avail himself of internal Union appeal procedures - 411/00/LRA - July 26, 2002 - Canada Safeway.

Contract Administration - Failure to Refer Grievance to Arbitration - Employee alleged Union failed in its duty of fair representation when it decided not to proceed with discharge arbitration - Delay result of conversations the Employee had with counsel over issues he raised - Employee 's witness testified the Union conducted thorough and complete investigation - Employee presented his case to union membership with an advocate who spoke on his behalf - Board satisfied Union not in contravention of section 20 - Application dismissed - 839/01/LRA - August 16, 2002 - INCO Limited Manitoba Division.

Employee filed claim based on Union not advising him of status of his grievances, quality of legal opinion obtained by the Union and existence of an appeal process of which local union officials did not advise him – Held Employee's frustration could have been avoided if Union had communicated in writing about grievances status, but communicating only verbally not sufficient to establish an unfair labour practice - Union not bound to take every grievance to arbitration - Union reasonably relied on legal opinion of unlikelihood of success at arbitration - Board did not have concerns about quality of legal opinion - Application dismissed - 463/02/LRA - Dec. 19, 2002 - Boeing Canada Inc.

DUTY OF FAIR REPRESENTATION

Employee alleges Union failed in its duty of fair representation when it failed to seek judicial review of an arbitration award - Despite finding Section 20 does not preclude the obligation to seek judicial review of an award, filing an application for judicial review is not a duty within the scope of the administration of a collective agreement for which a union is responsible - Union Representative's conduct could not sustain a finding of "gross negligence" - Application dismissed - 491/02/LRA - March 21, 2003 - Canwest Galvanizing/La Corportation Corbec - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Preliminary Issue - Board satisfied that the collective bargaining process did not fall within the meaning of Section 20 of The Labour Relations Act - Application dismissed - Substantive Order - Reasons not issued - 746/02/LRA - April 22, 2003 - Borreson Trucking and Tolko Industries.

Retroactive Pay - Employee voluntarily terminated full-time employment and converted to casual status prior to settlement being reached on new collective agreement - Applicant not an employee pursuant to newly signed collective agreement so as to be eligible for retroactive pay - Prima facie case not established - Application dismissed - 455/03/LRA - September 18, 2003 - Salvation Army Haven.

Union's withdrawal of grievance on the advice of legal counsel and absence of a grievance being filed by Employee satisfied Board the Employee failed to establish prima facie case and that Union had not acted contrary to section 20 - Application dismissed - 713/03/LRA - January 8, 2004 - Carlson Structural Glass.

Prima facie - After interviewing and questioning potential witnesses, Union decided not to take Employee's grievance to arbitration - Employee raised issues of management incompetence and a Workers Compensation issue which were not relevant to an unfair labour practice application - Applicant failed to establish prima facie case - Application dismissed - 526/03/LRA - January 20, 2004 - E.H. Price Ltd..

Board dismissed Employer's and Union's request for costs against Applicant as he believed he was victim of an injustice and Association's conduct, while not arbitrary, was questionable - 549/02/LRA - February 20, 2004 - Monarch Industries Ltd.

Applicant complained that Association accepted offer to reduce discipline without consulting him - Association's communication with Applicant not of a standard that bargaining unit member could expect from union but it cannot be said to have acted arbitrarily - Application dismissed 549/02/LRA - February 20, 2004 - Monarch Industries Ltd.

Arbitrary Conduct - Employee alleged Association failed to properly represent him when he was denied tenure - Board refused to accept application as it was filed three years after critical event, denial of tenure not a dismissal under Section 20(a) of The Labour Relations Act and for failure to establish prima facie case that Association's conduct was arbitrary under Section 20(b) of Act - 468/03/LRA - March 17, 2004 - Brandon University.

DUTY OF FAIR REPRESENTATION

Motivation of Employer - Failure to Refer Grievances to Arbitration - Medical Resident's termination resulted from failure to meet condition of employment to be enrolled in post graduate program and be registered on Educational Register, not because of complaints made about colleagues and superiors - Association entitled to rely on legal opinion not to refer grievances to arbitration - Resident failed to establish *prima facie* case that Association and Employer committed unfair labour practices - 847/01/LRA - March 19, 2004 - and - Winnipeg Regional Health Authority.

Lab Technologist alleged Union collaborated with Employer to force her to return to laboratory despite her allergic reactions experienced at work - Letter from Union indicating certain remedies not available to her not proof it lied to her - Union not following wishes of some union members that Employee return to work did not constitute unfair labour practice - Employee acted on her own when she resigned and could not fault Union for her decision - Also not reasonable to say Union failed to assist her when she failed to request a grievance be filed - Employee failed to establish *prima facie* case - Application dismissed - 458/03/LRA - March 24, 2004 - Burntwood Regional Health Authority - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Arbitrary Conduct defined- *Prima facie* - Local union president made honest mistake in advising Employee he would be able to port his benefits between health care facilities - Honest errors are not considered arbitrary conduct - *Prima facie* case not established - 690/03/LRA - June 29, 2004 - Cancercare Manitoba - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Employee resigned position on her own accord - Union decided not to proceed to grievance process - Allegations filed under Section 20(a) denied and there was no "dismissal" as contemplated by the *Act* - 785/03/LRA - March 14, 2005 - Winnipeg School Division No. 1 – **APPEAL TO COURT OF QUEEN'S BENCH ABANDONED**.

Employee instructed Union not to pursue grievance to rescind resignation as she did not want to disclose medical records - Nine months later she decided to pursue grievance - Union denied her request based on legal opinion grievance unlikely to succeed for timeliness - Union actions not arbitrary, discriminatory or in bad faith worked - It worked diligently to have long term disability benefits reinstated and to explore ways to get her job back without filing formal grievance - Also Employee responsible for passage of time - 785/03/LRA - March 14, 2005 - Winnipeg School Division No. 1 - **APPEAL TO COURT OF QUEEN'S BENCH ABANDONED**.

DUTY OF FAIR REPRESENTATION

Union executive's decision not to proceed to arbitration made after considering legal opinion and listening to Employee's presentation relating to the legal opinion regarding his grievance - Particulars contained in duty of fair representation application did not provide allegations to support a *prima facie* case that Union acted in a manner that was discriminatory, arbitrary or in bad faith - Application dismissed – 322 & 418/05/LRA – October 6, 2005 – Seven Oaks General Hospital.

Employee claimed Union failed to effectively and accurately present grievance at arbitration proceedings and did not request judicial review - Except in extreme cases Board does not function as appellate tribunal to scrutinize conduct of a union or its counsel during presentation of an arbitration - Based on material filed, Union did not breach Section 20 of *The Labour Relations Act* - 750/05/LRA - February 27, 2006 - Griffin Canada.

Oral Hearing - Board dismissed unfair labour practice application and review application based on written submissions - Board not required to hold an oral hearing - Subsections 30(3)(c) and 140(8)of *The Labour Relations Act* provide that the Board may decline to take further action on the complaint at any time during the application process - 525/05/LRA & 649/05/LRA - March 10/06 - Boeing Canada - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Contract Administration - Failure to Process Grievance - Upon review of application and replies filed, Board found Union investigated Employee's issues and obtained legal advice before deciding not to file grievance - Section 20 of *Labour Relations Act* does not require a union to grieve or arbitrate every complaint - Board does not interfere with Union's decision as it was not arbitrary, discriminatory or in bad faith - 138/06/LRA - May 9, 2006 - Manitoba Hydro.

Applicant filed unfair labour practice application under Section 20 of *The Labour Relations Act* - Board satisfied that application was in respect of collective bargaining process - Board does not have jurisdiction under Section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - Reasons not issued - 391/06/LRA - Aug. 22, 2006 - Seine River School Division.

Failure to Process Grievance - Sewing Machine Operators laid off by departmental seniority believed lay-offs should be on a plant or bargaining unit wide basis - Union considered provisions of Collective Agreement that lay-offs were to be on departmental basis and made objective and rational judgment regarding likelihood of succeeding at arbitration - Employees did not establish that Union acted arbitrarily or in bad faith - Application dismissed - Substantive Order - 95/05/LRA - Sept. 27, 2006 - Peerless Garments.

DUTY OF FAIR REPRESENTATION

Failure to Refer Grievance to Arbitration - Employees contended Union committed unfair labour practice when it did not follow through with grievance steps - Union made reasonable decision not to proceed to arbitration based on two legal opinions - Employees met with Union's legal counsel to discuss concerns and still had opportunity to state their case before Union's Executive Committee - Employees' disagreement with legal advice received does not constitute a breach of Section 20(b) - Employees failed to establish a *prima facie* - Application dismissed - Substantive Order - 593/06/LRA - Oct. 17, 2006 - City of Winnipeg.

Failure to Refer Grievance to Arbitration - Employee's disagreement with Union's interpretation of Collective Agreement and legal advice received does not constitute a breach of Section 20(b) - Employee failed to establish a *prima facie* - Application dismissed - Substantive Order - 619/06/LRA - Nov. 1/06 - Insight Falcon Beach 2.

Failure to Refer Grievance to Arbitration - Employee contended Union committed unfair labour practice when it did not follow through with grievance steps - Union made reasonable decision not to proceed to arbitration based on legal advice - Employee had opportunity to state his case before Grievance Screening Panel and Union's Executive Committee - Employee's disagreement with legal advice received does not constitute a breach of Section 20(b) - Employee failed to establish a *prima facie* - Application dismissed - Substantive Order - 606/06/LRA - Nov. 1, 2006, Health Sciences Centre, Dept. of Psych Health (WRHA).

Failure to Process Grievance - Hiring Hall - Applicants contend Union dispatched two other union members to job when the Applicants were on recall list - No recall rights in Collective Agreement and Union's Dispatching Policy not part of Collective Agreement - No basis upon which Union could file a grievance as no rights under Collective Agreement had been breached - Application dismissed - Substantive Order - 407 & 408/06/LRA - Nov. 7, 2006 - Empire Iron Works.

Scope of Duty - The complaints raised by the Employee alleging that he did not receive proper legal representation from his own counsel were beyond the scope of Section 20 of the *Act* - Substantive Order - 629/06/LRA - Dec. 14, 2006 - Daimler-Chrysler Canada.

Undue Delay - Application in October 2006 relied on events which occurred in 2004 and 2005 - Held Employee had unduly delayed filing application - Substantive Order - 629/06/LRA - Dec. 14, 2006 - Daimler-Chrysler Canada.

Prima facie - Withdrawal of unfair labour practice application was term of final and binding Employment Settlement Agreement - Employee filed second application 20 months later - Allegations relied on events which pre-dated the Settlement Agreement and the withdrawal of first application - Second application without merit as Employee sought to re-litigate matters - Substantive Order - 629/06/LRA - Dec. 14, 2006 - Daimler-Chrysler Canada.

DUTY OF FAIR REPRESENTATION

Failure to Process Grievance - Employee asserted that Union failed to properly represent him regarding his dismissal for theft - Union investigated circumstances surrounding dismissal, reviewed video tape evidence and interviewed Employee - Union ultimately decided that Employee's explanation was not credible - Union's decision that there was no basis to file a grievance was reasonable - Employee failed to establish a prima facie - Application dismissed - Substantive Order - 764/06/LRA - Jan. 9, 2007 - Carlson Structural Glass.

Ordering Employer to provide letters of references and matters arising from what may have transpired with other prospective employers did not fall within ambit of Section 20 of The Labour Relations Act - Substantive Order - Substantive Order - 677/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Scope - Employee claimed Union breached its duty under Section 20 of The Labour Relations Act between February and October of 2006 - Complaints regarding matters which pre-dated that period were not properly within the scope of the Application - Substantive Order - 677/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Employee filed Application claiming Union failed to file grievance relating to written warning, leave of absence without pay and abandonment of position - Employer did pay Employee for shifts which he would have been scheduled to work due to Union's intervention so Employee had no valid basis to assert Union breached its duty - Decision not to file grievance for portion of unpaid leave of absence for which Employee was unable to work for medical reasons was legitimate exercise of Union's discretion - Union told Employee to contact it if he wanted representation on abandonment issue but he had not done so - Employee failed to establish prima facie case - Application dismissed - Substantive Order - 677/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Failure to Process Grievance - Employee filed unfair labour practice application during which time the Union was in contact with Employee's counsel to facilitate signing of grievance - Grievance was filed as soon as Grievor signed form - Application premature as grievance/arbitration procedure not exhausted - Substantive Order - 832/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Res Judicata - Issues raised in unfair labour practice application that were raised in a prior application were improperly before the Board - Substantive Order - 832/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Employee's application included allegations for which a concise statement of material facts was not provided, included allegations which were untimely, and included allegations that were not related to rights under a collective agreement - Board determined that application was "without merit" and Union did not breach the duty of fair representation - 414/06/LRA - Feb. 26/07 - Winnipeg Fire Paramedic Service.

DUTY OF FAIR REPRESENTATION

Application asserted both Union and Employer breached duty of fair representation - Section 20 of *The Labour Relations Act* does not impose any duties upon employers - Application without merit against the Employer - 414/06/LRA - February 26, 2007 - Winnipeg Fire Paramedic Service.

Application filed in 2007 - Core events relied upon occurred in 2005 and were known to Employee at that time - Undue delay in filing complaint - Substantive Order - 102/07/LRA - April 4, 2007 - Riverview Health Centre.

Prima facie - Employee was laid off and not dismissed - Therefore as per Section 20(b) of *The Labour Relations Act* relevant standards were arbitrariness, discrimination and bad faith - Employee failed to establish *prima facie* case because application did not reveal, on its face, that Union acted in an arbitrary or discriminatory manner or in bad faith - Application dismissed - Substantive Order - 102/07/LRA - April 4, 2007 - Riverview Health Centre.

Scope of Duty - Employee's unfair labour practice allegations related to collective bargaining negotiations between Employer and Union which amended shift provisions in collective agreement - Held Board did not have jurisdiction under Section 20 regarding a collective bargaining process as that process does not involve "representing the rights of any employee under the collective agreement" - Substantive Order - 133/07/LRA - April 5, 2007 - Boeing Canada Technology.

Internal Union Affairs - Employee's removal from Union Executive was internal union matter and not subject of a Section 20 application as internal union matters do not involve representation of an employee's rights under a collective agreement - Substantive Order - 770/06/LRA - April 26, 2007 - Lord Selkirk School Division.

Employee unilaterally submitted grievance which was drafted on basis that he had Union's support when Union was not aware of content of grievance or that Employee had filed it - Regardless of improper manner grievance was filed, Union acted in an arbitrary manner after it was filed by failing to investigate grievance to determine whether it should be supported - Union to pay Employee $500 - Substantive Order - 770/06/LRA - April 26, 2007 - Lord Selkirk School Division.

Application did disclose a *prima facie* case as complaint made related to collective bargaining process and potential adjustments to collective agreement during its normal term - Board does not have jurisdiction under Section 20 as conduct complained of does not relate to Union representing rights of any employee under collective agreement - Application dismissed - Substantive Order - Reasons not issued - 181/07/LRA - May 8, 2007 - Ancast Industries.

DUTY OF FAIR REPRESENTATION

Complaint dismissed as application did not disclose *prima facie* violation of Section 20 - Regardless, Board does not have jurisdiction under Section 20 regarding matters relating to ratification process because that process does not involve "representing the rights of any employee under the collective agreement" - Substantive Order - 193/07/LRA - May 10, 2007 - Manitoba Lotteries Corporation.

Failure to Process Grievance - Employee on paid administrative leave pending completion of investigation had no reasonable basis to allege Union failed to represent her - Union was monitoring situation pending completion of investigation - Held application was premature and was dismissed - Substantive Order - 192/07/LRA - June 6, 2007 - Assiniboine Regional Health Authority.

Contract Administration - Settlement of Grievance - Employee disagreed with Union that settlement of grievance was in her best interest, however, she did not provide any detail as to what actions Union took which allegedly ran afoul of duty of fair representation provisions - Conversely, Union's Reply detailed measures it took following Employee's termination including that it sought legal advice - Application dismissed - 827/06/LRA & 107/07/LRA - June 13, 2007 - Assiniboine Regional Health Authority.

Contract Administration - Failure to Process Grievance - Union's decision not to file grievance because it would be inimical to interests of bargaining members as a whole was a decision which was reasonably sustainable - Employee disagreeing with decision was not a basis to find that Union was in breach of Subsection 20(b) of *The Labour Relations Act* - Application dismissed - Substantive Order - 738/05/LRA - September 11, 2007 - Winnipeg Fire Paramedic Service.

Arbitrary Conduct - Failure to Refer Grievance to Arbitration - Union Executive Committee directed arbitration hearing be adjourned in light of new allegations against Employee - Union did not act arbitrarily by not proceeding to arbitration hearing after a grievance had been filed and a hearing date scheduled - Decision not to proceed based on relevant factors and decision did not reflect indifference or non-caring attitude towards the Employee's concerns - Substantive Order - 9/07/LRA - January 25, 2008 - Manitoba Interfaith Immigration Council.

Union representative aggressively expressed his view towards dismissed employee was unfortunate but did not result in Union being unfair towards the Employee - Substantive Order - 9/07/LRA - Jan. 25/08 - Manitoba Interfaith Immigration Council.

Prima facie - Section 20 of *The Labour Relations Act* imposes a duty upon bargaining agents exclusively with respect to representing rights of any employee under a collective agreement - Union's efforts to assist Employee with Workers Compensation Appeal did not constitute representation of employee's rights under collective agreement - Employee failed to establish *prima facie* violation of Section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - 184/08/LRA - May 21, 2008 - City of Winnipeg/Winnipeg Police Service.

DUTY OF FAIR REPRESENTATION

Failure to Refer Grievance to Arbitration - Employees contended Union denied Membership right to appeal grievance steering committee's decision that no merit to policy grievance - Employees disagreeing with Union's decision not to pursue grievance to arbitration and disagreeing with legal advice received did not constitute breach of Section 20(b) of *The Labour Relations Act* - Union investigated Employees' concerns in factual circumstances prevailing; it considered relevant factors and legal advice received; and then made an objective judgment of arbitration succeeding - Application dismissed - Substantive Order - 15/08/LRA - June 20, 2008 - Manitoba Lotteries Corporation.

Failure to Refer Grievance to Arbitration - Union negotiated settlement of grievance with the Employer - Employee initially agreed to terms of settlement but changed his mind after settlement concluded - Union's decision that no legitimate basis to proceed to arbitration on basis of settlement was reasonable conclusion - Application dismissed - Substantive Order - 77/08/LRA - June 25, 2008 - Province of Manitoba.

Contract Administration - Settlement of Grievance - Employee instructed Union to accept settlement offer - Arbitration cancelled based on concluded settlement - Employee later refused to sign settlement documents - Employee failed to establish prima facie case that the Union breached its duty of fair representation - Substantive Order - 123/08/LRA - June 30, 2008 - Motor Coach Industries.

Timeliness - Delay - Employee unduly delayed filing application because core events relied upon in application occurred 33 months prior to date Application filed and arbitration was scheduled to proceed 11 eleven months prior to filing of Application - Substantive Order - 123/08/LRA - June 30, 2008 - Motor Coach Industries.

Failure to Refer Grievance to Arbitration - Employee contended Union committed unfair labour practice when it did not take her grievance to arbitration on the alleged failure of Employer to accommodate her return to work from medical leave - Held Union made reasonable decision not to proceed to arbitration based on legal advice - Employee's disagreement with legal advice received does not constitute a breach of Section 20(b) of *The Labour Relations Act* - Also Employee's disagreement to resolve Policy Grievance by mediation was not relevant factor regarding issue of whether Union breached Section 20(b) - Employee failed to establish a *prima facie* case - Application dismissed - Substantive Order - 548/07/LRA - July 7, 2008 - Middlechurch Home of Winnipeg.

Union submitted Section 20(a) of *The Labour Relations Act* did not apply as Employee was laid off and not discharged - Where alleged discharge is in guise of layoff, Board may determine that obligation to exercise reasonable care as per Section 20(a)(ii) ought to be applied - Substantive Order - 39/08/LRA - July 23, 2008 - University Of Manitoba.

DUTY OF FAIR REPRESENTATION

Union Representative exercised reasonable care in preparing, investigating and evaluating strength of grievance and in preparing legal opinion that grievance would not succeed - Union Executive following legal advice to not refer grievance to arbitration potent defence to claim that it had violated duty of fair representation - Application dismissed - Substantive Order- 39/08/LRA - July 23, 2008 - University Of Manitoba.

Bargaining agent not obligated to file any grievance that an employee wishes in exact language which employee feels appropriate and Union signing grievances on behalf of employee did not constitute breach of Section 20 of *The Labour Relations Act* - Union did not fail to exercise "reasonable care" and acted with prudence and competence in determining grievance would not be advanced to arbitration - Application dismissed - Substantive Order - 272/08/LRA - January 16, 2009 - Garda Security.

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 - 23/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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 - 23/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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 - 65/08/LRA - April 3, 2009 - City Of Winnipeg.

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 - 65/08/LRA - April 3, 2009 - City Of Winnipeg.

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- 65/08/LRA - April 3, 2009 - City Of Winnipeg.

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 thirteen months from date Union advised it was not willing to proceed with grievances and three 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 - 405/08/LRA - May 19, 2009 - City of Winnipeg.

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 - 405/08/LRA - May 19, 2009 - City of Winnipeg.

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 - 405/08/LRA - May 19, 2009 - City of Winnipeg.

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 - 131/09/LRA - July 22, 2009 - City of Winnipeg.

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 - 193/09/LRA - August 19, 2009 - City of Winnipeg and Employee Benefits Board.

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- 193/09/LRA - August 19, 2009 - City of Winnipeg and Employee Benefits Board.

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 - 193/09/LRA - August 19, 2009 - City of Winnipeg and Employee Benefits Board.

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 - 104/09/LRA & 190/09/LRA - October 7, 2009 - Health Sciences Centre.

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 - 251/09/LRA - October 30, 2009 - Weston Bakeries Limited.

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 - 256/09/LRA - November 5, 2009 - Government of Manitoba, Manitoba Civil Service Commission, Organization & Staff Development.

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 - 267/09/LRA - November 16, 2009 - Bristol Aerospace.

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 - 112/09/LRA - November 27, 2009 - Brandon University.

DUTY OF FAIR REPRESENTATION

Contract Administration - Settlement of Grievance - Employee alleged Union, contrary to her wishes, made settlement with Employer to reduce her two suspensions and that Union cancelled arbitration hearing which had commenced - Application contained serious allegations that were general in nature and did not disclose concise statement of material facts, actions or omissions that constituted irregular or improper conduct - Union's Reply included detailed legal opinion and confirmed preparations for arbitration and decision to settle grievances were made after Employee and potential witnesses were interviewed by counsel and after affording Employee right to avail herself of Union's internal appeal procedures - Employee failed to establish prima facie case - Application dismissed - Substantive Order - 328/09/LRA - January 25, 2010 - Grace Hospital (WRHA).

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 - 12/10/LRA - February 26, 2010 - Westeel Limited.

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 - 13/10/LRA - February 26, 2010 - Westeel, Division of Vicwest.

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 - 31/10/LRA - March 11, 2010 - Vaw Systems.

DUTY OF FAIR REPRESENTATION

Failure to Refer Grievance to Arbitration - Employee filed duty of fair representation application alleging that to her knowledge Union did not file grievance - Held Employee's statements did not reconcile with statements made in Application or with objective facts disclosed by Union - Application contained written submission filed before Board of Referees (Employment Insurance) which recorded dismissal was grieved but was not successful - Therefore, Board found grievance filed to Employee's knowledge - Board found Employee participated in Union's internal appeal procedures and was advised by letter Union would not be advancing grievance to arbitration decision which was reaffirmed at meeting with Union representative - Application filed twenty months after Employee had knowledge of Union's decision not to proceed to arbitration - Delay of twenty months in filing Application constituted undue delay for which Employee did not provide satisfactory explanation - Application dismissed - Substantive Order – 22/10/LRA – April 7, 2010 – The Sharon Home.

Res Judicata - Current Application touched upon matters Employee raised in prior applications withdrawn or dismissed by Board – Prior applications disposed of matters with finality and matters could not be raised under current Application – 18/09/LRA – May 31, 2010 – Winnipeg School Division.

Contract Administration – Failure to Refer Grievance to Arbitration - Employee submitted Union failed in duty of fair representation over number of years and final act was at Union membership meeting where his grievance was discussed - Employee was given 30 minutes to present his grievance prior to membership vote and while a union member made inappropriate comments during meeting, Union president cautioned that member – Board found Union communicated with Employee verbally and in writing; provided him with opportunity to put forward his case to Employer; retained counsel with whom Employee met; filed termination grievance and offered to negotiate settlement; obtained written legal opinion by experienced labour law counsel; and gave Employee opportunity to speak to Union's membership - Board satisfied Union competent and prudent in representation of Employee - Employee disagreeing with Union's decision not to pursue grievance did not in and of itself constitute breach of duty – Application dismissed - 18/09/LRA – May 31, 2010 – Winnipeg School Division.

Contract Administration – Settlement of Grievance - Employee alleged Union failed to properly investigate circumstances relating to her alleged disability and acted in bad faith by refusing to file a grievance contesting actions of Employer – Held parties concluded final and binding settlement agreement in which Employee received severance package - Employee second guessing settlement to which she agreed and under which she had taken benefits cannot be basis of Section 20 application - Application dismissed - Substantive Order – 63/10/LRA – June 28, 2010 – Club Regent Casino.

DUTY OF FAIR REPRESENTATION

Employer – Scope of Duty – Employee alleged Employer acted contrary to Section 20 of *The Labour Relations Act* by failing to take steps to preserve her employment - Section 20 imposes duty of fair representation on bargaining agents and does not impose any duty on employers - Claims that Employer breached Section 20 not sustainable - Substantive Order – 63/10/LRA – June 28, 2010 – Club Regent Casino.

Employee sought reinstatement as remedial relief in duty of fair representation application - Board does not function as surrogate arbitration board - In any event reinstatement not available remedy under a Section 20 application - Substantive Order – 63/10/LRA – June 28, 2010 – Club Regent Casino.

Contract Administration – Failure to Process Grievance – Employee alleged Union failed to assist with a number of grievances over two year period – Board found Union recently filed grievances respecting denied promotions and Employee did not specify what he requested Union to do on his behalf or how it failed to comply with its duties under Section 20 of The Labour Relations Act - Given Union's continuing representation of Employee, allegation Union had failed to properly represent him was premature – Application dismissed - Substantive Order – 92/10/LRA – July 9, 2010 – Grandview Personal Care Home.

Scope of Duty - Employee alleged Employer conspired with Union to deprive him of Union retirement gift he was entitled to receive pursuant to Union's Constitution and Bylaws – Section 20 of *The Labour Relations Act* imposes duty on bargaining agents in representing rights of employees under collective agreement - Alleged acts or omissions by Union under Bylaws and Constitution did not constitute representation of Employee's rights under collective agreement - Employee failed to establish *prima facie* violation by Union of Section 20 – Also, Section 20 does not impose obligations upon employers and, as such, there can be no breach of provision by Employer – Substantive Order – 113/10/LRA – July 12, 2010 - Tolko.

Undue Delay - Employee unduly delayed filing Application as he knew of allegations giving rise to Application 28 months prior to date of filing –Board has interpreted undue delay to mean periods of as little as six months – Application dismissed - Substantive Order – 113/10/LRA – July 12, 2010 – Tolko.

DUTY OF FAIR REPRESENTATION

Employee alleged Union acted in bad faith when it refused to refer grievance to arbitration - Union advanced grievance through Steps 1 and 2 of grievance procedure but determined it lacked merit as Employer had not violated collective agreement – Held bargaining agent has discretion to determine whether or not to refer grievance to arbitration with or without consent of Employee - Provided discretion exercised in manner which was not inconsistent with provisions of The Labour Relations Act Board will not interfere with Union's decision - Employee disagreeing with Union not to pursue grievance to arbitration did not, in itself, constitute breach of Section 20 of the Act - Application dismissed for failure to establish prima facie case - Substantive Order – 140/10/LRA, 141/10/LRA & 142/10/LRA – July 23, 2010 – Jeld-Wen Windows and Doors.

Union met with Employer to negotiate terms of Employee's layoff and to discuss bumping rights - Employee asserted Union acted arbitrarily when it altered its position at meeting and agreed to his being laid off; was reckless by failing to secure legal advice regarding bumping rights prior to meeting; and, when legal opinion was that he had bumping rights, acted in bad faith by failing to inform him of its mistake – Union filed grievance re bumping rights but arbitrator concluded dispute resolved by enforceable settlement – Held Union's interpretation re bumping rights not unreasonable to conclude Union made error; Union's failure to obtain legal opinion prior to meeting not unreasonable and not breach of Section 20(b) of The Labour Relations Act – Union's lack of communication unfortunate but did not amount to bad faith conduct under Section 20(b) – Application dismissed - Substantive Order - 273/09/LRA - July 29, 2010 - Transcontinental LGM-Coronet.

Employer - Proper Party - P*rima facie* – Employee filed application complaining of alleged discriminatory and disrespectful treatment by management and co-workers, perceived problems in the workplace, or criticisms of policies and practices of Employer – Held complaints of that nature not proper focus of duty of fair representation application purpose of which is to impose standards of conduct on bargaining agent, not employer – As to complaint Union did not proceed to arbitration, it filed grievance at earliest opportunity, advanced grievance through highest level short of arbitration, made determination on likelihood of success at arbitration through review of Employee's total record and applicable legal principles, and Employee given notice of her right to appear before Union's Executive to state her case – Application did not recite any material facts, acts or omissions by Union to find it acted on basis of hostility, ill-will or dishonesty - Employee failed to establish *prima facie* case – Application dismissed – Substantive Order - 236/10/LRA – Nov. 16, 2010 - Grace Hospital.

DUTY OF FAIR REPRESENTATION

Employee, terminated for violating conditions of Return to Work Agreement, agreed not to grieve second termination on basis that Record of Employment be amended to assist with benefits – Subsequently, he alleged Union violated Section 20 of *Labour Relations Act* for failing to follow up on issues associated with terminations and for settling first grievance one day prior to arbitration – Held Employee freely entered into settlement agreement after receiving advice from Union and its counsel - Employee second guessing settlement which he had agreed to and had benefitted from cannot be basis of Section 20 application – Union clearly justified in not filing grievance regarding second termination - Board noted unions often resolve grievances prior to proceeding to arbitration – Application dismissed - Substantive Order - 231/10/LRA - November 30, 2010 - Sonoco Flexible Packaging.

Undue delay – Employee filed complaint more than eight months following his termination and more than a year after he became aware of alleged contraventions of *The Labour Relations Act* by Union – Employee's reason for delay in filing was that he needed to check with various government and other entities prior to filing with Board – Attempts to file claims with other entities not acceptable explanation for delay – Board previously held "undue delay" means delays of six months – Application dismissed for undue delay – Substantive Order – 233/10/LRA – November 30, 2010 – Quality Glass & Aluminum Ltd.

Discharge - Employee's Duty of Fair Representation Application did not plead or disclose concise statement of material facts, actions or omissions upon which he relied and which facts, if proven, would result in finding that Union acted arbitrary or discriminatory manner under Section 20 of *The Labour Relations Act* - Union's Reply, including detailed written opinion, confirmed decision not to proceed to arbitration was made after Union interviewed Employee and potential witnesses and after affording Employee right to avail himself of internal appeal procedures - Therefore, Board determined Employee failed to establish *prima facie* case - Application dismissed - Substantive Order - 279/10/LRA - December 9, 2010 - City of Winnipeg.

Undue delay – Employee filed Application eleven months after Union informed him grievance would not be pursued - Employee explained he was waiting for decision regarding complaint filed with Employment Standards Division – Filing complaint under *The Employment Standards Code* unrelated to application pursuant to Section 20 of *The Labour Relations Act* – Also, bare allegation Employee suffered depression within period of delay did not constitute adequate explanation for overall delay - Eleven-month delay in filing Application constituted undue delay within Section 30(2) of the *Act* – Application dismissed for undue delay - Substantive Order - 266/10/LRA - December 13, 2010 - O'Connell Nielsen EBC.

DUTY OF FAIR REPRESENTATION

Scope of Duty - Employee claimed due to Union's alleged failures with handling accommodation grievance, he was forced to retire and involuntary retirement constituted constructive dismissal under Section 20(a) of *The Labour Relations Act* - Board interpreted dismissal to mean termination of employment for culpable conduct or innocent absenteeism – Retirement not dismissal in normal and ordinary meaning of term - Section 20(a) of *Act* not applicable and standard to be applied set out in Section 20(b) - 26/09/LRA & 27/09/LRA - December 20, 2010 - Manitoba Human Rights Commission.

Internal Union Affairs – Failure to Refer Grievance to Arbitration - Employee complained Union Director and not Screening Committee made ultimate determination not to proceed to arbitration – Held Director's decision based on legal advice from experienced counsel and reliance upon advice not superficial, capricious, cursory, grossly negligent, implausible or flagrant and did not constitute breach of duty of fair representation – Fact that Director made determination not breach of statute and not violation of Union's internal policy – Board does not dictate sort of meetings or appeal processes unions must adopt - 26/09/LRA & 27/09/LRA - December 20, 2010 - Manitoba Human Rights Commission.

Employee alleged Union failed to conduct itself in proactive manner involving worker with disability; assigned his case to Union Representative with little knowledge of matter while his usual representative was on vacation; did not proceed in timely manner with his accommodation grievance; and did not properly advise him of decision not to advance grievance to arbitration – Duty may require union to assist disabled employee obtain medical reports but Employee, an experienced human rights investigator, uniquely well-suited and competent to obtain medical reports - Union being content to have him continue to correspond with his doctors did not indicate uncaring or indifferent attitude - Union's failure to seek information from other doctors or experts not arbitrary, discriminatory or in bad faith as Union reasonably concluded if pre-eminent specialist unwilling to provide sufficient medical support for accommodation, then little sense in writing to anyone else – Union did not violate *Act* when it refused to comply with Employee's post-retirement suggestion to contact doctor - Board did not agree Union Rep had little knowledge of case and no steps were taken to protect Employee's interests - Employee did not request back to work meeting be deferred until usual Union Rep returned - While alternate Union Rep did not review file or medical reports before meeting, given he received advice and information from Union's Counsel and he met with Employee prior to the meeting, his being assigned to case did not constitute violation of Section 20(b) - Board found suggestion of half-time work with a half caseload good faith attempt to assist Employee who consented to proposal being presented - When Employee attempted to repudiate agreement, Union Rep immediately requested Employer to work out solution and did not violate Section 20(b) - Thereafter Union's

DUTY OF FAIR REPRESENTATION

Counsel provided sound advice to Employee to attend at work as directed and clearly and unconditionally indicated that if Employee elected to retire Union would not grieve because circumstances did not constitute constructive dismissal - Counsel, an experienced labour lawyer, acted reasonably and conscientiously in making him aware of consequences - Counsel's advice not being in writing was of no consequence and did not constitute violation of Section 20(b) - As to not proceeding in timely manner, delay resulted from Union waiting for Employee to provide medical information which was reasonable as doctor determined Employee's condition was mild and did not indicate that he required accommodation - Union delay in deciding to withdraw grievance when medical information did not support accommodation, but waiting for outcome of human rights complaint in hindsight, arguably ill-advised, but was not arbitrary, discriminatory or bad faith and did not constitute violation of Section 20 - Employee complained Union failed to utilize human rights investigator Case Analysis Report to take action with Employer - Board noted report not product of formal hearing process and did not represent Human Rights Commission's findings or ultimate determination - Union's decision not to take further action on basis of report cannot be characterized as arbitrary, discriminatory or in bad faith – Board found Union's representation not perfect, particularly communication with Employee, but was satisfied Union did not act in manner which was arbitrary, discriminatory or in bad faith and therefore, did not violate Section 20(b) of the *Act* - Application dismissed - 26/09/LRA & 27/09/LRA - December 20, 2010 - Manitoba Human Rights Commission.

Employee submitted Union Executive ignored her presentation why her grievance should proceed to arbitration – Submission based on Union's letter in which only three sentences explained their decision but did not include points she presented - Employee did not dispute she met with Union Representative; that she received Representative's lengthy written opinion recommending not proceeding to arbitration; and she appeared before Union Executive and stated case for proceeding to arbitration – Board held given sensitive nature of evidence Union Executive prudent to not provide details in letter - That manner of communicating decision did not disclose *prima facie* breach of Section 20 of *The Labour Relations Act* – Steps taken by Union in assessing whether it would proceed to arbitration reflected degree of care which a person of ordinary prudence and competence would exercise - Employee failed to establish *prima facie* case Application dismissed - Substantive Order - 300/10/LRA - January 5, 2011 - Tuxedo Villa Nursing Home – Extendicare.

Discharge – *Prima Facie* – Employee's Application recited employment history ending with his termination for violating Last Chance Agreement – Union asserted Employee never requested grievance be filed - Held Application did not contain any assertions or allegations that Employee ever requested Union to represent his interests; to file a grievance; or to pursue a settlement with Employer nor any facts relied on by Employee to support assertion Union acted in arbitrary, discriminatory or bad faith manner or failed to take reasonable steps to represent interests of Employee - Employee failed to establish *prima facie* case – Application dismissed - Substantive Order - 338/10/LRA - February 7, 2011 - E.H. Price Ltd.

DUTY OF FAIR REPRESENTATION

Scope of Duty - Employee unable to work resulting from workplace injury - Union not obligated by Section 20 of *The Labour Relations Act* to assist Employee with Workers Compensation claim or appeal as statutory Workers Compensation benefits not rights under collective agreement - Portion of duty of fair representation complaint relating to Union's failure to assist with WCB claim and related appeal dismissed - When Union was contacted it provided timely and appropriate representation to reasonable and practicable extent given Employee's failure to seek Union's assistance in timely manner and his further failure to reasonably cooperate with Union with respect to its attempts to represent him - Employee failed to satisfy onus that Union acted contrary to Section 20 of the *Act* - Application dismissed - Substantive Order - 92/09/LRA - March 17, 2011 - TC Industries of Canada Company West.

Contact administration - Failure to refer grievance to arbitration - Employee filed Application after Union advised grievance would not be submitted to arbitration as it lacked merit - Board found Union conducted meaningful and thorough investigation; attended grievance hearing and advocated on Employee's behalf; and, determined grievance should not be advanced to arbitration based on reasonable evaluation of relevant information and consideration of facts - Held Union exercised degree of care which person of ordinary prudence and competence would exercise in similar circumstances and could not be said to have failed to take reasonable care in representing Employee - Employee failed to establish violation of section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - 244/10/LRA - May 9, 2011 - Central Park Lodge.

Employee alleged union official pressured him to accept offer to settle grievances in May 2009 - Employee filed duty of fair representation application in March 2011 - Held Employee delayed filing Application more than 22 months following date when he became aware Union acted in violation of The Labour Relations Act - Employee explained delay by asserting he was seriously injured in automobile accident in March 2010 - Board found explanation inadequate - First, when accident occurred, Employee already unduly delayed filing complaint - Second, Employee did not established he was medically incapable of filing application in timely manner - Application dismissed for undue delay - Substantive Order - 96/11/LRA - June 3, 2011 - Y.W.C.A. Residence Inc.

Union submitted Employee unduly delayed filing duty of fair representation application - Board's practice not to entertain duty of fair representation complaint filed six to eight months beyond events referred to in complaint unless satisfactory explanation provided - Board found Employee became aware of alleged violation at union meeting held September 21, 2010 and application was filed March 14, 2011 - Board satisfied key event was communication from Employer to Employee on November 16, 2010 that she was being removed from casual list - Both events clearly fell within six month guideline - Substantive Order - 71/11/LRA - June 14, 2011 - Golden Links Lodge.

DUTY OF FAIR REPRESENTATION

Internal Union Affairs - Failure to process grievance - Employee's name removed from casual roster - She filed duty of fair representation application alleging Union representatives displayed indifferent attitude and ignored her request for help - Application cited complaints regarding events which transpired at union meetings related to election of local officers - Held internal union matters could not form basis of duty of fair representation complaint because section 20 of *The Labour Relations Act* only addressed standards of care which bargaining agent must follow when representing rights of employee under collective agreement - Also, within limited provisions of collective agreement as it related to casual employees, Union did pursue Employee's concerns - Except for specific provisions, collective agreement clearly did not apply to casual employees - Accordingly, no *prima facie* right to grieve nor to take issue to arbitration - Application did not plead or disclose concise statement on which Employee relied and which facts, if proven, would result in finding Union acted in arbitrary or discriminatory manner or acted in bad faith, under section 20 - Employee failed to establish *prima facie* - Application dismissed - Substantive Order - 71/11/LRA - June 14, 2011 - Golden Links Lodge.

Contract administration - Delay in processing grievance - Settlement of grievance - Employee alleged Union breached duty of fair representation when it accepted settlement offer to resolve his unpaid suspension - Employee submitted process took too long and he was not advised of Union membership meeting at which Union resolved to accept settlement offer - Held, based on Board's knowledge and experience, five months to conclude settlement of grievance not unreasonable and not ground upon which Board could find violation of subsection 20(b) - Found that Union filed grievance immediately after suspension imposed; held number of meetings with Employer; advised Employee of terms of settlement; had difficulty contacting Employee to advise him of meeting - When matter was presented to and voted upon by Union membership, settlement proposal had been revised in that suspension would be removed from Employee's file and he would be paid - Union's conclusion that no valid ground to proceed to arbitration was reasonable because Employee was made whole and could not have achieved better result at arbitration - Held Employee failed to establish prima facie case - Application dismissed - Substantive Order - 64/11/LRA - June 21, 2011 - CG Power Systems Canada Inc.

Arbitrary conduct - Reasonable care - Discharge - Employee discharged for allegedly making racial comments and assaulting co-worker - Board found Union official did not provide Employee with assistance in drafting discharge grievance; did not take any time to properly interview Employee; and hastily concluded he instigated incident without reviewing results of investigation and witness statements with him - Union's failures went beyond honest errors or even laxity and rose to level of failing to exercise reasonable care - Union dropped grievance on day it was filed and prior to Employer formally rejecting grievance - Union did not make reasonable effort to advocate for Employee or to persuade Employer to reduce or rescind penalty especially given clear evidence Employee victim of assault by co-worker - Manner in which Union communicated decision not to proceed with grievance left great deal to be desired - Union exhibited hostility towards Employee when he mentioned he might discuss matter with the Board - Cumulative effect of Union's conduct indicated failure on its part to exercise reasonable care - Application granted - Substantive Order - 43/10/LRA - July 14, 2011 - ONE Contractors.

DUTY OF FAIR REPRESENTATION

Board ruled Employee unduly delayed filing her duty of fair representation application - Employee listed health issues, being ignored by Union, difficulty in obtaining legal advice, and time spent in obtaining advice from elected officials, as reasons for not filing Application with Board more promptly - Board not satisfied Employee demonstrated she was incapable of filing Application in timely manner - Delay was extreme, ranging from over three years from initial allegations to more than six months with respect to most recent allegation - Subsection 30(2) of *The Labour Relations Act* provided Board may refuse to accept complaint where its filing has been unduly delayed which Board has interpreted to mean periods of six months or greater - Application dismissed - Substantive Order - 246/11/LRA - November 3, 2011 - Red River Place Personal Care Home.

Scope of duty - Employee alleged Union breached section 20 of *Labour Relations Act* when it negotiated certain terms and conditions of employment relating to general wage increases and sharing of tips - For remedial relief, Employee requested Board order wage increases of 2.9 percent over each year of agreement and order that tips be shared equally among all employees - Held section 20 restricted to disputes relating to rights of employees under collective agreement and did not apply to collective bargaining process - Board had no jurisdiction to award remedial relief requested as that would require Board to change terms of settlement concluded by the parties and ratified by employees - Employee failed to establish *prima facie* case that Union breached section 20 of the *Act* in any respect - Application dismissed - Substantive Order - 334/11/LRA - December 1, 2011 - Manitoba Lotteries Corporation.

Discharge - Employee complained Union's decision not to pursue his dismissal grievance breached subsection 20(a) of *The Labour Relations Act* - Union found no evidence to disprove Employer's position its decision not to renew Employee's term was based solely on expenditure management exercise - In concluding not proceed to arbitration, Union also considered term positions did not have to be renewed nor did positions have to be renewed on seniority - Board satisfied decision was one that reasonably could be made - Application dismissed - Substantive Order - 130/11/LRA - December 14, 2011 - Government of Manitoba, (Manitoba Infrastructure and Transportation).

Union submitted Employee's duty of fair representation application should be dismissed for undue delay - Board held that, although Employee filed application almost six months after Union's Grievance and Appeals Committee decided grievance would not proceed to arbitration, that was not delay of sufficient length to dismiss Application on that basis - Substantive Order - 130/11/LRA - December 14, 2011 - Government of Manitoba, (Manitoba Infrastructure and Transportation).

DUTY OF FAIR REPRESENTATION

New evidence - Employee filed review application requesting Board review new documentation - Board satisfied documentation filed with review application did not constitute new evidence within meaning of Section 17(1)(a) and (b) of *Manitoba Labour Board Rules of Procedure* - Further, purported new evidence related to bargaining process and to ratification of collective agreement and that evidence was not relevant to Section 20 complaint - In any event, purported new evidence available at time original application filed - To accept review application would require Board to exceed its jurisdiction and award remedial relief by changing terms of settlement concluded by parties - Application dismissed – Substantive Order - 400/11/LRA - January 3, 2012 - Manitoba Lotteries Corp.

Privilege - Union raised issue whether solicitor-client privilege applied to communications between Employee and Union's solicitor – Board ruled no substantive solicitor-client relationship between Employee and lawyer as Union retained counsel and paid professional fees incurred - However, Section 20 imposed statutory duties on every person acting on behalf of bargaining agent when representing rights of employee under collective agreement which encompassed union's counsel - To find statements made by either union's counsel or other union representatives was inadmissible because only union could waive "solicitor-client" privilege would prevent employee from asserting material facts in support of his complaint against bargaining agent or "any person acting on behalf of the bargaining agent" - Board ruled Union could not claim solicitor-client privilege in respect of evidence Employee may introduce regarding his dealings with Union's counsel - 184/11/LRA - January 10, 2012 - Community Therapy Services.

Prima facie - Employee alleged Union failed to represent him about complaint against Employer resulting in him having no choice but to ask for lay off - Board found Employee never asked Union to file grievance and when he raised incident with Union, he had already received lay-off - Given Employee wanted his "complaint" recorded by Union but only after he had requested lay-off and left worksite, Application did not plead or disclose concise statement of material facts, actions or omissions on which Employee could rely and, if proven, would result in finding that Union acted in arbitrary or discriminatory manner or acted in bad faith - Employee failed to establish *prima facie* case - Application dismissed Substantive Order - 348/11/LRA - January 13, 2012 - Structal Steel.

Ratification – Employee filed vote complaint alleging violations of a various sections of *The Labour Relations Act* including section 20 – Held Section 20 did not apply to collective bargaining process itself because bargaining process, of which ratification is integral part, did not involve representing rights of employees under collective agreement – Substantive Order - 387, 391, 392, 395, 396/11/LRA - Feb. 14, 2012 - City of Winnipeg, Transit Department.

DUTY OF FAIR REPRESENTATION

Scope of Duty - Arbitration - Employee alleged Union failed to perform due diligence for not challenging proper salary range for new job classification - Union filed grievances regarding Employee's placement on salary scale which were resolved to Employee's satisfaction - Filing and satisfactory resolution of grievances did not reveal arbitrariness or bad faith by Union - For Board to award remedy Employee claimed to revise the salary range would require Board to order amending collective agreement - Section 20 did not apply to collective bargaining process such as negotiation of salary range for new classifications - Employee failed to establish *prima facie* case Union breached section 20 - Application dismissed - Substantive Order - 1/12/LRA - March 23, 2012 - University of Manitoba.

Scope of Duty - Employee claimed Employer failed in its duty of due diligence - Section 20 restricted to claims bargaining agent failed in its duty of fair representation and was not forum for complaints against employer - Substantive Order - 1/12/LRA - March 23, 2012 - University of Manitoba.

Discharge - Employee filed duty of fair representation application alleging Union failed to take proper steps or do proper investigation of his dismissal - Union had filed grievance upon Employee's termination - Collective agreement provided that probationer may be discharged without notice at any time in sole and exclusive discretion of Employer and discharge deemed to be for just cause and, further, neither probationary employee nor Union may access grievance/arbitration procedure - Subsequent to dismissal, Employer and Union determined Employee was on probation at time of dismissal - Union withdrew grievance, based on provisions of collective agreement and Employer's reasons for dismissal were based upon its assessment of Employee's work habits - Held steps taken by Union in assessing whether it would proceed to arbitration, given Employee's status as a probationer and explicit wording of collective agreement, reflected degree of care which person of ordinary prudence and competence would exercise in the same or like circumstances - Employee failed to establish *prima facie* case - Application dismissed - Substantive Order - 42/12/LRA - April 13, 2012 - Gerdau Manitoba.

Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for failing to pursue his complaint that Employer discontinued his company vehicle benefit and did not proceed with his job reclassification - Union contended portion of Application relating to vehicle benefit was untimely because Employee raised issue, but did not pursue it further until application was filed two years later - Employee submitted loss of benefit was inter-related with reclassification dispute and that issue was live issue until he received decision of Union executive not to proceed to arbitration - Board determined to treat vehicle benefit issue as part of Application from a timeliness perspective - Substantive Order - 45/12/LRA - April 13, 2012 - City Of Winnipeg.

DUTY OF FAIR REPRESENTATION

Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for failing to pursue his complaint Employer discontinued his company vehicle benefit - Board determined benefit not conferred by any explicit provision in collective agreement - Union did take steps to have Employer examine issue but no basis under collective agreement for Union to seek formal remedial relief - Manner in which Union addressed vehicle benefit did not disclose any conduct that could reasonably be characterized as arbitrary, discriminatory or taken in bad faith - Board determined Employee failed to establish *prima facie* case that Union breached section 20(b) of the Act - Application dismissed - Substantive Order - 45/12/LRA - April 13, 2012 - City Of Winnipeg.

Employer - Proper Party - Employee asserted Employer violated collective agreement in not proceeding with his job reclassification and for discontinuing his vehicle benefit - Board held no basis under section 20 of The Labour Relations Act to seek ruling that Employer violated collective agreement nor to claim substantive relief against Employer - Board not forum where disputes resolved on merits - Board agreed with Employer that Board lacked jurisdiction to appoint arbitrator to conduct job analysis review and compensation review, but disagreed Employer was not party to proceedings - In section 20 applications, employers are interested parties because of employer's interest in potential remedial relief - Board has no jurisdiction to order Union and Employer make Employee "whole" by ordering payment of an (undefined) amount as compensation for diminution of income or other employment benefits or losses suffered - Employee also sought compensatory relief on behalf of any other person affected by reclassification - Awarding relief for unnamed persons beyond Board's jurisdiction within scope of section 20 application - Application dismissed - Substantive Order - 45/12/LRA - April 13, 2012 - City Of Winnipeg.

Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for not proceeding with his job reclassification - Board noted Union assisted Employee with filing of his reclassification request; made numerous inquiries of Employer on status of reclassification; after Employer issued decision on reclassification request, union representative advised Employee there was no merit to proceeding to arbitration but advised of his right to appeal decision to Union's executive; and Union obtained extension of time from Employer to ensure time limit to refer reclassification to arbitration - Employee disagreeing with decision of Union did not, standing alone, establish any violation of section 20(b) of the *Act* - No *prima facie* evidence of discriminatory treatment or bad faith and not within Board's jurisdiction to second guess or function as appeal tribunal regarding merits of decision - Application dismissed - Substantive Order - 45/12/LRA - April 13, 2012 - City Of Winnipeg.

DUTY OF FAIR REPRESENTATION

Scope of Duty - Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for not proceeding with his job reclassification - Board noted Employee's believed salary range for classification inadequate, but it is Union and Employer who negotiate wage scales - Board does not function as surrogate arbitration board especially where matters in dispute involve issues normally subject of collective bargaining - Section 20 does not apply to collective bargaining process or matters which are proper subject of collective bargaining such as negotiation of classification salary range - Board determined Employee failed to establish *prima facie* case Union breached section 20(b) of the *Act* - Application dismissed - Substantive Order - 45/12/LRA - April 13, 2012 - City Of Winnipeg.

Prima facie - Employee, terminated for alleged abuse of resident, filed duty of fair representation application - Board determined Union investigated Employer's allegations that Employee abused resident, interviewed resident, considered Employee's explanation and determined his explanation was not credible - Union determined Employee had no chance of successfully grieving termination, although matter was grieved and grievance hearing scheduled - Board does not sit in appeal of union's decisions; does not decide if union's opinion of likelihood of success of grievance correct; and, does not minutely assess and second guess every union action - Held Employee failed to establish *prima facie* case Union acted contrary to section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - 367/11/LRA - May 8, 2012 - Deaf Centre Manitoba.

Prima facie - Employee, terminated for alleged abuse of resident, filed duty of fair representation application - Board determined Union investigated Employer's allegations that Employee abused resident, attended discipline meeting, filed grievance, and attended grievance hearing - Union determined grievance not likely to succeed at arbitration - Employee was given opportunity to appeal to Union executive - Board does not sit in appeal of union's decisions; does not decide if union's opinion of likelihood of success of grievance correct; and, does not minutely assess and second guess every union action - Held Employee failed to establish *prima facie* case Union acted contrary to section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - 39/12/LRA - May 8, 2012 - Parkview Place.

DUTY OF FAIR REPRESENTATION

Prima facie - Employee filed unfair labour practice and duty of fair representation applications - Allegations in Applications connected to Employer imposing one-day suspension on Employee - Union filed grievance, met with Employee, attended at grievance meeting on his behalf and referred matter to arbitration - Board determined Applications did not disclose any reasonable likelihood that complaints against Union would succeed - Complaints Employee advanced with respect to Employer were simply disagreements regarding application and interpretation of collective agreement which were to be resolved through grievance and arbitration processes - Employee who is subjected to discipline, or whose conduct is investigated or otherwise questioned by his employer did not, standing alone, constitute unfair labour practice - Applications were frivolous, vexatious, constituted abuse of processes of Board and were without merit - Applications dismissed - Substantive Order - 281/11/LRA & 282/11/LRA, June 1, 2012, Garda Canada Security Corporation.

Prima facie - Union investigated Employee's complaints, filed grievances on his behalf, met with Employer to resolve his complaints and negotiated settlements of some complaints with Employer - Employee not being satisfied with Union's interventions and results obtained did not constitute breach of section 20 of *The Labour Relations Act* - Applications did not disclose any reasonable likelihood that complaints against Union would succeed and no facts were presented in Applications which constituted arbitrary, discriminatory or bad faith conduct by Union - Applications did not establish *prima facie* violation of section 20 - Application dismissed - Substantive Order - 197/11/LRA & 198/11/LRA, June 1, 2012, Garda Canada Security Corporation.

Prima facie - Applicant filed application under Section 20 of *The Labour Relations Act* - Board held that Section 20(a) of the *Act* did not apply as Applicant's resignation did not constitute a "dismissal" - In addition, even assuming Applicant's allegations against Union were true, application did not establish a *prima facie* violation by the Union of sections 20(a) or 20(b) of the *Act* - Application dismissed - Substantive Order - 117/12/LRA - June 28, 2012 - Seven Oaks School Division.

Undue delay - Applicant unduly delayed filing application - Board has interpreted "undue delay" to mean periods of as little as six months - Application concerned events which allegedly took place over a year prior to its filing - Applicant's contention he was medically incapable of filing application in timely manner not established by medical documentation which he provided - Application dismissed - Substantive Order - 117/12/LRA - June 28, 2012 - Seven Oaks School Division.

DUTY OF FAIR REPRESENTATION

Dismissal defined - Employer notified Employee she was laid off due to "economic downturn" - Employee asserted she was unfairly targeted for layoff as consequence for filing harassment complaint with Manitoba Human Rights Commission - Board noted section 20(a) of *The Labour Relations Act* refers to “dismissal” in culpable or no just cause sense commonly understood in collective bargaining relationships - Layoff not a “dismissal” - Union’s duty of Applicant set out in section 20(b) of the *Act* - Substantive Order - 204/12/LRA - November 20, 2012 - Winnipeg Free Press.

Prima facie - Employer laid off Employee due to "economic downturn" - Employee asserted she was unfairly laid off as consequence for filing harassment complaint with Human Rights Commission - Union representative, having reviewed seniority list, noted Employee was most junior in her classification, and was not entitled to benefit of job security article of collective agreement given date she commenced employment - Representative advised there was no basis upon which to file a grievance - Nothing in material Employee filed to suggest facts pleaded in application disclosed arguable position that application would succeed even assuming all facts presented were true - Disagreement with Union's position did not constitute unfair labour practice - Employee did not establish *prima facie* violation of section 20(b) of *The Labour Relations Act* - Substantive Order - Substantive Order - 204/12/LRA - November 20, 2012 - Winnipeg Free Press.

Employee accepted Employer's offer to resign his employment rather than being terminated - Employee reflected upon his decision to resign as well as representation provided by Union, concluded he had been treated unfairly and filed duty of fair representation application - Board noted “dismissal” not defined in The Labour Relations Act and concluded for purposes of Section 20(a) term refers to a “dismissal” in culpable or no just cause sense commonly understood in collective bargaining relationships - A resignation is not a “dismissal” as Board has interpreted the term and, as a consequence, Union’s duty of fair representation of employee is set out in section 20(b) of The Labour Relations Act - Substantive Order - 349/12/LRA - March 28, 2013 - St. James Assiniboia School Division.

Based on investigation into complaints received about Employee's behaviour, Employer decided to terminate his employment but offered opportunity for him to resign instead - Union considered Employee’s circumstances, provided him with advice, attempted to answer his questions, and scheduled meeting with Employee and its counsel for him to obtain further advice - Prior to meeting taking place, Employee tendered his resignation - Employee reflected upon his decision to resign as well as representation provided by Union, concluded he had been treated unfairly and filed duty of fair representation application - Board held Application did not disclose any arguable position that application would succeed, even assuming all facts were proven - Employee did not present facts which constituted arbitrary, discriminatory or bad faith conduct by Union and did not established prima facie violation by Union of Section 20(b) of The Labour Relations Act- Application dismissed - Substantive Order - 349/12/LRA - March 28, 2013 - St. James Assiniboia School Division.

DUTY OF FAIR REPRESENTATION

Probationary - Legal Opinion - Employee released during probationary period, one factor being that she never achieved keyboarding speed which had been condition of probation - Collective agreement stated rejection on probation neither grievable nor arbitrable, subject only to right to grieve rejection to vice president of Community Care whose decision on grievance was final - Employer denied Grievance - Union decided to proceed to arbitration but later, through counsel, decided, given wording of agreement, grievance would not likely be upheld at arbitration - Union closed file after Employee rejected various settlement options - Employee filed duty of fair representation application - Board concluded that case fell under section 20(a) of The Labour Relations Act, because employer's unilateral decision/action to end employment relationship of probationer fell within meaning of "dismissal" - Union relied on legal opinion of experienced counsel and Board does not second guess opinion from correctness perspective - Held decision not to proceed to arbitration, based on advice of counsel, fulfilled standard of "reasonable care" - Application dismissed - Substantive Order - 323/12/LRA - July 8, 2013 - Winnipeg Regional Health Authority.

Prima facie - In 2005, Board dismissed Employee's application alleging Union breached section 20 of The Labour Relations Act and dismissed application for Review and Reconsideration - Employee filed present application on May 7, 2013 indicating that, following her 2004 termination, she was offered severance package but would have been required to retire and she expected to go back to work - She claimed Union ought to have known Employer would not have taken her back and should have told her to take severance package - She also claimed she met with bargaining agent in October 2012 and alleged it had not kept her up to date with company programs and offered no further assistance - Board noted it had previously dismissed Employee's complaints regarding Union's representation regarding her 2004 termination - Even accepting Applicant's complaint regarding severance package was different aspect of Union's representation, it was unduly delayed and portion of complaint referring to advice regarding severance package dismissed - Regarding Employee's complaint of Union's representation in October 2012, Board satisfied application failed to disclose prima facie violation of section 20 - Application dismissed - Substantive Order - 116/13/LRA - July 24, 2013 - Boeing Canada.

Board found Union failed in its duty of fair representation and concluded that, notwithstanding possibility of prejudice to Employer's case caused by delay, that original grievance proceed to arbitration - Parties would be able to either settle grievance, or have it determined through arbitration hearing - Employer to process grievance without objection relating to time limits or other procedural deficiencies arising from delay - Union to engage, at its cost, lawyer experienced in labour relations in Manitoba, jointly selected by Union and Employee - Union may be responsible for portion of damages payable to Employee representing compensation for monetary losses - 157/12/LRA - August 16, 2013 - Phillips & Temro.

DUTY OF FAIR REPRESENTATION

Failure to Refer Grievance to Arbitration - Day before arbitration hearing, Union Representative met with Employee and his brother, who had better English skills than Employee, and indicated he was hopeful grievance would succeed - Later that evening, as result of conversation with shop steward and Employer, Representative no longer thought grievance would be successful and contacted Employee's brother to discuss settling grievance - Brother indicated he wanted arbitration adjourned to obtain legal advice - Representative contacted Employer who agreed to adjournment - Two months later, Union decided not to proceed to arbitration and wrote to Employee by registered letter to advise him - Letter was never picked up as it was incorrectly addressed - Two months later, Brother contacted Representative and was informed about letter and decision not to proceed with grievance - Subsequently, Employee filed duty of fair representation application - Board satisfied that up to and including day arbitration was scheduled, Union did not act arbitrarily, discriminatorily, or in bad faith - Following adjournment, Board determined Union breached its duty of fair representation - Union received no new information about case following adjournment when it unilaterally decided not to proceed - It would have been reasonable for Union to obtain legal opinion with respect to its obligations to Employee, and reasonableness of abandoning grievance, but lack of legal opinion not factor in establishing breach of union's duty of fair representation - While it was understandable that Representative communicated with Employee's brother, he should have communicated more frequently and directly with Employee as Union's duty of fair representation was owed to Employee, not his brother - Registered letter, whether received or not, was inadequate, and did not represent clear, explicit and comprehensive communication demonstrating Union had proper regard for Employee's interests - Union's position weakened that it sent registered letter to wrong address, and that it advised Employer that it would not be proceeding with grievance, before confirming Employee had received letter - Application granted - 157/12/LRA - August 16, 2013 - Phillips & Temro.

Employee filed duty of fair representation application alleging Union failed to ensure he was being paid in accordance with April 2005 Letter of Agreement - As remedial relief, he requested salary of job classification be adjusted and requested retroactive pay - Union denied allegations and asserted matters raised were res judicata as they were same as Duty of Fair Representation application Employee filed in January 2012 - Board determined Application without merit as it was essentially re-litigating essence of January 2012 complaint which was disposed of with finality, particularly having regard that Employee did not file application for review and reconsideration - Further, nature of relief Applicant was seeking would require Board to function as surrogate interest arbitrator and award substantive monetary relief against Union and Employer on retroactive basis beyond Board's jurisdiction under section 20 of The Labour Relations Act - No breach of section 20(b) of the Act revealed in factual circumstances - Application dismissed - Substantive Order - 123/12/LRA - August 21, 2013 - University of Manitoba.

DUTY OF FAIR REPRESENTATION

In April 2012, Employee filed duty of fair representation application alleging Union failed to ensure he was being paid in accordance with April 2005 Letter of Agreement - Union argued Employee unduly delayed filing Application because he had been aware of his salary ranges when he was hired in February 2006 - Board declined to dismiss Application on this account alone because Employee asserted he became aware of letter when he reviewed Union's Reply to application he had filed in January 2012 which means current Application filed within three months of Employee becoming aware of letter of agreement - Time frame fell within range of time Board found to be acceptable for filing of unfair labour practice applications - Substantive Order - 123/12/LRA - August 21, 2013 - University of Manitoba.

Union filed grievance day after Employee terminated for allegedly violating Respectful Workplace Policy on multiple occasions - Union referred grievance to arbitration, assigned its legal counsel to advance grievance, and Union met with Employee on number of occasions to prepare for hearing - When Employer made motion to adjourn arbitration hearing, Union argued against adjournment and requested Employee be placed back on payroll until grievance was determined - Arbitrator ordered hearing be adjourned and did not agree Employee entitled to interim reinstatement - New arbitration hearing dates were scheduled at earliest opportunity - Prior to date of rescheduled hearing, Employee filed duty of fair representation application - Board determined Employee had not established *prima facie* violation of section 20 of *The Labour Relations Act* - Material filed by Employee suggested Union had taken considerable care in representing her - Moreover, Board noted that arbitration procedure had not been exhausted and, therefore, application was premature and was dismissed pursuant to section 140(8) of the *Act* - Substantive Order - 150/13/LRA - August 21, 2013 - Concordia Hospital.

Failure to Refer Grievance to Arbitration - Employee had applied for, but did not receive, Skilled Maintenance Worker position for which he was most senior qualified applicant - Prior to arbitration hearing, based on opinion of outside counsel that grievance would not succeed, Union withdrew grievance - Employee filed duty of fair representation application arguing Union overlooked relevant articles in collective agreement dealing with promotions and did not properly prepare for arbitration hearing, one reason being its failure to interview co-worker whose evidence was strongly supportive of his case - Board determined that while articles were not mentioned at grievance hearing or in legal opinion, Union Executive, after hearing submission from Employee, was mindful of articles - Union counsel did not interview co-worker but was aware of substance of his evidence - Board concluded Union undertook adequate preparations and had properly considered substantive issues before withdrawing grievance - Union received opinion from experienced counsel and acted in accordance with that opinion which is important element in its defence to Employee’s unfair labour practice complaint - Union also followed fair and appropriate process in providing Employee with copy of legal opinion and allowing Employee to appear before Executive to outline his position before making final decision to withdraw grievance - Application Dismissed - Substantive Order - 366/12/LRA - October 1, 2013 - City of Winnipeg.

DUTY OF FAIR REPRESENTATION

Scope of Duty - Contract Negotiation - Failure to Consult Unit - Employee filed Duty of Fair Representation application alleging Union failed to pursue number of issues on his behalf - In their Replies, Employer and Union noted they would resolve some issues in Applicant's favour - Therefore, Board found no basis to claim violation - On issue of failure to be trained as Bingo Paymaster, Union was not aware he had requested training and Employee did not request Union file grievance, therefore, no *prima facie* evidence Union refused to file grievance - As to Employee's complaint Employer and Union agreed to new protocol regarding sharing of tips with inadequate consultation with him and others, Board satisfied agreement on sharing of tips did not engage section 20 of *The Labour Relations Act* for number of reasons - Remedial relief Employee seeking involved Employer directly and section 20 complaint not forum for complaints against employer - Agreement reached resulted from direct bargaining process between Union and Employer which does not involve representing rights of employee under collective agreement and was beyond scope of section 20 - Applicant failed to establish *prima facie* case - Application dismissed - Substantive Order - 121/12/LRA - October 4, 2013 - Manitoba Lotteries Corporation.

Employee filed Duty of Fair Representation application submitting Union failed to pursue her grievance and disrespectful workplace complaint regarding her failure to be selected for staff pharmacist position - Board noted Application filed 20 months after Employee was aware that she was unsuccessful candidate - Even if meeting, which was to discuss her concerns with Employer and Union Representative, accepted as relevant benchmark, Application still not filed for approximately one year after that meeting - By either benchmark, Board satisfied Applicant unduly delayed filing Application and failed to provide satisfactory explanation for delay - Application dismissed for undue delay - Substantive Order - 262/12/LRA - October 4, 2013 - Winnipeg Regional Health Authority (Riverview Health Centre).

Prima Facie - Timeliness - Applicant claimed Union provided superficial representation to her and treated her in discriminatory and bad faith manner in dealing with her respectful workplace complaint - Board determined Union turned its mind to Applicant's concerns, provided her with advice, attended meetings with her, participated in mediation process, and negotiated on her behalf with Employer - No factual foundation for Board to conclude Union conducted itself in a manner that violated section 20(b) of *The Labour Relations Act* - Any alleged delay with respect to Applicant's return to work was because she had not been medically certified to return to work - No facts were advanced to support allegation Union discriminated against her on basis of her age or claim Union displayed preference for another member who held a position with it - Unsupported allegations, without any factual underpinnings, entitle Board to conclude *prima facie* case not established - Also, as per section 30(2) of the *Act*, complaints that arose out of allegations of conduct that occurred more than six months prior to filing of application were dismissed due to undue delay - Application dismissed - Substantive Order - 202/13/LRA - Oct. 28/2013 - Actionmarguerite (St. Boniface)

DUTY OF FAIR REPRESENTATION

Failure to Refer Grievance to Arbitration - Employee received 3-day unpaid suspension for not attending meeting as requested by Employer - Employee indicated to Union representative and its legal counsel that she would resign - Union representative counselled Employee not to resign at least until she had new job - Legal counsel concluded that he did not feel arbitrator would fully absolve Employee from imposed discipline, although she might receive shorter suspension or written warning - Union representative discussed possibility of reducing period of suspension with Employer, but discussions were not concluded at time Employee submitted her resignation - Union, relying on legal opinion, determined it would not proceed with harassment concern given Employee resigned - Employee filed duty of fair representation complaint maintaining Union failed to represent her and Union Representative had paternalistic, complacent and negative attitude towards her, resulting in him failing in his duty to protect her - Board determined Union responded appropriately to Employee's concerns and supported her as situation unfolded - Facts do not show any attitude of indifference or capriciousness or in not caring about Employee - No facts presented to suggest Union did not meet its obligations - Union Representative provided appropriate advice and addressed Employee's concerns throughout; she was urged not to resign, and Union sought legal opinions from experienced labour counsel - Employee failed to establish, on balance of probabilities, that Union or Union representative breached section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - 221/13/LRA - November 15, 2013 - Winnipeg School Division.

Reasonable Care - Arbitrary Conduct - Failure to Refer Grievance to Arbitration - Employee claimed Union failed to fulfill its obligations under section 20 of The Labour Relations Act by failing to proceed to arbitration with termination and denial of disability benefits grievances - Employer was of position that video surveillance provided evidence Employee was malingering and lying regarding severity of his medical condition - Board satisfied Union acted in arbitrary manner in representing Employee as it failed to direct its mind to merits of matter, to inquire into or to act on available evidence, or to conduct meaningful investigation to justify decision to withdraw benefits grievance - Any discussion by Union’s Bargaining Committee of merits of benefits grievance was so perfunctory as to indicate arbitrary representation - Although video evidence was central to termination grievance, committee members had not viewed video in its entirety prior to making determination not to proceed with grievance - Employee was not even advised of right to appeal decision - Board satisfied persons acting on behalf of Union pressured and browbeat Employee into saying he committed “indiscretion” and that he was sorry for what he had done despite his repeated claims he had not engaged in misconduct - Union processed grievance in careless and superficial way, failing to investigate or to give any credence to Employee’s claims that he did not engage in misconduct - Union did not arrange for Employee to view video evidence, it did not consult with Employee’s physician to evaluate whether, from medical perspective, his claims that he did not engage in misconduct were valid - Union’s conduct did not meet standard of exercising reasonable care - Board satisfied Union rushed to judgement, believing Employee to be guilty as Employer alleged - Application allowed - Substantive Order - 132/12/LRA - December 13, 2013 - Bristol Aerospace Ltd.

DUTY OF FAIR REPRESENTATION

Failure to Refer Grievance to Arbitration - Board found Union filed appropriate grievances on behalf of the Employee, conducted thorough investigations, obtained two legal opinions that grievances were unlikely to be successful, and offered appeal procedure to contest decision not to proceed to arbitration, which Employee elected not to pursue - Union complied with obligations in section 20 of The Labour Relations Act - Employee failed to establish breach of section 20 of the Act - Application dismissed - Substantive Order - 370/12/LRA - December 24, 2013 - Canada Safeway.

Discharge - Failure to Process Grievance - Reasonable Care - Board found no evidence that Union thoroughly tested or investigated Employer's claim that Employee administered "wrong medication" - Union's failure to obtain and review copies of documentation, protocols and policies, expressly referred to in termination letter, reflected lack of meaningful investigation into central elements of case - Union failed to meaningfully explore and investigate positions and perspectives that Employee advanced including her state of mind at material time and her explanations for her actions - Board reviewed disclosures Employee made during Local Executive meeting, that given her state of mind at material times, she ought to have sought psychiatric help and that legal opinion suggested she had reasonable chance of succeeding with grievance if she expressed remorse and committed to complying with work rules, policies and procedures - Reasonable care required Union to further reflect upon Employee's mental and emotional state and, at minimum, to seek further advice from counsel - Board determined Union failed to take reasonable care in representing Employee's rights with respect to her dismissal grievance and committed unfair labour practice contrary to section 20(a) of The Labour Relations Act - 298/12/LRA and 299/12/LRA - January 14, 2014 - Winnipeg Child and Family Services.

Suspension - Failure to Process Grievance - Legal opinion concluded 10-day suspension was excessive and suspension grievance had merit - Board satisfied that Union failed to follow advice of legal counsel - While Union belatedly attempted to negotiate settlement which would have seen discipline varied to fall within range identified by counsel, Employer did not agree to settlement - Rather than referring grievance to arbitration to attempt to achieve result that was in line with legal opinion, Union withdrew grievance, leaving Employee with 10-day suspension on her employment record and bearing resulting wage loss - Board satisfied Union failed to represent Employee in manner which was consistent with legal conclusion regarding suspension grievance - Employee was detrimentally affected by this failure - Board concluded Union represented rights of Employee in arbitrary manner and committed unfair labour practice contrary to section 20(b) of The Labour Relations Act - 298/12/LRA and 299/12/LRA - January 14, 2014, Winnipeg Child and Family Services.

DUTY OF FAIR REPRESENTATION

Bad Faith - Union acknowledged Union's President yelled at Employee during meeting - Board found outburst was momentary expression of frustration during otherwise cordial and respectful meeting - Isolated act indicative of frustration, while regrettable, does not amount to bad faith and was not violation of section 20 of The Labour Relations Act - 298/12/LRA and 299/12/LRA - January 14, 2014 - Winnipeg Child and Family Services.

Employee filed duty of fair representation application submitting Union failed to adequately represent his interests when it refused to proceed to arbitration with grievance contesting letter of discipline - Board determined Union filed grievance, attended grievance hearings, obtained legal opinion from counsel which indicated highly unlikely arbitrator would substitute lesser penalty, and provided appeal procedure to contest decision not to proceed to arbitration - Employee failed to establish prima facie - Application dismissed - Substantive Order - 315/13/LRA - January 22, 2014 - City of Brandon.

Failure to Process Grievance - While on short-term disability, Employee advised manager he was going to Philippines due to his brother's death - Despite being advised by manager to put in vacation request, Employee left that afternoon - When he did not return to work on date expected, his employment was terminated - A month later Employee contacted Union which determined matter would not be successfully pursued by way of grievance - Employee filed duty of fair representation application - Board noted president of Local dealt directly with Employer in attempt to return Employee to work; Union retained consultant, who dealt with Employer; and, Employee had not taken into account internal appeal processes, which Union explained to him as being available - Application suggested Employee was principally critical of Employer conduct in terminating him - Board was of view Employee's complaint against Union was an afterthought, and without consideration of requirements that had to be met to bring matter within section 20 of The Labour Relations Act - Employee did not establish prima facie violation of section 20 - Application dismissed - Substantive Order - 279/13/LRA - January 31, 2014 - Hotel Fort Garry.

Scope of Duty - Employee filed Step 1 grievance, without consultation with Union, when his application for Building Servicer I position was rejected - After Employer rejected Step 1 grievance, Employee filed duty of fair representation complaint which was first direct knowledge Union had of grievance - Board found that Employee was making complaint over seniority dates established in Property, Planning, and Development Agreement as opposed to Union's handling of issue - Facts did not show Union had attitude of indifference or capriciousness in not caring about Employee - Concerning standard of care requirement, Employee claimed he had not been fairly represented, but Union first learned of grievance when Notice of Application was presented - Therefore, claim that Union had not acted to fairly represent Employee was unfounded - Application claiming unfair representation premature - Applicant failed to advance p*rima face* violation of section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - 287/13/LRA - January 31, 2014 - City of Winnipeg.

DUTY OF FAIR REPRESENTATION

Employee filed duty of fair representation application alleging Union failed to pursue his claim for subsistence allowance; failed to pursue certain amounts owing to him under collective agreement when he was dispatched to a position in Brandon; and, failed to dispatch him to a position in The Pas, Manitoba and did not seek written reasons from company that refused to hire him – Board noted Union investigated issue of subsistence allowance but determined evidence insufficient to pursue grievance – Therefore, application did not establish conduct of Union was arbitrary, discriminatory or that it acted with bad faith – Regarding issue of dispatching Employee to position in Brandon, Board stated Union mistakenly dispatching Employee did not relate to representation of rights under collective agreement - Moreover, Union investigated matter and determined Employee not entitled to payment under collective agreement but had paid him amount representing four hours' pay, having regard that it dispatched him without realizing he was not qualified for position – Regarding refusal to dispatch him to a position in The Pas, collective agreement confers upon employer "the right to reject any applicant referred by the Union for cause" - Union determined that as he was not hired, no basis to grieve company's decision under collective agreement – Employee contended Union damaged his reputation in his trade and that accounts for company's refusal to accept him, but Board noted required factual foundation absent from Employee's allegations – Employee failed to establish conduct of Union was arbitrary, discriminatory or that it acted in bad faith – Employee failed to establish prima facie case – Application dismissed – Substantive Order - 259/13/LRA - February 4, 2014 - Summit Pipeline Services.

Employee filed duty of fair representation application alleging Union acted contrary to section 20 of The Labour Relations Act in almost all his dealings with them over "past three years" - Portions of application, which related to conduct alleged to have occurred more than six months prior to date Employee filed application, dismissed for undue delay which Board has interpreted to mean periods of as little as six months - Substantive Order - 259/13/LRA - February 4, 2014 - Summit Pipeline Services.

Employee filed duty of fair representation application 32 months after he claimed to have first become aware Union allegedly breached section 20 of *The Labour Relations Act* and 21 months after Union explained it could not grieve or arbitrate his issues and it could do nothing further on his behalf - Employee stated delay in filing Application due to his pursuit of remedies in other venues - Board stated that pursuit of claims with other entities not acceptable explanation for delay - Application dismissed - Substantive Order - 346/13/LRA - February 14, 2014 - Government of Manitoba, Selkirk Family Services.

DUTY TO BARGAIN IN GOOD FAITH

Extent of duty to bargain in good faith examined where parties reach an impasse as a result of hard bargaining - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

Whether "unreasonable" offer of wages indicates that the employer had failed to bargain in good faith - 391/83/LRA - August 24, 1983 - Watkins Incorporated.

Union does not meet onus to prove Employer knew during negotiations that it would be laying off most of bargaining unit - 644/87/LRA - November 30, 1990 - University of Manitoba.

Employer rejected the 12-hour shift schedule at the bargaining table - During lock-out requested hours of work exemption for 12-hour shift - Held could not make unilateral changes during lock-out that it opposed during negotiations or "pre-impasse negotiating framework" - Request denied - 369/95/ESA - August 2, 1995 - Gateway Industries Ltd.

Union continues to represent the employees employed in the bargaining unit at the time the lock-out commenced, including those who had returned to work - Union was at party to the proceedings before the Board - 369/95/ESA - August 2, 1995 - Gateway Industries Ltd.

Board determines that bargaining was not at an impasse as numerous meetings had recently taken place and a grievance had been referred to arbitration - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

While Union acknowledged Employer not unwilling to reach an agreement, it argued unilateral improvements to benefits interfered in achieving collective agreement - Held improvements not made with anti-union animus, nor did Union object to them at time they were given - Application dismissed - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Interference in Union - Letter circulated to employees constituted bargaining directly with employees - Compensation limited due to delay in filing application - Substantive Order, full Reasons not issued - 560/97/LRA - May 25, 1998 - Province of Manitoba.

Disclosure - Employer fails to disclose all information as required by Section 66(1)(b) of *The Labour Relations Act* - Employer ordered to provide list of route types for each delivery and collection routes; list of route bonuses for each route; and pay Union $2,000 for interfering with rights of the Union - Substantive Order - Reasons not issued - 664/98/LRA - December 17, 1998 - Winnipeg Free Press.

DUTY TO BARGAIN IN GOOD FAITH

Hard Bargaining - Each time Union modified its position, Employer offered less purposely avoiding attempts to find common ground to resolve outstanding issues - Tactics utilized by Employer were to see how much more could be squeezed out of Union before it capitulated to Employer's demands - Employer's actions unequivocally caused strike to take place and breached duty to bargain in good faith – 220/01/LRA – July 30, 2001 – Buhler Versatile Inc.

Disclosure - Decision to allow tractor contract to terminate rather than request extension of terms fell within types of decisions that must be disclosed to a union in a timely fashion as it would have serious ramifications as to the continued viability of the plant - Employer failed to satisfy onus of this type of disclosure – 220/01/LRA – July 30, 2001 – Buhler Versatile Inc.

Employer's hard bargaining tactics precipitated strike - Ordered to cease and desist - Remedies to be compensatory, and not punitive and intended to bring the employees back to status prior to the strike -Each employee who was a member of the bargaining unit and who was employed by the Employer at the time the strike commenced to be compensated for all lost wages and employment benefits they would have earned had the strike not occurred, less monies earned, exclusive of strike pay - Union to be compensated for strike expenditures, but not its legal and expert witness fees - Employer ordered to pay interest at the prime rate on all monies payable – 220/01/LRA – July 30, 2001 – Buhler Versatile Inc.

Board declined to issue declaration that Employer not bargaining in good faith as there were no employees in the bargaining unit - Substantive Order - Reasons not issued - 191/04/LRA - June 29, 2004 - JVS Erection Services Ltd.

Non-Negotiable Items - Prior to collective bargaining process, Employer stated it would not negotiate trucking rates - Union stated Employer’s position was clear and unlikely to change and sought Board’s assistance prior to a single bargaining session taking place - Board found it was premature to intervene when collective bargaining had not even commenced as Employer's positions may change during collective bargaining through Union's use of persuasion, logic, and ultimately the threat of economic pressure - 459/05/LRA - May 16, 2006 - Tolko Industries, Manitoba Solid Wood Division.

Effective date of collective agreement was January 22, 2006 to January 31, 2009 - Union gave notice to commence collective bargaining on August 10, 2006 - Union’s notice not within time frames of Section 61 of *The Labour Relations Act* to oblige Employer to commence bargaining - Application dismissed - Substantive Order - 756/06/LRA - Jan. 2, 2007 - Tolko Industries.

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 - 204/09/LRA - August 10, 2009 - Howard Johnson Hotel.

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 - 204/09/LRA - Aug. 10/09 - Howard Johnson Hotel.

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 - 204/09/LRA - August 10, 2009 - Howard Johnson Hotel.

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 - 112/09/LRA - November 27, 2009 - Brandon University.

Breach of duty - Hard bargaining - Lockout - Board determined Union paying locked-out employees 100 percent of lost wages was matter of internal union policy and not evidence that Union bargaining in bad faith - Also Employer entitled to table best and final wage offer and take position that collective agreement would only be concluded if Union moved off its last wage proposal, but Union not accepting Employer’s position not evidence of bad faith bargaining but only reflected hard bargaining by both parties - Parties having reached impasse on wages not sufficient basis to rule Union was not bargaining in good faith for the purposes of either subsection 87.1(3) or subsection 87.3(1) of The Labour Relations Act - Substantive Order - 389/11/LRA - December 21, 2011 - Granny’s Poultry Co-Operative (Manitoba) Ltd., Hatchery Operations.

EMPLOYEE

Definition - Board determines whether contractors or employees hauling wood for the company are dependent contractors within Section 1(i) of ***The Labour Relations Act*** - #C-283-19 - Undated - Manitoba Forestry Resources Ltd.

Definition - Supervisor of Maintenance, though having some managerial/supervisory functions, determined to be an "employee" within the meaning of Section 1(k) of ***The Labour Relations Act*** - No Number - February 9, 1977 - The Convalescent Home of Winnipeg.

Definition - Foremen determined to be "employees" and therefore included in the bargaining unit - Subsections 1(k) and 2(2) of ***The Labour Relations Act*** considered - 829/76/LRA - Undated - Allied Farm Equipment (Manitoba) Ltd.

Board considers whether articling students with work and educational commitments are employees - Subsection 1(k) of ***The Labour Relations Act*** considered 554/81/LRA - June 10, 1982 - Legal Aid Services Society of Manitoba.

Definition - Board determines whether individuals were employees as contemplated by ***The Labour Relations Act*** - 737/83/LRA - July 10, 1984 - R.M. of Strathclair.

Board rules that due to the sporadic consistency of hours, employees who worked an average of fifteen hours per week over a three month period were employees - Regularly scheduled full-time Receiver deemed to be employee - Substantive Order - Reasons not issued - 215/85/LRA - May 22, 1985 - Winnipeg Convention Centre.

Board determines whether a Museum Attendant is included in a collective agreement as an employee of the City of Winnipeg - Subsection 121.2(5) of ***The Labour Relations Act*** considered - 165/85/LRA - June 27, 1985 - The City of Winnipeg.

Definition - Board of Governors of University functions as "Employer" - Member of Board not an "Employee" and properly excluded from unit - 403/87/LRA - March 14, 1988 - University of Manitoba.

Courier driver (owner/operator) classified as employees for the purposes of ***The Labour Relations Act*** - 1248/87/LRA - March 23, 1988 - Gelco Express Ltd. – **ABANDONED (COURT OF QUEEN'S BENCH)**.

Effect of an agreement between the parties on the Board's determination of the status of courier drivers as employees discussed - 1248/87/LRA - March 23, 1988 - Gelco Express Ltd. – **ABANDONED (COURT OF QUEEN'S BENCH)**.

Definition - Scuba instructors not "employees" for the purposes of ***The Labour Relations Act*** - 788/87/LRA - May 5, 1988 - Angelfish Enterprises Limited.

Union requests the exclusion of supervisors from the bargaining unit - Board examines Sections 1 and 2(2) of ***The Labour Relations Act*** - 481/87/LRA - September 8, 1988 - Blackwood Beverages Ltd.

EMPLOYEE

Board refuses certification for lone stagehand temporarily employed by special arrangement for travelling production - Rule 28 of Board's **Rules of Procedure** applied - 1322/88/LRA - September 29, 1989 - Manitoba Theatre Centre.

Definition - Supervisors do not exert effective control - Treated as employees - Section 1 of ***The Labour Relations Act*** considered - 238/89/LRA - October 20, 1989 - Health Sciences Centre.

Supervisory and office staff not chiefly performing management functions - Only one individual excluded due to employment of a confidential nature - 336/89/LRA - October 20, 1989 - Dominion Malting Ltd.

Definition - Foremen performing supervisory functions determined to be "employees" and, therefore, eligible for collective bargaining - Subsections 1 and 2(2) of ***The Labour Relations Act*** considered - 110/89/LRA - May 2, 1990 - Labatt's Manitoba Brewery.

Part-time tour guides whose wages were funded by an external source to the Employer are still employees and are included in the bargaining unit - Section 1 and 142(5) of ***The Labour Relations Act*** considered - 352/90/LRA - September 18, 1990 - The Winnipeg Art Gallery.

Board determines that individual was an employee as he had very little decision making authority and basically only provided labour - Subsection 142(5) of ***The Labour Relations Act*** considered - 153/90/LRA - September 24, 1990 - The Town of Dauphin.

To meet criteria of employment, incumbent required to maintain professional certification which required employment in the practice of nursing - Board determined that when the position was performed by a qualified nurse it fell within the Applicant's bargaining unit- 512/89/LRA - March 21, 1991 - Health Sciences Centre.

Nucleus of "employees", who were expected to work hours as scheduled, considered regularly scheduled employees for the purpose of Application for Certification - Applicant achieves support in excess of 55% - Automatic certification granted - **Rules of Procedure, Manitoba Regulation 184/87R** considered - 470/91/LRA - October 30, 1991 - P & H Foods, Division of Parrish & Heimbecker Limited.

Board determined in an earlier decision that golf course employees were covered under collective agreement between Province and Union - Situation had not changed since expiry of agreement - Employers were still considered to be common employers and employees covered by new agreement - 315/92/LRA - April 26, 1993 - Province of Manitoba, Venture Manitoba Tours Ltd.

EMPLOYEE

Board held that there were no employees within the applied for unit as per Rule 28 of the ***Rules of Procedure*** as all personnel were either casual or part-time and were employed on an on call basis - Application for Certification dismissed - Substantive Order - Case No. 217/93/LRA - June 9, 1993 - Royal Crown Dining Room.

Individuals not hired as per the hiring hall provisions of the collective agreement not bona fide employees and hold no status to file application under Section 49(1) of ***The Labour Relations Act*** - Application for termination of bargaining rights dismissed - 221/94/LRA - January 23, 1995 - Linda Tyndall, 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; MATTER RETURNED TO THE BOARD.**

Area Distributors of advertising materials determined to be employees as they lacked degree of independent control especially because Employer made unilateral decisions regarding setting rates of pay - 72/94/LRA - March 23, 1995 - Canadian Media Distributors (Winnipeg) – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Definition - Employees discharged during lockout for criminal conduct still employees when lockout ended - Scope of section 13 of ***The Labour Relations Act*** not restricted to those currently employed to do work - Sections 7 and 13 of the ***Act*** considered - 723/94/LRA - April 6, 1995 - Trailmobile Canada, A Div. of Gemala Industries.

Objecting Employees file Application for cancellation of certificate of Union involved in lengthy strike with Employer - As per Section 35(6) of ***The Labour Relations Act,*** individuals who were laid off, employed on seasonal basis, or hired as replacement workers after strike began were not employees for purposes of application - Employees who retired after strike began and owner/operators represented by another bargaining agent did not have continuing interest in outcome of the proceedings - However, individuals terminated during strike and individual terminated prior to strike but reinstated through arbitration had continuing interest in proceedings - 56/96/LRA - Oct. 18, 1996 - Building Products & Concrete Supply.

Objecting Employees file Application for cancellation of certificate of Union involved in lengthy strike with Employer - Applicant claims that individuals classified as redi-mix drivers prior to strike did not have continuing interest in strike because during strike classification became redundant and was replaced by owner/operators - Board held continued existence of classification valid bargaining issue during strike so redi-mix employees on strike have continuing interest in outcome of application - 56/96/LRA - October 18, 1996 - Building Products & Concrete Supply.

Doctors previously employed by Clinic entered into an independent fee-for-service contract with Clinic - Board found duties, responsibilities and reporting relationship between Doctors and Clinic had not changed other than remuneration and support staff arrangements - Held agreement entered into was a contract for employment and not an agreement of an independent contractor - 391 & 417/96/LRA - Aug 29, 1997 - Shoal Lake Strathclair Health Centre/Drs. Muller, Venter, Krawczyk.

EMPLOYEE

Routes handled by salesmen included in the bargaining unit and by franchisees/distributors who were excluded - After all routes converted to franchises/distributorships, Union sought to have franchisees/distributors included in the bargaining unit - Inappropriate to include those individuals whom the parties had agreed to exclude. - Application rejected - 38 & 39/96/LRA - Nov. 18, 1997 - McGavin Foods Limited.

Routes handled by salesmen included in the bargaining unit and by franchisees/distributors who were excluded - Although all routes converted to franchises/distributorships, economic relationship of certain distributors more closely resembles employee/employer relationship than an independent contractor relationship - However, further evidence required before definitive decision can be made - 38 & 39/96/LRA - Nov. 18, 1997 - McGavin Foods Limited.

Community of Interest - For employees to share a community of interest, an element of correlation must exist not only with work done, but also with responsibilities attached to the position, with skills, abilities, and relevant experience, benefits received, and regularity of work - Casual employees of arena could not realistically be considered to share community of interest with full-time employees - 126/97/LRA - Dec. 2, 1997 - Winnipeg Enterprises Corporation.

Newspaper Carriers - Employer has relatively high degree of control over the work, customers served, hours and manner paper must be delivered, route that is taken - Carriers could not refuse to deliver advertisements and carriers economically dependent on Employer - Board ordered and certified bargaining unit of newspaper carriers who are under written arrangement and assigned specific routes - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Employer submitted Delivery Representative Agreement establishes carriers are independent contractors - Title of agreement not determinative of status - Board has authority to determine employer-employee relationship exists based on particulars of case - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Employees - Board ruled employees, who were on lay-off and who had recall rights under the collective agreement at the date of filing the decertification application, were employees for the purposes of determining the level of support pursuant to Section 49 of *The Labour Relations Act* - Substantive Order - Reasons not Issued - 374/99/LRA - May 17, 2000 - Aspen Industries Manitoba.

Zone Distributors not restricted from delivering for other media outlets, purchase delivery vehicles for their use, and hire and fire their own staff - Only control Employer exercised related to the performance of the contract - Held Zone Distributors were not employees for the purposes of *The Labour Relations Act* - Application dismissed - 298/99/LRA - September 25, 2000 - Thomson Distribution Services (Div. of Thomson Canada).

EMPLOYEE

Employer claims owner/operators of taxis and handi-transit were independent contractors - Held evidence overwhelmingly established degree of control excercised over owner/operators more closely resembled employer/employee relationship than an independent contractor - 367/00/LRA - December 4, 2000 - A.E. Crundwell & Associates Ltd t/a Blueline Taxi; Balbir Chand Vij & Sons Ltd. t/a Blueline Taxi.

Little weight given to agreement Applicant signed declaring he was an independent contractor - Board looks at substance of employment relationship and determined that Employer exercised complete control over Applicant - Held Applicant was an employee under Employment Standards Code. – 559/01/LRA – October 23, 2001 – Elite Holdings Inc. aka Academy Towing, Kildonan Towing, Eddie's Towing.

Health Care - Facility Patient Care Managers have authority on a facility wide basis to exercise independent judgement and discretion which has economic impact on the livelihood of bargaining unit employees and creates a conflict of interest with bargaining unit status - Same authority not given to charge nurses - Limited personal hiring done by FPCM did not alter her performance of managerial functions - Board practice that appropriate bargaining unit for nurses was all nurses practising the profession of nursing - FPCM did not perform clinical duties - Held FPCM were not employees within the meaning of The Labour Relations Act, and were not covered in nurses' bargaining unit - 258/00/LRA - June 6, 2002 - Seven Oaks General Hospital.

Casual - Public Schools Act defined teachers as those employed with written contracts - Substitute teachers were not employed under written contracts and therefore were not deemed employees for the purpose of inclusion in bargaining units covering "all teachers employed" - 223/02/LRA - 246/02/LRA - Nov. 13, 2003 - Winnipeg School Division No 1 et al - **APPEAL TO COURT OF QUEEN'S BENCH WITHDRAWN**.

Unit Supervisors not subject to managerial exclusion as they performed management duties within standardized guidelines and exercised discretion within limited range and subject to direction from senior management - Confidentiality exclusion not satisfied because, while Supervisors had access to personnel files, they did not use information for labour relations matters - Supervisors giving opinions during negotitations did not constitute membership on the Employer's bargaining team - Held unit supervisors' duties consistent with front line supervisors and that they were "employees" under The Labour Relations Act - Application for certification granted - 721/03/LRA - August 26, 2004 - Ten Ten Sinclair Housing Inc.

EMPLOYEE

Bargaining Unit - Confidential Secretary to President and Secretary/Treasurer had been included in bargaining unit covered by successive collective agreements notwithstanding access to confidential information relating to labour relation matters - New duties were not of such a material, significant or regular nature to enable the Board to ignore and essentially re-write long standing mutual covenant between the parties - Board ruled incumbent was an "employee" within the meaning of the *Act,* was included in the bargaining unit and was covered by the collective agreement - Substantive Order - Reasons not issued - 246/04/LRA - January 26, 2005 - United Food and Commercial Workers Union, Local 832.

Board held that physicians deemed to be independent contractors by the Employer were employees under *The Labour Relations Act* as the Employer supplied facilities and equipment for the physicians and controlled the patient load through the appointment booking process – 199/04/LRA – April 27, 2005 – Burntwood Regional Health Authority.

Owner/Operator - Held truck owner/operators operating through a corporation were not excluded from bargaining unit - Each individual and his corporation were considered as one employee and were entitled to engage in collective bargaining - 459/05/LRA - May 16, 2006 - Tolko Industries, Manitoba Solid Wood Division.

Definition - Employees perception that Housekeeper was their supervisor not sufficient for her to be considered as Employer or a person acting on behalf of Employer as she only had minor supervisory authority - Also, Board found that individual whom Union alleged was Front Desk Manager was a Reservation Clerk - Both individuals found to be "employees" under *The Labour Relations Act* and not management in consideration of unfair labour practice - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing migrant seasonal workers were not employees within the meaning of *The Labour Relations Act* - Held workers did not fall under any exclusions set out in the *Act* - Board ordered certification to issue - 595/06/LRA - June 26, 2007 - Mayfair Farms (Portage) - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

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 - 227/09/LRA - August 28, 2009 - Buhler Trading.

EMPLOYEE

Casual Employee – Automatic – Employee Wishes - Employer submitted employees in proposed bargaining unit hired on casual basis and worked "as, if and when" needed on an "on call" arrangement and did not work on regular recurring basis week by week – Board held requirements of Rule 28 of *Manitoba Labour Board Rules of Procedure* satisfied by virtue that majority of affected employees appear on an "on-call" work schedule and have actually performed tasks during the scope of that schedule by reference to date of filing of application - Employees who did not regularly appear on "on-call" schedule or who did not work at all during relevant period by reference to date of filing of application did not meet criteria of Rule 28 and were excluded from Board's consideration for determining employee support – Substantive Order – 218/09/LRA – January 8, 2010 – Government of Manitoba, Family Services and Housing.

Casual Firefighters - Union applied for certification of firefighters employed by Municipality – Held bargaining unit of firefighters shared community of interest and appropriate unit for collective bargaining - Board could not deny certification of employees appropriate for collective bargaining because they may exercise statutory right to strike - Rule 28 of Board's *Rules of Procedure* modified to include those firefighters paid for at least one attendance at an accident or fire scene in each month during twelve week period preceding date of application - Applying modified formula under Rule 28, more than 65% of employees wished to have Union represent them – Certification granted – 107/10/LRA – Sept. 10, 2010 – R.M. of Springfield - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**

Freelance – Board ruled alleged Employee was freelance columnist performing services as person in business on own account and was independent contractor not "employee" within the meaning of The Labour Relations Act; Employee not included in bargaining unit; and, was not a person on whose behalf a collective agreement was entered into - Substantive Order - 228/10/LRA - February 18, 2011 - Winnipeg Free Press.

Union filed application for bargaining unit of stagehands employed by concert promoter - Stagehands did not operate own business for profit, took on no financial risk, had no responsibility for investment or management, did not hire helpers, did not provide equipment beyond basic tools and required direction in helping to set up stage - Held stagehands were employees and not independent contractors - 202/10/LRA - February 27, 2012 - AEG Live Canada.

EMPLOYEE

Management Exclusion - Onus - Union filed application for Board Determination on whether Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Employer acknowledged position originated from position that had been included in bargaining unit - Employer determined position should be removed from bargaining unit without consulting Union - As position not new, Employer bore onus to demonstrate significant and material changes occurred to justify exclusion from bargaining unit of previously included position - Substantive Order - 32/11/LRA - August 17, 2012 - University of Manitoba.

Management Exclusion - Union filed application for Board Determination on whether Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Board determined that, although Manager MED IT has some additional responsibilities, Board was not satisfied evidence established changes were material and significant to sustain conclusion that previously included position should be excluded from bargaining unit nor that position performed management functions primarily - Essence of position was development, implementation and maintenance of Information Technology and project management - Occasional performance of some managerial functions did not justify exemption - Not unfair to include position in bargaining unit as prior position specifications contemplate Information Technologist may have "full supervisory responsibilities" and some may spend "majority of time supervising staff - Manager MED IT was "employee" under the *Act* and was included in bargaining unit - Substantive Order- 32/11/LRA - August 17, 2012 - University of Manitoba.

Probationary - Legal Opinion - Employee released during probationary period, one factor being that she never achieved keyboarding speed which had been condition of probation - Collective agreement stated rejection on probation neither grievable nor arbitrable, subject only to right to grieve rejection to vice president of Community Care whose decision on grievance was final - Employer denied Grievance - Union decided to proceed to arbitration but later, through counsel, decided, given wording of agreement, grievance would not likely be upheld at arbitration - Union closed file after Employee rejected various settlement options - Employee filed duty of fair representation application - Board concluded that case fell under section 20(a) of The Labour Relations Act, because employer's unilateral decision/action to end employment relationship of probationer fell within meaning of "dismissal" - Union relied on legal opinion of experienced counsel and Board does not second guess opinion from correctness perspective - Held decision not to proceed to arbitration, based on advice of counsel, fulfilled standard of "reasonable care" - Application dismissed - Substantive Order - 323/12/LRA - July 8, 2013 - Winnipeg Regional Health Authority.

EMPLOYEE LAY-OFFS

Employer lays-off employees without considering seniority or competence in violation of the collective agreement - Jurisprudence on the onus on the employer and employee discussed - 347, 342/84/LRA - January 11, 1985 - Tan Jay Co.

Elimination of bargaining unit positions with non-unionized positions essentially rid the Employer of the collective agreement - Actions were anti-union - Board orders reinstatement and compensation of Teaching Assistants - Sections 5, 6, 7, 26, 62, & 82 of ***The Labour Relations Act*** considered - 644/87/LRA - November 30, 1990 - University of Manitoba.

Employer motivated by anti-union animus when indefinitely laying off three employees who participated in union organizational meeting - Rationale suspect because no prior written record of disciplinary problems, anti-union comments made by owner, junior employees keep on staff and new employees hired - Section 7 of ***The Labour Relations Act*** considered - 60/91/LRA - January 14, 1992 - Northern Meats – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Anti-Union Animus - Supervisor on lay-off terminated for entering unauthorized float representing the Employer in a parade - Other employee laid off for shortage of work - Board noted reasons for lay-offs contradictory - Employer created atmosphere of anti-union animus that continued beyond certification process - Ordered compensation to employees for loss of income and other benefits and $2000 to Union for the interference with its rights - 527/99/LRA - July 11, 2000 - Faroex Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Board noted a number of employees, including Union activists, were recalled - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc.

EMPLOYER

Definition - Board determines that a body corporate set up by Legislation is the Employer for collective bargaining purposes - Subsections 8(1) and 8(2) of **The Legal Aid Services Society Act** and Subsections 2(1)(k)(iii) and 2(3) of **The Civil Service Act** considered - L-160-1/LRA - July 25, 1975 - Legal Aid Services Society of Manitoba.

Board determines which party is the Employer for the purpose of collective bargaining upon an application for certification - 379/85/LRA - June 25, 1985 - Manitoba Cardiac Institute (REH-FIT) Inc.

Board determines whether a Museum Attendant is included in a collective agreement as an employee of the City of Winnipeg - Subsection 121.2(5) of ***The Labour Relations Act*** considered - 165/85/LRA - June 27, 1985 - The City of Winnipeg.

Individuals working in the offices of the Caucus were employees of the Legislative Assembly Management Commission rather than the political party - Employee/employer relationship fell outside the jurisdiction of ***The Labour Relations Act*** - Application for certification dismissed - 42/90/LRA - August 29, 1990 - New Democratic Party Caucus, The Legislative Assembly Management Commission.

Board denied application under section 15(1) of ***The Labour Relations Act*** seeking determination that the work of employees of the Employer's Winnipeg plant would directly facilitate the operation of the Employer's plant in Calgary whose employees were lawfully on strike - Board held that the Calgary operations did not represent "another employer", and therefore, it did not have jurisdiction to deal with the matter under that section - 726/91/LRA - August 8, 1991 - Molson Breweries (Winnipeg).

Definition - Subcontractor exercising control and direction over staff complement is true employer - 995/91/LRA - July 30, 1992 - Province of Manitoba, Red River Community College, and VS Services Ltd. t/a Versa Food Services.

Employer objects to application claiming no employees described in the unit were on its payroll - Employer attempting to mislead the Board as to the identity of the employer by having another contractor pay Employee's salary - Employer offered Employee job, paid for his tools and had him report to its project supervisor at job site - Held Employee employed by Employer - Application for Certification granted - 605/94/LRA - October 26, 1995 - TNL Industrial Contractors Ltd.

Freedom of Speech - Employer Communications - Captive Audience - Employer Interference - Expanded panel confined its role to defining and clarifying policy issues on employer communications to employees and to what extent employer's freedom of speech is fettered by the provisions of *The Labour Relations Act* - 624/00/LRA - September 28, 2001 - Marusa Marketing Inc.

EMPLOYER

Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing terms and conditions of employment were set by the governments of Canada and Mexico through federal program and unalterable employment agreement - Held while Employer's discretion was somewhat fettered by Employment Agreement, it was decision-maker with respect to fundamental aspects of the work performed - Board ordered certification to issue - 595/06/LRA - June 26, 2007 - Mayfair Farms (Portage) - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

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 - 193/09/LRA - August 19, 2009 - City of Winnipeg and Employee Benefits Board.

Employee filed unfair labour practice application naming Manitoba Human Rights Commission as employer - Commission denied being employer as it was not responsible for actions of Treasury Board and that Province of Manitoba employed Employee - While it would have been prudent for Employee to amend application by naming "Her Majesty the Queen in Right of the Province of Manitoba" as respondent, having regard to broad definition of employer in *The Labour Relations Act,* employment relationship existed between Employee and Commission - 26/09/LRA & 27/09/LRA - December 20, 2010 - Manitoba Human Rights Commission.

Union filed application for bargaining unit of stagehands employed by concert promoter - Held manner in which stagehands were hired, disciplined, supervised, directed, and controlled during exceptionally brief period of their engagement, lead inexorably to conclusion promoter not employer - Made little labour relations sense to grant certification where union would be required to negotiate with entity that did not hire, discipline, control or direct employees in meaningful manner - Such conditions unlikely to yield viable collective bargaining relationship - Application dismissed - 202/10/LRA - February 27, 2012 - AEG Live Canada.

(Next Section: Sec. 5.4)

ESTOPPEL

Union led Employer to believe collective agreement had been ratified - Union estopped from denying collective agreement had been entered into - No Number - Undated - Manitoba Forestry Resources Ltd.

Estoppel argued when Employer applies to terminate a collective agreement due to union's decertification - Board examines third party rights - 142/77/LRA - April 28, 1977 - Gateway Construction Company Ltd.

Board concludes that the doctrine of estoppel could not be used to defeat a statutory obligation imposed on the employer - Subsection 10(4) of ***The Labour Relations Act*** applied - 347, 342/84/LRA - January 11, 1985 - Tan Jay Co.

Issue estoppel - Employer objects to application for certification as another union had filed an application for the same unit and another panel of the Board had dismissed that application - Board had serious concerns that the application before it was an attempt to have another panel make a different determination, but was reluctant to dismiss application on that basis as reasons not issued for previous dismissal - 298/99/LRA - September 25, 2000 - Thomson Distribution Services (A Div. of Thomson Canada Ltd.)

Representation - Employer submitted Union represented it would not seek to certify employees when it agreed to exclude employees from collective agreement – Held estoppel could not be relied upon to prevent exercising of statutory right or to release party from statutory obligation – Substantive Order - 1/11/LRA - August 12, 2011 - Government of Manitoba, Manitoba Ombudsman.

EVIDENCE

Privately obtained information - Chairperson refers to an announcement in the Winnipeg Free Press at hearing - Application for review denied - 612/85/LRA - October 18, 1985 - Westfair Foods Ltd.

Board rules that the onus was on the Employer to proceed first, even though the application was initiated by the Certified Bargaining Agent - Subsection 142(5)(a) and (d) of ***The Labour Relations Act*** considered - 1141/89/LRA - May 31, 1990 - Victoria General Hospital – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Board departs from past reliance on date of application as evidentiary cut-off date - Held that a period of six months from the date the position was filled was a reasonable cut-off date - 638/92/LRA - December 22, 1992 - Flin Flon General Hospital.

Witness - Company president not excluded from hearing despite Union's argument his presence would intimidate employees - Natural justice would not permit his exclusion particularly in light of alleged influence - 960/92/LRA - February 18, 1993, Western Egg Co. Ltd.

Cut-off date for evidence regarding whether persons are employees determined to be the date of hearing - 762/92/LRA - March 8, 1993 - Winnipeg Free Press.

Onus on Employer/Respondent to adduce evidence first, although application initiated by Bargaining Agent - 762/92/LRA - March 8, 1993 - Winnipeg Free Press.

Admissibility - Board maintained date of application as evidentiary cut-off date - Employer not allowed to introduce evidence from period between date of application and date of hearing especially when attempt made three days into hearing - 958/92/LRA - October 18, 1993 - Maples Personal Care Home.

Employer's concerns regarding Board ruling during hearing without merit - Board not bound to follow strict rules of evidence - 158/93/LRA - February 7, 1994 - Unicity Taxi Ltd.

Onus of Proof - Applicant claimed Employer guilty of discrimination in hiring practices contrary to Section 7 of ***The Labour Relations Act*** - Employer failed to discharge onus - Held Employer committed an unfair labour practice contrary to Section 7 of the ***Act*** - Substantive Order - No reasons issued - 306/94/LRA - June 2, 1994 - C.C. Biggs Neighbourhood Restaurant & Bar.

Onus - Union claimed timing of terminations suspiciously close to Application for Certification presumes motivated by anti-union animus - Board stated reverse onus does not put absolute liability on Employer, but must present reasonable and plausible explanation to satisfy onus - Fairness of decision not a consideration in Board's determination of claim - 555/94/LRA - February 3, 1995 - Logan Iron and Metal Co. Ltd.

EVIDENCE

Admissibility - Employer presents evidence on events occurring after date of application claiming positions evolving - Positions not created within six months prior to date of application so Board would not allow exception to normal rule of using date of application as evidentiary cut-off date - 655/93/LRA - June 19, 1995 - Seven Oaks General Hospital.

Privilege - Hearsay - Employer objected to Union's associate lawyer's testimony regarding a telephone conversation between himself and counsel for Interested Party who was not present at hearing - Board held that case could be decided on facts so evidentiary issue need not be considered - However, Board clarified that a party could not hide behind the cloak of privilege to mislead the Board and it would have accepted the evidence, particularly when Interested Party chose not to make oral or written representations - Silence of party inferred evidence was true and irrefutable - 605/94/LRA - October 26, 1995 - TNL Industrial Contractors Ltd.

"New evidence" - Union requested review of Board decision to omit proposed vacation clause as omission would result in employees getting less than minimum entitlement provided under pre-existing conditions of employment - During hearing, Board proceeded on assumption no employees affected and Union did not disagree - Board could not later hear evidence from the Union because it was not "new evidence" - In the absence of any indication that any employee would be affected, issue best addressed in future negotiations - Request for review declined - 509/95/LRA - October 31, 1995 - R.M. of St. Andrews.

Witness - Credibility - Board questioned motive of Objecting Employees who became supervisors subsequent to campaign - Board does not accept they did not know of obligation to pay union dues given they were previously active in the Union and had paid dues - 360/95/LRA - February 8, 1996 - Greenberg Stores Ltd. – **LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

Relevance - Notice of Intention - Employer objects to Union's line of questioning as Union failed to submit Notice of Intention to allege improper conduct as per ***Rule 3 of Manitoba Regulation 184/87R*** - Board ruled to extent questions went to relevance and credibility they were properly in scope of cross-examination - ***Rule 3*** not applicable - 507 & 718/94/LRA - March 7, 1996 - R.D Rosenblat & Building Products and Concrete Supply Ltd.

Hearing to be treated as if it commenced two weeks later so evidence presented relating to what was to occur on purchase date of company was not treated as hypothetical, but was considered as factual - Substantive Order - Reasons not issued - 802/95/LRA - March 8, 1996 - Cottrell Transport Inc. & Cottrell Freight Systems Inc.

Evidence of witness who overhears conversation accepted only as proof that conversation took place and not as to content - 7/96/LRA - May 1, 1996 - KT Industries Ltd.

Relevance - Board held documents found in Employee's Workers Compensation file consisted of hearsay and carried no weight in claim that Employee unfairly discharge because she filed for compensation benefits - 99/96/LRA - June 18, 1996 - Gerri Sylvia/Sylvia Personnel Services Ltd.

EVIDENCE

Interference - Witness told Union he was afraid if he voted he would lose his overtime - Based on conversation, Union alleged Employer interfered with ratification process by creating a climate of fear - At hearing, witness denied comment - Board concluded witness made comment to mislead Union - Although other witnesses were apprehensive, and seemed to be coached, evidence did not establish Employer interfered in achieving collective agreement - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Reverse Onus of Proof - Discriminatory Action - Section 7 of ***The Labour Relations Act*** reverses normal onus on Applicant - Application dismissed as Union does not make a *prima facie* case that anyone in workplace was discriminated against - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Admissibility - Audio tapes to be admitted and heard on condition that complete transcripts be provided; person who made the recordings to testify and be cross-examined; that the tape be the original with no additions or deletions; and, Board to attribute weight to the evidence that it deemed appropriate - 528, 595 & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Witness - Union sought to adduce evidence from Board Officer who dealt with application - Board Officer carrying out duties as an employee of the Board - Not compellable witness as per Section 144(1) of *The Labour Relations Act* - 528, 595 & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Onus - Witness - Employer's witness was not familiar with what transpired on workplace floor - Board can only consider evidence before it - Employer does not satisfy onus to prove Employee was not terminated for filing complaint to Workplace Safety and Health - 555/99/LRA & 556/99/WSH - January 19, 2000 - Watertown Inc.

Employer submitted Union proceed first as union membership must first be established - To avoid fragmentation of case Board directed Employer give evidence first on all matters without that creating any improper onus with respect to other issues before the Board - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc.

Employer seeking review and reconsideration of finding of successorship - New evidence would not lead Board to any different disposition – 99/00/LRA – May 3, 2001 - CanWest Galvanizing Inc - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Employee requested proceedings be taped - While it was Board's policy to not tape proceedings, it would consider request if Employee retained services of a court reporter and made transcript available to Board and all parties - 421/02/ESC & 586/02/LRA - April 22, 2003 - (C.A.H.R.D.) Centre for Aboriginal Human Resourde development.

EVIDENCE

Onus of Proof - Board asked to determine if Confidential Secretary to President was excluded from bargaining unit - This was not exclusion case of first instance as Secretary had been included in bargaining unit covered by successive collective agreements - Onus of proof rested on applicant to satisfy Board that material and significant changes were made to duties to sustain exclusion - Substantive Order - Reasons not issued - 246/04/LRA - January 26, 2005 - United Food and Commercial Workers Union, Local 832.

Witness - Credibility - Where evidence of Union and Employer differed testimony of Employer's witnesses preferred as their evidence was in harmony with the preponderance of probabilities - Union's witnesses' testimony often differed during direct examination and cross-examination - Individuals named in the application did not testify - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

Witness - Employer submitted it was not aware of doctor's note Employee presented at hearing so Supervisor did not attend to testify that Employee had not given note - Parties to application are responsible to be ready to proceed when hearing convenes which includes ensuring availability of witnesses who can be reasonably expected to have knowledge of facts - Employer knew supervisor had direct knowledge of relevant facts and should have foreseen supervisor should have been available to testify at the hearing - Application for Review dismissed - 211/07/LRA - June 12, 2007 - Integra Castings.

Admissibility - Compensation - Board conducted hearing on issue of compensation due to Employee - Methods proposed by Employee and Employer based on facts and information which were not properly in evidence before Board - Board did not adopt either method proposed but instead determined quantum based on best and most reliable evidence which was introduced - Substantive Order - 448/06/LRA - June 12, 2007 - Integra Castings - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Fact that Union investigating new medical evidence to determine link to events 2 years earlier did not affect disposition of unfair labour practice application against Employer - Core issue arising from any new evidence related to Employer's alleged obligation to reasonably accommodate Employee's disability in 2004 - That issue not within jurisdiction of the Board - Application dismissed - Substantive Order - 281/07/LRA - July 5, 2007 - Province of Manitoba, Winnipeg Child and Family Services.

Employee filed Rebuttal to Employer's and Union's Replies - Board's Rules of Procedure do not contemplate or allow rebuttal or reply to be filed in response to reply of another party - Board exercised its discretion and reviewed the Rebuttal in circumstances of the case - Substantive Order - 265/08/LRA - October 15, 2008 - Middlechurch Home of Winnipeg.

EVIDENCE

Witness – Board issued Letter of Direction in which scope of hearing limited to specific allegations contained in Particulars in respect of three named employees - Union asserted Letter too restrictive and it ought to be allowed to adduce evidence beyond the three named employees - Board amended Letter indentifying other individuals eligible to be called as witnesses and ruled parties were free to call other witnesses provided that evidence directly related to scope of issues defined in Letter - Substantive Order - 248/10/LRA - December 17, 2010 - Manitoba Lotteries Corporation.

Witness - Employee who filed duty of fair representation and unfair labour practice applications not credible witness as his evidence frequently in disharmony with preponderance of probabilities - Employee evasive in answering questions, had selective recall, favoured information that confirmed his views and hypotheses while minimizing, discounting, or ignoring information not consistent with his beliefs - 26/09/LRA & 27/09/LRA - December 20, 2010 - Manitoba Human Rights Commission.

Admissibility - Union objected to use of two surreptitious tape recordings Employee made of meetings with Union's counsel and business representative - Board ruled tapes inadmissible since allowing tapes would encourage parties to distrust each other and would prolong proceedings due to necessity to adjudicate applications for admissibility of taped conversations - 184/11/LRA - January 10, 2012 - Community Therapy Services.

Privilege - Union raised issue whether solicitor-client privilege applied to communications between Employee and Union's solicitor – Board ruled no substantive solicitor-client relationship between Employee and lawyer as Union retained counsel and paid professional fees incurred - However, Section 20 imposed statutory duties on every person acting on behalf of bargaining agent when representing rights of employee under collective agreement which encompassed union's counsel - To find statements made by either union's counsel or other union representatives was inadmissible because only union could waive "solicitor-client" privilege would prevent employee from asserting material facts in support of his complaint against bargaining agent or "any person acting on behalf of the bargaining agent" - Board ruled Union could not claim solicitor-client privilege in respect of evidence Employee may introduce regarding his dealings with Union's counsel - 184/11/LRA - January 10, 2012 - Community Therapy Services.

Hearsay - Employee filed documentation which included unedited Facebook comments of various individuals - Board determined hearsay Facebook comments did not add to fundamental allegations in Application - Substantive Order - 383/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

EVIDENCE

Management Exclusion - Onus - Union filed application for Board Determination on whether Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Employer acknowledged position originated from position that had been included in bargaining unit - Employer determined position should be removed from bargaining unit without consulting Union - As position not new, Employer bore onus to demonstrate significant and material changes occurred to justify exclusion from bargaining unit of previously included position - Substantive Order - 32/11/LRA - August 17, 2012 - University of Manitoba.

EXCLUSIONS

In determining whether an employee is within a bargaining unit the Board considers the employees actual functions as opposed to the title assigned to them - 378/76/LRA - Undated - The City of Winnipeg.

Board determines the appropriate bargaining unit for the employees of an optical dispensing company - 469/76/LRA - Undated - Central Optical Company.

Private secretary outside of the scope of the unit for which had been applied- 829/76/LRA - Undated - Allied Farm Equipment (Manitoba) Ltd.

Foremen determined to be employees and therefore included in the bargaining unit - Subsections 1(k) and 2(2) of ***The Labour Relations Act*** considered - 829/76/LRA - Undated - Allied Farm Equipment (Manitoba) Ltd.

Supervisor of Maintenance, though having some managerial/supervisory functions, determined to be an "employee" within the meaning of Section 1(k) of ***The Labour Relations Act*** - No Number - February 9, 1977 - The Convalescent Home of Winnipeg.

Board excludes Stock Counters from warehouse employees bargaining unit -852/84/LRA - January 24, 1985 - Amesco (1967) Ltd., Division of Westburne.

Definition - Board of Governors of University functions as "Employer" - Member of Board not an "Employee" and properly excluded from unit - 403/87/LRA - March 14, 1988 - University of Manitoba.

Factors relevant to the determination of whether supervisory unit within management exclusion discussed - Subsection (1)(k)(i) of ***The Labour Relations Act*** considered - 1207/87/LRA - March 17, 1988 - Provincial Auditor, Province of Manitoba.

Union requests the exclusion of supervisors from the bargaining unit - Board examines Sections 1 and 2(2) of ***The Labour Relations Act*** - 481/87/LRA - September 8, 1988 - Blackwood Beverages Ltd.

The Board, in determining the appropriate bargaining unit, separates production/blue collar workers from clerical/white collar workers - 481/87/LRA - September 8, 1988 - Blackwood Beverages Ltd.

Supervisory and office staff not chiefly performing management functions - Only one individual excluded due to employment of a confidential nature - 336/89/LRA - October 20, 1989 - Dominion Malting Limited.

Employee defined - Assistant Managers and Thirds, though performing limited managerial functions, deemed to be employees - 346/88/LRA - March 9, 1990 - Kittson Investments Ltd., Singleton's Professional Family Hair Care.

EXCLUSIONS

Foremen performing supervisory functions determined to be "employees" and, therefore, eligible for collective bargaining - Chief Engineer, Quality Control and Purchasing Managers performing management functions - Excluded from bargaining unit - Subsections 1 and 2(2) of ***The Labour Relations Act*** considered - 110/89/LRA - May 2, 1990 - Labatt's Manitoba Brewery.

Board determines that individual was an employee as he had very little decision making authority and basically only provided labour - Subsection 142(5) of ***The Labour Relations Act*** considered - 153/90/LRA - September 24, 1990 - The Town of Dauphin.

Nursing Co-ordinators excluded from bargaining unit as they were extensively involved in the hiring process - Assistant to Nursing Director excluded because she would often act for the Director - Nursing Supervisors not excluded as they perform tasks within strict guidelines - 1143/89/LRA - October 18, 1990 - Bethesda Health & Social Services, Bethesda Personal Care Home Inc.

Commissioned route persons determined their own hours, were paid on commission, were self-supervised, and hired and fired their own agents - Properly excluded from the bargaining unit as they were not employees as contemplated by ***The Labour Relations Act*** - 414/90/LRA - March 18, 1991 - Perth Services Ltd, Perths Cleaners Launderers and Furriers Ltd. – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Supervisor's responsibilities no less than other supervisors who were excluded from the unit - Supervisor properly excluded - 414/90/LRA - March 18, 1991 - Perth Services Ltd., Perths Cleaners Launderers & Furriers Ltd. – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Board denied Applicant's argument that the Supervisory position it originally agreed to exclude was different from position currently held by incumbent - Supervisor's duties primarily managerial - Position properly excluded from unit - 470/91/LRA - October 30, 1991 - P & H Foods, Division of Parrish & Heimbecker Limited.

Bargaining Agent aware for 21 years that positions existed and what duties were performed - Although incumbents were employees as defined in ***The Labour Relations Act***, bargaining agent's inactivity in pursuing representation results in tacit agreement to exclude them from bargaining unit - Reasons not issued - 1139/91/LRA - May 7, 1992 - Thompson General Hospital.

Head Nurses - Nursing Unit Managers were first line supervisors performing within strict guidelines allowing little or no discretion - Position likely created to form layer of management which could perform bargaining unit work during a work stoppage - Held Unit Managers were employees within the meaning of ***The Labour Relations Act***, and were included in the bargaining unit - 1141/89/LRA - October 14, 1992 - Victoria General Hospital – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

EXCLUSIONS

Head Nurses - Incumbent possesses high degree of independent decision making authority in hiring process and in the disciplining or terminating of employees - Functions affect economic livelihood of subordinates - Excluded from the bargaining unit - 638/92/LRA - December 22, 1992 - Flin Flon General Hospital.

Management - Health Care - Duties of Chief of Staff of small rural hospital included planning, budgeting, approving work schedules, and imposing limited discipline. Duties not particularly significant with respect to overall duties as physician - Until by-law and job description finalized, no basis to exclude Chief of Staff for confidential or managerial functions - 599/92/LRA - April 6, 1993 - Notre Dame De Lourdes Health District.

Management - Health Care - Chief of Staff's participation on hospital committees, which resulted from his expertise as physician and not as manager, and degree of economic control over other physicians insufficient to warrant exclusion from bargaining unit - 600/92/LRA - August 11, 1993 - Lynn Lake Hospital District No. 38.

Head Nurse - Resident Care Managers did not primarily perform management functions and were treated as caregivers for budgetary purposes - Board determined position should be included in the bargaining unit - Staff Development Co-ordinator/Assistant Director of Nursing affected the economic livelihood of subordinates - Board held position should be excluded from the bargaining unit - 958/92/LRA - October 18, 1993 - Maples Personal Care Home.

Management - Health Care - Duties of Manager of Laboratory Services did not include technical hands on analysis as contemplated by the certificate - Incumbent and Union aware duties had not changed for many years - Held classification primarily management and not employee as per ***The Labour Relations Act*** - Properly excluded for bargaining unit - 343/93/LRA - April 21, 1994 - The Pas Health Complex.

Community of Interest - Health Care - Bed Utilization Manager position appropriate for inclusion in nursing unit as health care background required to effectively perform job - However, responsible for decisions on bed closures which affect the economic well-being of the bargaining unit members, and Union had not questioned the excluded status of position for years, so excluded as per ***The Labour Relations Act*** - 655/93/LRA - June 19, 1995 - Seven Oaks General Hospital.

Community of Interest - Health Care - Coordinator Injured Workers Program position appropriate for inclusion in nursing unit as health care background required to effectively perform job - Although incumbent indicates possible abuse of program by bargaining unit members, found not to be a conflict of interest to justify exclusion - 655/93/LRA - June 19, 1995 - Seven Oaks General Hospital.

EXCLUSIONS

Admissibility - Employer presents evidence on events occurring after date of application claiming positions evolving - Positions not created within six months prior to date of application so Board would not allow exception to normal rule of using date of application as evidentiary cut-off date - 655/93/LRA - June 19, 1995 - Seven Oaks General Hospital.

Health Care - Head Nurse - Board finds no "significant change" occurred in the degree of hands-on nursing performed by the Nursing Unit Coordinator from the date of certification until the evidentiary cut-off date - Position remained excluded from bargaining unit - Substantive Order - Reasons not issued - 217/95/LRA - November 30, 1995 - Pembina-Manitou Health Centre – **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Security Officer - Employer sought to exclude security officers from all employee unit as they were involved with internal security matters - Security duties not significant to create conflict with other bargaining unit members - Held Security officers to be included in proposed unit - 206/96/LRA - September 6, 1996 - 3322785 Manitoba Ltd. t/a The Sheraton Hotel.

Routes handled by salesmen included in the bargaining unit and by franchisees/distributors who were excluded - After all routes converted to franchises/distributorships, Union sought to have franchisees/distributors included in the bargaining unit - Inappropriate to include those individuals whom the parties had agreed to exclude. - Application rejected - 38 & 39/96/LRA - Nov. 18, 1997 - McGavin Foods Limited.

Routes handled by salesmen included in the bargaining unit and by franchisees/distributors who were excluded - Although all routes converted to franchises/distributorships, economic relationship of certain distributors more closely resembles employee/employer relationship than an independent contractor relationship - However, further evidence required before definitive decision can be made - 38 & 39/96/LRA - Nov. 18, 1997 - McGavin Foods Limited.

Confidential Personnel - Employer contested inclusion of executive secretaries who deal with confidential correspondence and messages - Board found they were simply conduits for the distribution of information and have no involvement in policy formulation or implementation - Confidentiality of material questioned since other bargaining unit members were allowed to type or file same - Secretaries' minimal involvement in labour relations limited to typing and filing - Typing and posting of job advertisements, receiving employment applications, and typing and filing or disciplinary reports do not constitute grounds for exclusion from the bargaining unit - Held duties did not prevent executive secretaries from being included in the bargaining unit - 724/97/LRA - October 30, 1998 - Transcona-Springfield School Division No. 12.

EXCLUSIONS

Youth Newspaper Carriers - Board could not find any prohibition under *The Labour Relations Act* which prevented the limited number of youth carriers from being Union members - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Confidential capacity - Protection Officers who frequently investigate matters relating to accidents and internal security issues do not have significant independent authority in labour relations - Level of investigation limited to gathering of information and following supervisor's directives - Not employed in confidential capacity to support exclusion from bargaining unit - 400/99/LRA - June 12, 2000 - Brandon Regional Health Authority.

Manger of Physical Plant Services - Hiring of single employee and no on-site supervisor not sufficient to meet threshold test - Duties more in line with front-line supervisor - Position included in the bargaining unit - Regional Health Authority - Central Manitoba Inc. - September 20, 2000 - 53/00/LRA.

Health Care - Facility Patient Care Managers have authority on a facility wide basis to exercise independent judgement and discretion which has economic impact on the livelihood of bargaining unit employees and creates a conflict of interest with bargaining unit status - Same authority not given to charge nurses - Limited personal hiring done by FPCM did not alter her performance of managerial functions - Board practice that appropriate bargaining unit for nurses was all nurses practising the profession of nursing - FPCM did not perform clinical duties - Held FPCM were not employees within the meaning of *The Labour Relations Act,* and were not covered in nurses' bargaining unit - 258/00/LRA - June 6, 2002 - Seven Oaks General Hospital.

General rule that an employer is entitled to exclude at least one employee who provides secretarial or administrative support even if individual not employed in a confidential capacity in matters relating to labour relations as a regular and major part of job function applicable only if individual employed in confidential capacity in some not insignificant degree - Employer did not demonstrate that Administrative Assistant to Operations Manager was employed in a confidential capacity in matters related to labour relations - Classification included in bargaining unit - Substantive Order - Reasons not issued - 438/02/LRA - May 5, 2003 - IKO (Manitoba).

Management - Supervisors - Security Supervisors, Surveillance Supervisors, Customer Services Supervisor, Kitchen Supervisor and Restaurant Supervisor excluded from bargaining unit of employees as they exercised management functions although limited - Casino Shift Supervisor and Gift Shop Supervisor did not exercise significant management functions that would preclude them from being included in bargaining unit - 592/03/LRA - June 15, 2004 - Aseneskak Casino.

EXCLUSIONS

Unit Supervisors not subject to managerial exclusion as they performed management duties within standardized guidelines and exercised discretion within limited range and subject to direction from senior management - Confidentiality exclusion not satisfied because, while Supervisors had access to personnel files, they did not use information for labour relations matters - Supervisors giving opinions during negotitations did not constitute membership on the Employer's bargaining team - Held unit supervisors' duties consistent with front line supervisors and that they were "employees" under The Labour Relations Act - Application for certification granted - 721/03/LRA - August 26, 2004 - TEN TEN SINCLAIR HOUSING INC.

Bargaining Unit - Confidential Secretary to President and Secretary/Treasurer had been included in bargaining unit covered by successive collective agreements notwithstanding access to confidential information relating to labour relation matters - New duties were not of such a material, significant or regular nature to enable the Board to ignore and essentially re-write long standing mutual covenant between the parties - Board ruled incumbent was an "employee" within the meaning of the *Act,* was included in the bargaining unit and was covered by the collective agreement - Substantive Order - Reasons not issued - 246/04/LRA - January 26, 2005 - United Food and Commercial Workers Union, Local 832.

Owner/Operator - Held truck owner/operators operating through a corporation were not excluded from bargaining unit - Each individual and his corporation were considered as one employee and were entitled to engage in collective bargaining - 459/05/LRA - May 16, 2006 - Tolko Industries, Manitoba Solid Wood Division.

Confidential Personnel - Management - Six positions Union claimed should to be included in the bargaining unit were same positions submitted in a previous application that Union and Employer agreed would be excluded - Held changes to organization and to titles of positions were not material and significant changes sufficient to conclude that excluded positions should be included in bargaining unit - Substantive Order - 394/05/LRA - January 10, 2007 - University of Manitoba.

Burden of Proof - Where position has historically been excluded from bargaining unit covered by successive collective agreements, onus of proof rests with Union who must satisfy Board that material and significant changes have occurred sufficient to conclude that excluded positions ought to be from then on included in bargaining unit - Substantive Order - 394/05/LRA - January 10, 2007 - University of Manitoba.

EXCLUSIONS

Confidential Personnel - Fact that incumbents had access to "confidential" information in general sense and were expected to maintain confidentiality under their duty of fidelity to the Employer not sufficient to exclude positions from bargaining unit - Access to and the processing of salary information or disciplinary notices not reason to exclude on confidentiality criterion - Held Benefit Support Clerk and Payroll Clerk were included in the bargaining unit - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

Board did not accept that Union had agreed to exclusion of positions historically not covered by successive collective agreements - Parties were addressing restructuring of support unit in parallel discussions outside of the collective bargaining process - Unfair to apply "significant/material change" principle - Determination of whether positions ought to be excluded must be decided as a case of first instance and by reference to current duties - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

Confidential Personnel - Human Resources Clerk performed duties of Human Resource Administrative Assistant when incumbent was absent - Administrative Assistant worked directly for and reported to the Director of Human Resource Services prepared and processed correspondence for the Director - Unfair to include Human Resources Clerk in support unit as employed in confidential capacity in matters relating to labour relations to such a degree that position ought to be excluded - Substantive Order - 681/04/LRA - July 20, 2007 - Salvation Army Grace General Hospital.

Confidential Personnel - Union sought ruling that positions historically excluded in Libraries Administration Office be included - In accordance with long-standing principle where position covered by successive collective agreements, Applicant must satisfy Board that material and significant changes have occurred - While some changes to titles of positions and individuals who filled the positions, changes were not material and significant to conclude contested excluded positions ought to be included in bargaining unit - 394/05/LRA - August 2, 2007 - University of Manitoba.

(Next Section: Sec. 6.0)

FAMILY RELATIONSHIP

Board determines sale of business takes place when contract won by union shop owned by father transferred to non-union shop owned by son - Subsections 59(1) and 142(5) of ***The Labour Relations Act*** considered - 1019/88/LRA - October 30, 1989 - Peter's Mechanical & Installation Ltd., Daplex Plumbing and Heating Ltd., Peter's Plumbing and Heating Ltd.

FINAL OFFER SELECTION

Voting constituency - Parameters of "the employees in the unit affected by dispute" when determining employees eligible to vote for final offer selection discussed - Sections 94.1(4), 94.1(9) and 94.1(10) of ***The Labour Relations Act*** considered - 537, 538/88/LRA - June 20, 1988 - Molsons Manitoba Brewery Ltd., and Associated Beer Distributors Ltd.

A "unit" for the purpose of final offer selection properly referred to as a "bargaining unit" - 537/538/88/LRA - June 20, 1988 - Molsons Manitoba Brewery Ltd., and Associated Beer Distributors Ltd.

Based on Applicant's own letter, application for vote filed three days prior to date dispute assumed to exist - Application dismissed as being untimely - Subsection 94.1(1) and 94.1(4) of ***The Labour Relations Act*** considered - 1192/90/LRA - March 21, 1991 - Victoria General Hospital.

FINANCIAL DISCLOSURE

Applicant filed request to inspect Financial Compensation Statements of the Union three months after he received his final cheque from the Employer - Board satisfied he was a member in good standing of the Union, but at time of application he was not an employee in the unit of employees for which the Union was the bargaining agent as per Section 132.4(1) of ***The Labour Relations Act*** - Request for disclosure denied - 233/97/LRA - September 8, 1997 - Kearsley Electric Ltd.

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 - 50/09/LRA - April 8, 2009 - International Alliance of Theatrical Stage Employees, Local 856.

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 - 195/09/LRA - July 24, 2009 - International Union of Operating Engineers, L. 987.

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 - 195/09/LRA - July 24, 2009 - International Union of Operating Engineers, L. 987.

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 - 195/09/LRA - July 24, 2009 - International Union of Operating Engineers, L. 987.

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 - 229/09/LRA - September 11, 2009 - International Union of Operating Engineers, Local 987.

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- 229/09/LRA - September 11, 2009 - International Union of Operating Engineers, Local 987.

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 - 271/09/LRA - October 15, 2009 - United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of US and Canada, Local 254.

(Next Section: Sec. 6.4)

FIRST CONTRACT

Board settles terms and conditions of first collective agreement for doctors - 849/88/LRA - January 31, 1989 - The Victoria General Hospital.

In proposed vacation entitlement clause, Union referred to "permanent" employees while Employer "referred" to full-time employees - Union contended Board obligated "to accept, without amendment, any provisions agreed upon in writing by the parties" as per Section 87(6) of ***The Labour Relations Act*** - Difference in wording could not be seen as agreement - Request for review declined - 509/95/LRA - October 31, 1995 - R.M. of St. Andrews.

"New evidence" - Union requested review of Board decision to omit proposed vacation clause as omission would result in employees getting less than minimum entitlement provided under pre-existing conditions of employment - During hearing, Board proceeded on assumption no employees affected and Union did not disagree - Board could not later hear evidence from the Union because it was not "new evidence" - In the absence of any indication that any employee would be affected, issue best addressed in future negotiations - Request for review declined - 509/95/LRA - October 31, 1995 - R.M. of St. Andrews.

Board does not have jurisdiction under Section 87(1)(d) of ***The Labour Relations Act*** to impose a First Collective Agreement as the Board had five years earlier imposed one between the parties - Application for First Collective Agreement dismissed - Substantive Order - Reasons not issued - 699/96/LRA - November 21, 1996 - Greenberg Stores.

Clarification - Board clarified interpretation of formula to calculate compensation - Method to determine hourly rate was bi-weekly profit divided by total delivery and collection time with minimum hourly rate of $7.00 - Weekly kilometre and route bonuses paid in addition to the hourly rate - Letter Decision, Reasons not issued - 579/99/LRA - November 1, 1999 - Winnipeg Free Press.

Board's failure to provide reasons for certification order did not invalidate the application for first collective agreement or deprive the Board of jurisdiction to proceed to consider the merits - Board also held that it may impose a first collective agreement despite that no employees were in the bargaining unit - Preliminary objections dismissed - 373/03/LRA - July 30, 2003 - Sperling Industries.

FRAUD

Notice of Intention - Due to serious nature of allegations that Union acted fraudulently, Board does not consider improper filing "technicality", but hears matter fully - 626 & 738/90/LRA - May 10, 1991 - Intelicom Ltd. t/a Trojan Security Services.

Substantive Order - Union alleged Employer was fraudulent in an earlier matter before the Board - No time limit on fraud - Allegation must be established by evidence under Oath and in the presence of a Court Reporter - Preliminary Ruling - 634/93/LRA - September 20, 1993 - D.J. Provencher Limited, Canadian Tire.

Union Election Campaign - Union alleged documents circulated by other union during a representation vote campaign contained false statements to sway vote - Board satisfied other union attempted to get clarification and, in its mind, circulated accurate information - 619/98/LRA - November 17, 1999 - Interlake Regional Health Authority.

FREEZE

Time Limits - Change in working conditions - Board grants 45 day extension to 90 day period restricting changes in working conditions as per Section 10(3) of ***The Labour Relations Act*** - Substantive Order - Reasons not issued - 860/85/LRA - November 6, 1985 - Versatile Corporation t/a Versatile Farm Equipment Company.

Requirement to hold formal hearing - Held submissions from parties in initial applications provided sufficient information to deal with application for extension under Section 10(3) without conducting formal hearing - Substantive Order - Reasons not issued - 860/85/LRA - November 6, 1985 - Versatile Corporation t/a Versatile Farm Equipment Company.

Anti-union animus - Discipline - Shortly after certification, Employees disciplined for improper use of abuse crisis line - Union alleged Employer enforcing rule that did not exist before certification and was motivated by Employees involvement on negotiating team - Held rule restricting use of crisis line unwritten, but obvious - Employees improperly used crisis line although calls not related to Union activity - Both parties to blame for situation due to strained working relationship during certification process - Applications alleging unfair labour practice dismissed - 753/93/LRA - Oct. 14, 1994 - Selkirk Cooperative on Abuse Against Women Inc.

Days after Application for Certification, General Labourer refused to sign note agreeing to comply with Workplace Safety & Health regulations - Union claimed requirement to sign change in working condition contrary to Section 10 of ***The Labour Relations Act*** - When Employee lost job because of refusal, Union claimed discharge motivated by anti-union animus - Board held Employee quit not discharged and requirement to sign note not change in working condition - Claim dismissed - 555/94/LRA - Feb. 3, 1995 - Logan Iron and Metal Co. Ltd.

Employer plans to change its operations from having employed drivers to owner/operators was in the process of being put in place well before Union filed application for certification - Board held Employer did not violate statutory freeze provisions under Section 10 of ***The Labour Relations Act*** - 169/95/LRA - January 19/96 - First Class Transportation/ Messenger Service Inc., Triumph Transportation Inc., & George Chapman.

One week before collective agreement expired, Employer changed travel policy to require use of designated travel agent - Choice of travel agent administrative procedure - "Term or condition of employment" does not cover administrative procedures change of which is under management's prerogative as per collective agreement - Board not satisfied change in policy amounted to violation of Section 10(4) of ***The Labour Relations Act*** - 318/94/LRA - September 13, 1996 - University of Manitoba.

(Next Section: Sec. 8.0)

HEALTH AND SAFETY

Days after Application for Certification, General Labourer refused to sign note agreeing to comply with Workplace Safety & Health regulations - Union claimed requirement to sign change in working condition contrary to Section 10 of ***The Labour Relations Act*** - When Employee lost job because of refusal, Union claimed discharge motivated by anti-union animus - Board held Employee quit not discharged and requirement to sign note not change in working condition - Claim dismissed - 555/94/LRA - February 3, 1995 - Logan Iron and Metal Co. Ltd.

HOT GOODS

Whether the performance of work will "directly" facilitate the business or operation of a struck employer - Identifying the offending product - Indirect routing - Section 12 of ***The Labour Relations Act*** considered - 564/85/LRA - July 4, 1985 - Canada Packers Ltd.

Identifiable and separate product - Advertisement placed by struck employer only an offending product until it becomes part of the newspaper - Hardship or injury to innocent third party discussed - Section 12 of ***The Labour Relations Act*** considered - 739/85/LRA - October 18, 1985 - Winnipeg Free Press.

Section 12 of ***The Labour Relations Act*** allowing employees to refuse to handle "hot" products demonstrably justified in a free and democratic society - 739/85/LRA - October 18, 1985 - Winnipeg Free Press, Canadian Newspaper Company Limited.

Bakery's whole wheat flour supplier on strike - Employees of bakery refuse to handle the completed whole wheat product and the whole wheat in process - Subsection 12(1) of ***The Labour Relations Act*** considered - 119/86/LRA - March 6, 1986 - Empress Foods Ltd.

Employer indicated to Union that it would send any employees in Advertising Department home who refused to handle advertisement of an airline whose employees were on a legal strike - Application under section 12(2) of ***The Labour Relations Act*** fails as no employee had actually refused to handle an ad - 1063/85/LRA - March 10, 1986 - Winnipeg Free Press, Canadian Newspaper Company Limited.

Although Application fails under section 12(2) of ***The Labour Relations Act***, Board decides on "its own motion" that while an ad of a struck employer was in the Advertising Department, it was a separate and identifiable product and an employee could refuse to handle the work under section 12(1) of the **Act** as disruption to work minimal - 1063/85/LRA - March 10, 1986 - Winnipeg Free Press, Canadian Newspaper Company Limited.

Board held that omission of individual names on application under subsection 12(2) of ***The Labour Relations Act*** was a defect in form and by section 115 the proceeding would not be deemed invalid - 1063/85/LRA - March 10, 1986 - Winnipeg Free Press, Canadian Newspaper Company Limited.

Employee refuses to handle products of another employer whose employees were on a legal strike - Subsections 12(1) and (2) of ***The Labour Relations Act*** considered - 924/86/LRA - March 17, 1987 - Westfair Foods Ltd.

HOT GOODS

Board denied application under section 15(1) of ***The Labour Relations Act*** seeking determination that the work of employees of the Employer's Winnipeg plant would directly facilitate the operation of the Employer's plant in Calgary whose employees were lawfully on strike - Board held that the Calgary operations did not represent "another employer", and therefore, it did not have jurisdiction to deal with the matter under that section - 726/91/LRA - August 8, 1991 - Molson Breweries (Winnipeg).

Board's jurisdiction pursuant to Section 16 of ***The Labour Relations Act*** limited to occurrences within the province - No jurisdiction to rule on the situation where employees were on strike in one of the Employer's facilities in Saskatchewan - 789/92/LRA - Dec. 3,1992 - Western Grocers, Division of Westfair Foods Ltd.

Employer operated mine in Thompson Manitoba – Employer anticipated receiving nickel concentrate for processing from its wholly-owned subsidiary in Newfoundland, employees of which were on strike – Board determined that Newfoundland operation was not "another employer" for purposes of Section 15(1) of *The Labour Relations Act* to allow employees in Thompson to refuse to perform work which would directly facilitate the operation or business of another employer whose employees were on strike - Substantive Order– 15/10/LRA – May 7, 2010 – Vale INCO.

(Next Section: Sec. 9.2)

INDEPENDENT CONTRACTOR

Definition - Board determines whether individuals were employees as contemplated by ***The Labour Relations Act*** - 737/83/LRA - July 10, 1984 - R.M. of Strathclair.

Courier driver (owner/operator) classified as employees for the purposes of ***The Labour Relations Act*** - 1248/87/LRA - March 23, 1988 - Gelco Express Ltd.- **ABANDONED (COURT OF QUEEN'S BENCH)**.

Effect of an agreement between the parties on the Board's determination of the status of courier drivers as employees discussed - 1248/87/LRA - March 23, 1988 - Gelco Express Ltd. – **ABANDONED (COURT OF QUEEN'S BENCH)**.

Definition - Scuba instructors not "employees" for the purposes of ***The Labour Relations Act*** - 788/87/LRA - May 5, 1988 - Angelfish Enterprises Ltd.

Board determines that individual was an employee as he had very little decision making authority and basically only provided labour - Subsection 142(5) of The Labour Relations Act considered - 153/90/LRA - September 24, 1990 - Town of Dauphin.

Commissioned route persons determined their own hours, were paid on commission, were self-supervised, and hired and fired their own agents - Properly excluded from the bargaining unit as they were not employees as contemplated by ***The Labour Relations Act***- 414/90/LRA - March 18, 1991 - Perth Services Ltd, Perths Cleaners Launderers & Furriers Ltd. – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Area Distributors of advertising materials determined to be employees as they lacked degree of independent control especially because Employer made unilateral decisions regarding setting rates of pay - 72/94/LRA - March 23, 1995 - Canadian Media Distributors (Winnipeg) – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Control and Direction - Union claims the City and operators providing wheelchair passenger service under a detailed contract were carrying on associated businesses and constituted one employer - City exercising quality control over the contractor's activities or retaining right to remove unsuitable employees not evidence of common control or functional interdependence - 403-405/96/LRA - June 3, 1997 - City of Winnipeg, Gull Wing Transit, Duffy's Taxi and A.E. Crundwell.

Doctors previously employed by Clinic entered into an independent fee-for-service contract with Clinic - Board found duties, responsibilities and reporting relationship between Doctors and Clinic had not changed other than remuneration and support staff arrangements - Held agreement entered into was a contract for employment and not an agreement of an independent contractor - 391 & 417/96/LRA - Aug 29, 1997 - Shoal Lake Strathclair Health Centre/Drs. Muller, Venter, Krawczyk.

Routes handled by salesmen included in the bargaining unit and by franchisees/distributors who were excluded - After all routes converted to franchises/distributorships, Union sought to have franchisees/distributors included in the bargaining unit - Inappropriate to include those individuals whom the parties had agreed to exclude. - Application rejected - 38 & 39/96/LRA - Nov. 18, 1997 - McGavin Foods Limited.

INDEPENDENT CONTRACTOR

Routes handled by salesmen included in the bargaining unit and by franchisees/distributors who were excluded - Although all routes converted to franchises/distributorships, economic relationship of certain distributors more closely resembles employee/employer relationship than an independent contractor relationship - However, further evidence required before definitive decision can be made - 38 & 39/96/LRA - Nov. 18, 1997 - McGavin Foods Limited.

Newspaper Carriers - Employer has relatively high degree of control over the work, customers served, hours and manner paper must be delivered, route that is taken - Carriers could not refuse to deliver advertisements and carriers economically dependent on Employer - Board ordered and certified bargaining unit of newspaper carriers who are under written arrangement and assigned specific routes - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Employer submitted Delivery Representative Agreement establishes carriers are independent contractors - Title of agreement not determinative of status - Board has authority to determine employer-employee relationship exists based on particulars of case - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Employer claims owner/operators of taxis and handi-transit were independent contractors - Held evidence overwhelmingly established degree of control excercised over owner/operators more closely resembled employer/employee relationship than an independent contractor - 367/00/LRA - December 4, 2000 - A.E. Crundwell & Associates Ltd t/a Blueline Taxi; Balbir Chand Vij & Sons Ltd. t/a Blueline Taxi.

Little weight given to agreement Applicant signed declaring he was an independent contractor - Board looks at substance of employment relationship and determined that Employer exercised complete control over Applicant - Held Applicant was an employee under *Employment Standards Code.* – 559/01/LRA – October 23, 2001 – Elite Holdings Inc. aka Academy Towing, Kildonan Towing, Eddie's Towing.

Board held that physicians deemed to be independent contractors by the Employer were employees under *The Labour Relations Act* as the Employer supplied facilities and equipment for the physicians and controlled the patient load through the appointment booking process – 199/04/LRA – April 27, 2005 – Burntwood Regional Health Authority.

INDEPENDENT CONTRACTOR

Freelance – Board ruled alleged Employee was freelance columnist performing services as person in business on own account and was independent contractor not "employee" within the meaning of The Labour Relations Act; Employee not included in bargaining unit; and, was not a person on whose behalf a collective agreement was entered into - Substantive Order - 228/10/LRA - February 18, 2011 - Winnipeg Free Press.

(Next Section: Sec. 10.0)

JURISDICTION

Board examines whether local shop mechanics of an interprovincial transport company fall within federal or provincial jurisdiction - #A-254-1 - July 28, 1975 - Atomic Interprovincial Transportation Systems Ltd.

Board determines whether the work of dredging the harbour at Churchill is within federal or provincial jurisdiction - #N-106-2 - Undated - Government of Canada.

Board outlines its role in overseeing the employer/employee relationship after certification has been applied for and before a collective agreement has been reached - Section 18 of ***The Labour Relations Act*** considered - #B-104-15 - Undated - Borger Industries Limited.

Board's jurisdiction to interpret collective agreements or declare rights examined - Section 121 of ***The Labour Relations Act*** examined - No Number - July 8, 1976 - The Piling Contractors Association of Manitoba Incorporated and Subterranean (Winnipeg) Ltd.

Dispute concerning effect of Anti-Inflation legislation on collective agreement not within the jurisdiction of the Board - No Number - Undated - Manitoba Forestry Resources Ltd.

Board determines that it lacks jurisdiction to determine whether certain persons are within the scope of a unit previously certified - Section 121 of ***The Labour Relations Act*** considered - 4/77/LRA - February 18, 1977 - Manitoba Hydro Electric Board.

Arbitration the proper remedy for alleged violations of the collective agreement - 911/76/LRA - March 18, 1977 - Shell Canada Limited.

Federal/provincial jurisdiction dispute - Board determines that provincial labour relations legislation governs employer's trucking business - 439/77/LRA - August 25, 1977 - Greenberg Cartage.

Board declines jurisdiction to resolve a dispute as to transfers and the reclassification of job functions for inclusion in an office staff certificate to a supervisory certificate - 581/77/LRA - January 5, 1978 - Manitoba Hydro.

Board lacks jurisdiction to interpret previous certificates to determine under which certificate the job function of an employee falls - 581/77/LRA - January 5, 1978 - Manitoba Hydro.

Board's jurisdiction to make declaratory judgements discussed - Board refuses to determine whether a person is an employee so as to be included in a previously issued certificate - Section 121 of ***The Labour Relations Act*** considered - No Number - February 22, 1978 - Thompson General Hospital, Flin Flon General Hospital.

JURISDICTION

Board determines that it is within its jurisdiction to conduct a certification hearing regarding civil service employees employed under an employment contract - Section 3.1 of ***The Civil Service Act*** - 554/81/LRA - June 10, 1982 - Legal Aid Services Society of Manitoba.

Whether collective agreements entered into pursuant to federal legislation are collective agreements within the meaning of ***The Labour Relations Act*** - 283, 292, 392/83/LRA - October 24, 1983 - Deer Lodge Centre Incorporated.

Board considers that matter could be adequately determined under the provisions of the collective agreement - Subsection 142(5)(e) of ***The Labour Relations Act*** considered - Substantive Order - Reasons not issued - 215/85/LRA - May 22, 1985 - Winnipeg Convention Centre.

Apprehension of bias - Questions asked by the Board in an attempt to determine the voluntariness of a petition of objection within jurisdiction of Board - 612/85/LRA - October 18, 1985 - Westfair Foods Ltd.

Board reviews its decision as to the appropriateness of a bargaining unit restricted to the Faculty of Arts - 846/86/LRA - December 31, 1986 - University of Manitoba.

Application for certification for Employees of the Legislative Assembly Management Commission not within Board's jurisdiction - 567/87/LRA - February 24, 1988 - Legislative Assembly Management Commission – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Board dismissed application to determine whether collective agreement was in full force, because same question already determined by an arbitrator through the grievance procedure - Matter should be determined by the court - 334/90/LRA - July 17, 1990 - Blackwoods Beverages Ltd.

Individuals working in the offices of the Caucus were employees of the Legislative Assembly Management Commission rather than the political party - Employee/employer relationship fell outside the jurisdiction of ***The Labour Relations Act*** - Application for certification dismissed - 42/90/LRA - August 29, 1990 - New Democratic Party Caucus, The Legislative Assembly Management Commission.

Board denied application under section 15(1) of ***The Labour Relations Act*** seeking determination that the work of employees of the Employer's Winnipeg plant would directly facilitate the operation of the Employer's plant in Calgary whose employees were lawfully on strike - Board held that the Calgary operations did not represent "another employer", and therefore, it did not have jurisdiction to deal with the matter under that section - 726/91/LRA - August 8, 1991 - Molson Breweries (Winnipeg).

JURISDICTION

Board's jurisdiction pursuant to Section 16 of ***The Labour Relations Act*** limited to occurrences within the province - No jurisdiction to rule on the situation where employees were on strike in one of the Employer's facilities in Saskatchewan - 789/92/LRA - Dec. 3,1992 - Western Grocers, Division of Westfair Foods Ltd.

Employees covered under collective agreement of Province are not automatically civil servants - Board has jurisdiction to order that they are covered by agreement - 315/92/LRA - April 26, 1993 - Prov. of Manitoba, Venture Manitoba Tours Ltd.

Board's jurisdiction confined to matters specified in ***The Labour Relations Act*** - Cannot determine whether Employee properly dismissed - 497/94/LRA - February 6, 1995 - Domtar Inc.

Union claimed change to travel policy violation of Section 10(4) of ***The Labour Relations Act*** - Employer submitted Board should defer matter to arbitration under section 140(7) of the **Act** - Held arbitration preferable forum if issue was interpretation of the collective agreement - However, at issue was whether choice of travel agent was a condition of employment - 318/94/LRA - Sept. 13, 1996 - University of Manitoba.

Board does not have jurisdiction under Section 87(1)(d) of ***The Labour Relations Act*** to impose a First Collective Agreement as the Board had five years earlier imposed one between the parties - Application for First Collective Agreement dismissed - Substantive Order - Reasons not issued - 699/96/LRA - November 21, 1996 - Greenberg Stores.

Applicant has no new evidence, but felt he did not present all evidence at first hearing - Board held the additional evidence did not constitute reasonable basis for review - Board noted Employer should be penalized under **The Workplace Safety and Health Act** , but that **Act** was not under its jurisdiction - Original findings upheld that claim for unfair labour practice for safety violations be dismissed - 348/96/LRA - February 21, 1997 - Pointe River Holdings Ltd. (Geoplast).

Union decides not to proceed to arbitration with Employee's grievance regarding removal of letter from his personnel file - Employee requested Board order letter removed - Board does not have jurisdiction to order the remedy sought - 829/96/LRA - May 12, 1997 - Winnipeg Hydro.

Board believed Applicant wanted Board to deal with her grievance about the training she received, rather than Union’s decision not to arbitrate - Board has no jurisdiction to deal with adequacy of training - 590/97/LRA - April 29, 1998 - Cara Operations Ltd. **- LEAVE TO APPEAL TO COURT OF APPEAL DENIED.**

JURISDICTION

Arbitration - Duty of Disclosure - Union Steward reprimanded for not voluntarily disclosing at a disciplinary meeting that the employee was lying - Board questioned whether it should accept jurisdiction - Parties submitted matter properly before Board as conduct of shop steward and ability of officers to properly represent employees were matters of general importance to labour relations, and Union seeking declaration Employer committed unfair labour practice not available through arbitration - Board found arguments persuasive and accepted jurisdiction - 621/98/LRA - October 22, 1999 - MacMillan Bathurst.

Constitutional - Indians - Employer providing transportation services exclusively to aboriginal people who came from reserves to Winnipeg for medical treatment fell within provincial jurisdiction on labour relations matters - 363/02/LRA - July 25, 2003 - Southeast Resource Development Council t/a Southeast Medical Referral - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Board's failure to provide reasons for certification order did not invalidate the application for first collective agreement or deprive the Board of jurisdiction to proceed to consider the merits - Board also held that it may impose a first collective agreement despite that no employees were in the bargaining unit - Preliminary objections dismissed - 373/03/LRA - July 30, 2003 Sperling Industries - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**

Constitutional Law - First Nation Casino - Board finds that casino situated on Reserve land, operated by non-profit corporation and owned by eight First Nations' bands fell within provincial jurisdiction - 592/03/LRA - June 15, 2004 - Aseneskak Casino.

Applicant filed unfair labour practice application under Section 20 of *The Labour Relations Act* - Board satisfied that application was in respect of collective bargaining process - Board does not have jurisdiction under Section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - Reasons not issued - 391/06/LRA - Aug. 22, 2006 - Seine River School Division.

Arbitration - Telecommunications - Employer questions whether Board has jurisdiction to appoint arbitrator under Expedited Arbitration Referrals - While Employer had relationship with other corporate entities which fell under federal jurisdiction various provisions in collective agreement between Employer and Union, confirmed, on their face, that the parties had agreed that the operations of Employer fell within provincial jurisdiction - Applications for the two Expedited Arbitration Referrals were specifically limited to the collective agreement between the parties and were within the jurisdiction of the Board - 742/06/LRA & 743/06/LRA - November 23, 2006 - MTS Media, part of the MTS Group of Companies.

JURISDICTION

Scope of Duty - Employee's unfair labour practice allegations related to collective bargaining negotiations between Employer and Union which amended shift provisions in collective agreement - Held Board did not have jurisdiction under Section 20 regarding a collective bargaining process as that process does not involve "representing the rights of any employee under the collective agreement" - Substantive Order - 133/07/LRA - April 5, 2007 - Boeing Canada Technology.

Application did disclose a *prima facie* case as complaint made related to collective bargaining process and potential adjustments to collective agreement during its normal term - Board does not have jurisdiction under Section 20 as conduct complained of does not relate to Union representing rights of any employee under collective agreement - Application dismissed - Substantive Order - Reasons not issued - 181/07/LRA - May 8, 2007 - Ancast Industries.

Complaint dismissed as application did not disclose *prima facie* violation of Section 20 - Regardless, Board does not have jurisdiction under Section 20 regarding matters relating to ratification process because that process does not involve "representing the rights of any employee under the collective agreement" - Substantive Order - 193/07/LRA - May 10, 2007 - Manitoba Lotteries Corporation.

Stay of Proceedings - Judicial Review - Employer challenged Board's jurisdiction to deal with issue of quantum of compensation as judicial review proceedings had been commenced - Held Board had jurisdiction to proceed as commencement of judicial review does not stay Board's proceedings - Substantive Order - 448/06/LRA - June 12, 2007 - Integra Castings.

Majority of individuals in applied for unit were foreign seasonal agricultural workers from Mexico who worked under federal government program - Employer opposed application arguing foreign workers were aliens and therefore within federal jurisdiction as per Section 91 of the Constitution Act, 1867 - Provincial labour relations legislation applies to aliens as they were employed on vegetable farm which is an industry within legislative authority of provincial legislature to regulate - Application properly before provincial board - 595/06/LRA - June 26, 2007 - Mayfair Farms (Portage) - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED.**

Fact that Union investigating new medical evidence to determine link to events 2 years earlier did not affect disposition of unfair labour practice application against Employer - Core issue arising from any new evidence related to Employer's alleged obligation to reasonably accommodate Employee's disability in 2004 - That issue not within jurisdiction of the Board - Application dismissed - Substantive Order - 281/07/LRA - July 5, 2007 - Province of Manitoba, Winnipeg Child and Family Services.

JURISDICTION

Employee asserted collective agreement was contrary to Human Rights Code and asserted Employer and Union violated agreement - Board declined to adjudicate matter arising from an interpretation of the agreement as such assertions were properly subject of formal grievance and arbitration procedure - Substantive Order - 472/077/LRA - November 20, 2007 - Seven Oaks School Division.

First Nation band was direct employer of nurses providing health services on reserve to primarily aboriginal clients - Provision of health care services primarily for Indian beneficiaries not ordinary commercial activity found to be within provincial jurisdiction - Board satisfied provincial labour relations legislation did not apply and it did not have jurisdiction over labour relations of the Employers - Applications for certification dismissed - 480/07/LRA & 522/07/LRA - August 29, 2008 - Norway House Cree Nation and Pinaow Wachi Inc. Personal Care Home.

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* - 327/08/LRA - June 17, 2009 - Government of Manitoba, Manitoba Civil Service Commission / Organization & Staff Development.

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 - 327/08/LRA - June 17, 2009 - Government of Manitoba, Manitoba Civil Service Commission / Organization & Staff Development.

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- 193/09/LRA - August 19, 2009 - City of Winnipeg and Employee Benefits Board.

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 - 339/09/LRA - March 24, 2010 - Tembec Industries Inc.; Tembec Paper Group Pine Falls Operations.

JURISDICTION

Employee filed application seeking remedy for unfair labour practice contrary to Section 20 of *The Labour Relations Act* - Pursuant to *Act Respecting Hudson Bay Mining and Smelting Co., Limited*, the works and undertaking of Employer deemed "works for the advantage of two or more provinces" and Union certified under *Canada Labour Code* - Board determined it did not have jurisdiction to deal with application because Employer was subject to federal jurisdiction - Application dismissed – Substantive Order – 73/10/LRA – April 27, 2010 – Hudson Bay Mining and Smelting.

Constitutional - Indians - Health - Board dismissed applications for certification having concluded labour relations of Employers not within exclusive jurisdiction of Legislature - Union filed for review of decision which was granted and heard by expanded panel of Board - Expanded panel used functional test to inquire into nature, habitual activities and daily operations of Employers to determine whether operations constituted federal undertaking - Functional test conclusive - Essential nature of operations was health care which was not federal undertaking under section 91 of Constitution Act, 1867 - Application for Review and Reconsideration allowed and matter referred back to original panel - 318/08/LRA and 319/08/LRA - April 8, 2011 - Norway House Cree Nation - and - Pinaow Wachi Inc. Personal Care Home.

New evidence - Employee filed review application requesting Board review new documentation - Board satisfied documentation filed with review application did not constitute new evidence within meaning of Section 17(1)(a) and (b) of *Manitoba Labour Board Rules of Procedure* - Further, purported new evidence related to bargaining process and to ratification of collective agreement and that evidence was not relevant to Section 20 complaint - In any event, purported new evidence available at time original application filed - To accept review application would require Board to exceed its jurisdiction and award remedial relief by changing terms of settlement concluded by parties - Application dismissed – Substantive Order - 400/11/LRA - January 3, 2012 - Manitoba Lotteries Corp.

Scope of Duty - Arbitration - Employee alleged Union failed to perform due diligence for not challenging proper salary range for new job classification - Union filed grievances regarding Employee's placement on salary scale which were resolved to Employee's satisfaction - Filing and satisfactory resolution of grievances did not reveal arbitrariness or bad faith by Union - For Board to award remedy Employee claimed to revise the salary range would require Board to order amending collective agreement - Section 20 did not apply to collective bargaining process such as negotiation of salary range for new classifications - Employee failed to establish *prima facie* case Union breached section 20 - Application dismissed - Substantive Order - 1/12/LRA - March 23, 2012 - University of Manitoba.

JURISDICTION

Deferral - Employer submitted that Union had elected to use grievance arbitration provisions set out in collective agreement and, as a result, Board did not have jurisdiction to hear matter - Board found grievances referred to in Application were either partially completed, were completed pending receipt of decision from arbitrator or had been advanced to arbitration board to be scheduled for hearing - Application and three most recent grievances addressed same or essentially same matters - Given nature of remedial relief claimed in grievances, Board satisfied arbitration forum may adequately determine substance of matters raised in Application - Board declined to hear Application and deferred matters to grievance and arbitration provisions - Substantive Order - 291/11/LRA - March 30, 2012 - Burntwood Regional Health Authority and T.L..

Scope - Voluntariness - Employees filed application for decertification alleging Union lost support of majority of employees in bargaining unit because it was unable to assist members with pension concerns - Employer and Union opposed application - Board held neither Union nor Employer advanced specific grounds contesting voluntariness of petition - Unless some illegality or conduct contrary to *The Labour Relations Act* disclosed, and as long as material filed in support of application for decertification disclosed more than 50 percent of employees in bargaining unit voluntarily support application, Board does not inquire into reasons why employees wish to decertify rights of bargaining agent - Such subjective inquiries beyond scope of Board's role under the *Act* - Board satisfied more than 50 percent of employees in unit voluntarily supported Application - Board directed ballots cast in representation vote be counted - Substantive Order - Substantive Order - 244/12/LRA - Dec. 6, 2012 - Manitoba Teachers' Society.

Arbitration - Union filed unfair labour practice application alleging Employer refused to provide it with information regarding "minimum staffing level", a term used in collective agreement, which placed Union in position where it was unable to take reasonable care to protect interests of its members and potentially placing it in violation of its duty of fair representation - Union also argued Employer's failure to provide the information interfered with administration of Union and representation of its members - Board did not accept this perspective as reason to hear Application on its merits - Position being advanced by Union speculative in nature because it is asking Board to rule in advance on hypothetical situation which may arise - Also to determine Application on its merits, Board would have to interpret meaning of phrase "minimum staffing level" and then assess Employer's obligation to provide information to Union under that clause - Board satisfied interpretative determinations more properly fell within jurisdiction and expertise of arbitration board - Application dismissed - Substantive Order - 210/12/LRA - January 24, 2013 - City of Winnipeg and Winnipeg Police Service.

JURISDICTION

Constitutional - Indian Act - Union applied for certification as bargaining agent for nursing unit - Employer questioned Board's jurisdiction submitting that care home was located on Cree Nation reserve and, by the *Indian Act,* matter would be under federal jurisdiction - Board applied "functional test" to nature, habitual activities and daily operations of care home, found nature of operation is to provide residential care for the elderly and infirm members of the community - Board satisfied activities of Employer do not constitute federal undertakings - Fact that care home operated by an entity constituted by "Band By-Law" passed and enacted pursuant to a statutory authority contained in section 81 of the *Indian Act* and was "derivative entity" of Opaskwayak Cree Nation did not alter conclusion - Labour relations of Employer subject to provincial regulation and application for certification properly advanced under *The Labour Relations Act* - Certification granted - Substantive Order - 129/13/LRA - June 21, 2013 - Rod McGillivary Memorial Care Home.

Employee filed duty of fair representation application alleging Union failed to ensure he was being paid in accordance with April 2005 Letter of Agreement - As remedial relief, he requested salary of job classification be adjusted and requested retroactive pay - Union denied allegations and asserted matters raised were res judicata as they were same as Duty of Fair Representation application Employee filed in January 2012 - Board determined Application without merit as it was essentially re-litigating essence of January 2012 complaint which was disposed of with finality, particularly having regard that Employee did not file application for review and reconsideration - Further, nature of relief Applicant was seeking would require Board to function as surrogate interest arbitrator and award substantive monetary relief against Union and Employer on retroactive basis beyond Board's jurisdiction under section 20 of The Labour Relations Act - No breach of section 20(b) of the Act revealed in factual circumstances - Application dismissed - Substantive Order - 123/12/LRA - August 21, 2013 - University of Manitoba.

JURISDICTIONAL DISPUTE

Employees of predecessor employer intermingled with employees of company to whom the business is sold - Appropriate bargaining unit determined - 243/87/LRA - November 26, 1987 - Sterling Stall Group; Lantry Leather.

(Next Section: Sec. 12.1)

LACHES

Bargaining Agent aware for 21 years that positions existed and what duties were performed - Although incumbents were employees as defined in ***The Labour Relations Act***, bargaining agent's inactivity in pursuing representation results in tacit agreement to exclude them from bargaining unit - Reasons not issued - 1139/91/LRA - May 7, 1992 - Thompson General Hospital.

LOCKOUT

Board grants consent under Subsection 35(5) of ***The Labour Relations Act*** as Incumbent Union did not contest displacement application - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

Objecting employees have no standing in application as Petition did not include allegations against the Union as required by Subsection 47(2) of ***The Labour Relations Act*** - 492/94/LRA - March 30/95 - Trialmobile Canada, Division of Gemala Industries Ltd.

Employees terminated during lockout eligible to vote in displacement application because they were on the payroll the day immediately before the lockout commenced - Employees who had resigned out of economic necessity could be eligible to vote - However, replacement workers not eligible as not on the payroll before lockout and did not share community of interest with locked-out employees - Subsection 35(6) discussed - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

Reinstatement - Employer dismissed long-term Employees convicted of criminal mischief on picket line - Section 12(2) of ***The Labour Relations Act*** requires reason for dismissal to be unrelated to lockout - Board ordered reinstatement without monetary relief - 723/94/LRA - April 6, 1995 - Trailmobile Canada, Div. of Gemala Industries.

Definition - Lockout ended when employees submitted to Employer's terms even though bargaining agent certified at the start of the lockout had been displaced - Also Subsection 89(1) of ***The Labour Relations Act*** prohibits lockout during first 90 days after certification - Section 13(2) of the **Act** considered - 723/94/LRA - April 6, 1995 - Trailmobile Canada, Div. of Gemala Industries.

Definition - Employees discharged during lockout for criminal conduct still employees when lockout ended - Scope of section 13 of ***The Labour Relations Act*** not restricted to those currently employed to do work - Sections 7 and 13 of the **Act** considered - 723/94/LRA - April 6, 1995 - Trailmobile Canada, Div. of Gemala Industries.

Employer rejected the 12-hour shift schedule at the bargaining table - During lock-out requested hours of work exemption for 12-hour shift - Held could not make unilateral changes during lock-out that it opposed during negotiations or "pre-impasse negotiating framework" - Request denied - 369/95/ESA - August 2, 1995 - Gateway Industries Ltd.

Union continues to represent the employees employed in the bargaining unit at the time the lock-out commenced, including those who had returned to work - Union was at party to the proceedings before the Board - 369/95/ESA - August 2, 1995 - Gateway Industries Ltd.

Short term - To move negotiations along, Employer imposes one-day lockout - Board determines that lockout was lawful as no anti-union animus nor blatant attempt to defeat union - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

LOCKOUT

Subsequent collective agreement - Following consideration of material filed, evidence and argument presented at hearing, Board determined Employer was not bargaining in good faith and Union was bargaining in good faith, sufficiently and seriously - Held parties unlikely to conclude collective agreement within 30 days - Board ordered Employer immediately terminate lockout, reinstate employees who were locked out and settle a collective agreement either by an arbitrator within 60 days or failing an agreement between the parties on an arbitrator by the Board within 90 days of the date of the Order - Substantive Order - 85/07/LRA - May 15, 2007 - Fort Rouge and Imperial Veterans Legion.

MEMBERSHIP EVIDENCE

Board asked to determine if members of Association were members in good standing if admitted before constitution adopted - No formal method for admittance provided in constitution - N-199-3 (LRA) - May 13, 1975 - Nelson River Construction Ltd.

Board determines that membership in good standing is established by the signing of a membership card and the payment of $1.00 notwithstanding other obligations imposed by the Association's constitution - Section 49 of ***The Labour Relations Act*** considered - No Number - February 4, 1977 - Macleods Division of Macleods Stedman Limited.

Board asked to consider a date other than the date of application for certification in determining membership support - "Build down" principle - Lay-offs occurring between the date of application and the date of certification hearing - 64/83/LRA - April 20, 1983 - Mrs. K's Food Products Ltd.

Board considers voluntariness and effect of a petition of objection on membership evidence in support of an application for certification - 439/84/LRA - October 1, 1984 - The T. Eaton Company Limited.

Date of filing an Application for Certification is the paramount date for determining employee wishes - Sections 31, 36 and 38 of ***The Labour Relations Act*** considered - 74/85/LRA - April 3, 1985 - Perimeter Lumber, Fin Mac Lumber Ltd.

Alteration of membership card alleged - Termination of membership in union prior to date of application for certification discussed - Subsection 36(2) of ***The Labour Relations Act*** considered - 231/86/LRA - July 24, 1986 - Kodiak Industries Ltd.

Board outlines the extent of the inquiries, in lieu of personal knowledge, required of a person who signs a statutory declaration in support of an application for certification - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

Petitions of Objection dismissed for failure to allege or substantiate Union misconduct regarding membership support - Subsections 45(4) and 47(2) of ***The Labour Relations Act*** considered - 414/90/LRA - March 18, 1991 - Perth Services Ltd. & Perth Cleaners Launderers and Furriers Ltd. – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Board held there were no employees within the applied for unit as per Rule 28 of the ***Rules of Procedure*** as all personnel were either casual or part-time and were employed on on-call basis - Application for Certification dismissed - Substantive Order - Case No. 217/93/LRA - June 9, 1993 - Royal Crown Dining Room.

Young student received appropriate information regarding union membership during organizational campaign, but she did not understand the nature of her actions - Her membership to be disregarded in determining employees' wishes - 360/95/LRA - February 8, 1996 - Greenberg Stores Limited – **LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

MEMBERSHIP EVIDENCE

Hiring Hall - Two members of an out-of-province local sent to northern hydro job site contrary to Manitoba Hydro's northern hiring policy and with no documentary proof membership transferred to Manitoba local - Two others did not pay initiation fee as per Constitution and By-laws - Held none were members in good standing and collective agreement not properly ratified - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc. – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Automatic - No evidence that any member had taken steps to terminate membership at the time of or prior to the date of application for certification - Union has required support for automatic certification - Certification issued - 650 & 738/96/LRA - February 14, 1997 - East Side Ventilation. – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; COURT OF APPEAL REVERSED DECISION OF COURT OF QUEEN'S BENCH; LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED.**

Proposed unit of substitute teachers appropriate for collective bargaining - For determination of employee support, Board modified Rule 28 of *Manitoba Labour Board Rules of Procedure* to meet the circumstances of the particular case - Board ruled that it would include any teacher, (1) whose name appeared on the Division's list of substitutes on the date of application, and (2) who had worked at any time during the 12 weeks prior to date of application, excluding Christmas break from the 12 week period - 776-778/03/LRA & 149/04/LRA - December 6, 2004 - Portage La Prairie School Division, Flin Flon School Division, Pine Creek School Division & Swan Valley School Division.

Union filed application for certification for unit of all inside recycling employees of Employer - Board received letters of objection which were not supported by statutory declaration - Board ordered employees to provide further particulars of their objections, verified by statutory declaration - Board, following consideration of objections filed by employees, determined, pursuant to sections 45(4)(b) and 45(4)(d) of *The Labour Relations Act,* that it would not accept union membership cards as evidence that they wished to have Union represent them as their bargaining agent - Substantive Order - Reasons not issued - 88/13/LRA - May 8, 2013 - Halton Recycling Ltd. dba Emterra Environmental.

Revocation - Prior to date of application for certification, Employee sent email to individual who was acting on behalf of Union to conduct organizing drive, withdrawing her support for Union, having previously signed membership card - As per section 45(2) of *The Labour Relations Act*, an employee may, prior to date of application for certification, terminate membership in Union by taking "reasonable and unequivocal steps to do so" - Best practice to terminate membership is in writing to Union and to copy correspondence to Board - However, Board satisfied that email sent prior to date of application constituted reasonable and unequivocal step taken to terminate membership in Union - Membership evidence with respect to Employee not accepted - Substantive Order - 360/12/LRA - June 21, 2013 - Jobworks Employment Education Programs.

MEMBERSHIP EVIDENCE

Defects/ Irregularities - Employees testified they were not provided with information required under section 45(3.1) of *The Labour Relations Act* - Board was satisfied their signatures on membership cards acknowledging they were provided with information regarding initiation fees and membership dues and how they were determined, constituted proof of compliance with section 45(3.1) - Substantive Order - 360/12/LRA - June 21, 2013 - Jobworks Employment Education Programs.

Revocation - Prior to date of application for certification, Employee took steps to terminate her membership, including attending at Union's office, leaving voice mail message with senior Union official, and meeting with individual who was acting on behalf of Union to conduct organizing drive and advising him numerous times she wished to have membership card that she signed returned to her - As per section 45(2) of *The Labour Relations Act*, an employee may, prior to date of application for certification, terminate membership in Union by taking "reasonable and unequivocal steps to do so" - Best practice to terminate membership is in writing to Union and to copy correspondence to Board - Board satisfied, while Employee did not seek to terminate her membership in writing, she took reasonable and unequivocal steps to do so prior to date application for certification was filed - Membership evidence with respect to Employee not accepted - Substantive Order - 360/12/LRA - June 21, 2013 - Jobworks Employment Education Programs.

MERGER

Board considers whether the bargaining units of two printing companies should be merged when one printing company purchases the assets of another - Section 36 of ***The Labour Relations Act*** considered - #G-2-9 - Undated - The Garry Press Ltd.

Board rules that despite the dissolution of the Districts and merger with the Division, that an obligation to bargain with the certified bargaining agent still existed - However, existing bargaining units no longer appropriate - Vote ordered to determine new agent - Subsections 10((1)d) and 12 of ***The Labour Relations Act*** considered - S-267-1 - July 13, 1967 - Assiniboine North School Div., No. 2.

Application to merge two units where one is newly certified and the other is governed by a collective agreement, dismissed - 544/88/LRA - January 31, 1989 - Deer Lodge Centre.

Appropriateness of a larger merged unit - The concept of merging doctors with other employees discussed - 544/88/LRA - January 31, 1989 - Deer Lodge Centre.

Educational support staff apply for certification and merger with a pre-existing bargaining unit of clerical workers - 514/89/LRA - August 15, 1989 - St. Vital School Division, No. 6.

(Next Section: Sec. 14.0)

NATURAL JUSTICE

Apprehension of bias - Questions asked by the Board in an attempt to determine the voluntariness of a petition of objection within jurisdiction of Board - 612/85/LRA - October 18, 1985 - Westfair Foods Ltd.

Privately obtained information - Chairperson refers to an announcement in the Winnipeg Free Press at hearing - Application for review denied - 612/85/LRA - October 18, 1985 - Westfair Foods Ltd.

(Next Section: Sec. 15.1)

ORGANIZATIONAL CAMPAIGN

Union support - A temporary employee hired to work Sundays during the summer is not an affected employee for the determination of union support - R-213-1 - Undated - Rapid Cleaners Ltd.

Board asked to determine if members of Association were members in good standing if admitted before constitution adopted - No formal method for admittance provided in constitution - N-199-3 (LRA) - May 13, 1975 - Nelson River Construction Ltd.

Date of application for certification determined to be the effective date for the determination of union support - Subsection 30(1)(a) of ***The Labour Relations Act*** considered - No Number - May 26, 1976 - Ronald I.G.A.

Union membership - Board determines that membership in good standing is established by the signing of a membership card and the payment of $1.00 notwithstanding other obligations imposed by the Association's constitution - Section 49 of ***The Labour Relations Act*** considered - No Number - February 4, 1977 - Macleods Division of Macleods Stedman Limited.

Employer interference - Company causes the formation of an Association for the purpose of defeating a union organization campaign - Subsection 34(1) and Sections 31 and 7 of ***The Labour Relations Act*** considered - No Number - February 4, 1977 - Macleods Division of Macleods Stedman Limited.

Employees laid-off during a Union organizational campaign - Allegations of unfair labour practice examined - Section 7 of ***The Labour Relations Act*** considered - 163-166/77/LRA - June 3, 1977 - G. A. Junkin (1976) Co. Ltd.

Representation vote ordered where employer found guilty of unfair labour practice during organizational campaign - 220, 279, 414/83/LRA - June 21, 1983 - Valdi Inc.

Employer alters terms of employment and terminates a number of employees during organizational campaign - Sections 5, 6, 7 and 9 of ***The Labour Relations Act*** considered - 220, 279, 414/83/LRA - June 21, 1983 - Valdi Inc.

Board reviews its position on the question of Petitions of Objection filed in opposition to certification application - Section 31 of ***The Labour Relations Act*** considered - 872/83/LRA - May 4, 1984 - Home Orderly Service Ltd.

Union publication of campaign literature during organizational drive examined - 439/84/LRA - October 1, 1984 - The T. Eaton Company Limited.

ORGANIZATIONAL CAMPAIGN

Date of the filing of an Application for Certification is the paramount date for determining employee wishes - Sections 31, 36 and 38 of ***The Labour Relations Act*** considered - 74/85/LRA - April 3, 1985 - Perimeter Lumber, Fin Mac Lumber Limited.

Significance of a Petition of Objection on an Application for Certification discussed - Voluntariness of Petition of Objection examined - Sections 31, 36 and 38 of ***The Labour Relations Act*** considered - 74/85/LRA - April 3, 1985 - Perimeter Lumber, Fin Mac Lumber Limited.

Employees who had previously signed union membership cards, file a petition of objection to an Application for Certification - Employees allege union misconduct in solicitation of union membership - Subsections 36(1) and 36(4) of ***The Labour Relations Act*** considered - 898/85/LRA - December 11, 1985 - Conquist Nursing Home Ltd.

Alteration of membership card alleged - Termination of membership in union prior to date of application for certification discussed - Subsection 36(2) of ***The Labour Relations Act*** considered - 231/86/LRA - July 24, 1986 - Kodiak Industries Ltd.

Board determines no fraud or false pretence involved in organizational campaign - 346/88/LRA - March 9, 1990 - Kittson Investments Ltd., Singleton's Professional Family Hair Care.

Fraud discussed - Employee misinterprets statements made by Union representative who did not intentionally mislead him - Applicant did not improperly obtain list of employees - Application to set aside certification disallowed - Subsections 19(b), 45(4), 47(1)&(2) and 52(c)&(d) of ***The Labour Relations Act*** considered - 626 & 738/90/LRA - May 10, 1991 - Intelicom Ltd. t/a Trojan Security Services.

Employer motivated by anti-union animus when indefinitely laying off three employees who participated in union organizational meeting - Rationale suspect because no prior written record of disciplinary problems, anti-union comments made by owner, junior employees keep on staff and new employees hired - Section 7 of ***The Labour Relations Act*** considered - 60/91/LRA - January 14, 1992, Northern Meats – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Conflict of Interest - Person who played role in organizing employees on behalf of the Union also held positions as member on Employer's board of directors and on executive committee - Board found employees could have perceived his role was approved by management and his presence at meeting tainted free expression of employees' wishes - Board held his role as staff organizer was contrary to Section 5 and 6 of ***The Labour Relations Act*** - Application for certification dismissed - Ordered Union not to make further application for certification until three months from date of Decision - 390 & 449/93/LRA - February 10, 1994 - Rossmere Golf and Country Club.

ORGANIZATIONAL CAMPAIGN

Anti-union animus - Employer Interference - Employer does not come before Board with "squeaky clean hands" - Employer's speech given at captive meeting was threat to job security and thwarted true wishes of employees - As well, lay-offs and terminations imposed two days after organizational campaign tainted by anti-union animus - Ordered employees be reinstated with back pay, Employer pay Union $2,000 for interfering with its rights - Discretionary certificate issued - 813 & 814/98/LRA - February 29, 2000 - Canadian Anglo Machine and Ironwork Inc.

Employer Interference - Employer sent letter to employees, which went beyond providing information pertaining to conduct of vote - Employer claimed letter sent because of staff's inability to access the posting on their day off - Board questioned Employer's intent given letter sent to all 70 employees rather than the 10 who would be off and no evidence produced that employees were confused about voting procedure - Employer's credibility further questioned because Union member overheard him commenting negatively about the Union and the certification process - Held sole purpose of sending letter was to interfere with the formation and selection of the Union - Employer's conduct affected the results of the representation vote - Discretionary certification issued - 479/00/LRA & 561/00/LRA - July 5, 2001 - Emerald Foods Ltd. t/a Bird's Hill Garden Market IGA - **APPEAL TO COURT OF QUEEN BENCH GRANTED; BOARD'S ORDER AND CERTIFICATE QUASHED;MOTION FOR STAYED DENIED; APPEAL TO COURT OF APPEAL GRANTED, BOARD ORDER RESTORED.**

Employer Interference - Employer's letter to employees; attachment, and Power Point presentation was clearly directed at employees in an attempt to interfere with formation and selection of a union - Employer's actions intended to and had a "chilling effect" on organizing drive - Discretionary certificate issued – 171 & 172/05/LRA – October 27, 2005 – Praxair Canada.

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 - 362/08/LRA - October 2, 2009 - Triple Seal Ltd.

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 - 34/09/LRA - October 2, 2009 - Triple Seal t/a Northwest Glass Products.

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 - 34/09/LRA - October 2, 2009 - Triple Seal t/a Northwest Glass Products.

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- 34/09/LRA - October 2, 2009 - Triple Seal t/a Northwest Glass Products.

(Next Section: Sec. 16.1)

PETITION

Employer allows an employee to prepare and circulate petition for decertification on his premises - Sections 6 and 14 of ***The Labour Relations Act*** considered - 57/77/LRA - March 3, 1977 - West Hotel.

Application for cancellation of Union's Certificate - Prima facie case of 50 percent employee support not established - Subsection 4(1) of ***The Labour Relations Act*** applied - 202/85/LRA - June 21, 1985 - Freed and Freed of Canada Inc. and Cambrian Clothing Ltd.

PETITION OF OBJECTION

Employer interference - Superintendent of plant circulates with petition of objection following the union's application for certification - No Number - February 24, 1959 - Dent's English Bacon Co. Ltd.

Board reviews its position on the question of Petitions of Objection filed in opposition to certification application - Section 31 of ***The Labour Relations Act*** considered - 872/83/LRA - May 4, 1984 - Home Orderly Service Ltd.

Board considers voluntariness and effect of a petition of objection on membership evidence in support of an application for certification - 439/84/LRA - October 1, 1984 - The T. Eaton Company Limited.

Significance of a Petition of Objection on an Application for Certification discussed - Voluntariness of Petition of Objection examined - Sections 31, 36 and 38 of ***The Labour Relations Act*** considered - 74/85/LRA - April 3, 1985 - Perimeter Lumber, Fin Mac Lumber Limited.

Apprehension of bias - Questions asked by the Board in an attempt to determine the voluntariness of a petition of objection within jurisdiction of Board - 612/85/LRA - October 18, 1985 - Westfair Foods Ltd.

Employees who had previously signed union membership cards, file a petition of objection to an Application for Certification - Employees allege union misconduct in solicitation of union membership - Subsections 36(1) and 36(4) of ***The Labour Relations Act*** considered - 898/85/LRA - December 11, 1985 - Conquist Nursing Home Ltd.

Board determines the status of a group of objecting employees in an application for certification - Subsections 45(4) and 47(2) of ***The Labour Relations Act*** considered - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

Board determines no fraud or false pretence involved in organizational campaign - 346/88/LRA - March 9, 1990 - Kittson Investments Ltd., Singleton's Professional Family Hair Care.

Petitions of Objection dismissed for failure to allege or substantiate Union misconduct regarding membership support - Subsections 45(4) and 47(2) of ***The Labour Relations Act*** considered - 414/90/LRA - March 18, 1991 - Perth Services Ltd. & Perth Cleaners Launderers and Furriers Ltd. – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Objecting employees have no standing in application as Petition did not include allegations against the Union as required by Subsection 47(2) of ***The Labour Relations Act*** - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

PETITION OF OBJECTION

Witness - Credibility - Board questioned motive of Objecting Employees who became supervisors subsequent to campaign - Board does not accept they did not know of obligation to pay union dues given they were previously active in the Union and had paid dues - 360/95/LRA - February 8, 1996 - Greenberg Stores Ltd. – **LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

Employees file Objection claiming Union failed to disclose amount payable for dues - Held Objection filed because their enthusiasm for joining the Union cooled - Not sufficient reason to set aside the previous decision of the Board - 360/95/LRA - February 8, 1996 - Greenberg Stores Ltd. – **LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

Standing - Objecting Employees no longer wishing Union to represent them does not qualify as grounds for filing objection as per Section 47(2) of ***The Labour Relations Act*** - Objecting Employees had no further status in proceedings - 650 & 738/96/LRA - February 14, 1997 - East Side Ventilation – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; COURT OF APPEAL REVERSED DECISION OF COURT OF QUEEN'S BENCH; LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED.**

Voluntariness of petition - Senior supervisors demoted from out-of-scope manager positions were not considered management in terms of unfair labour practice allegations, but given nature of their jobs, other employees may perceive them to be management - Supervisors' signatures discounted from petition as well as any employee signing after them as they could have inferred petition was endorsed by management - 100/00/LRA & 136/00/LRA - December 12, 2001 - Integrated Messaging Inc.

Voluntariness of petition implied by *The Labour Relations Act* - Petition tainted as it did not comply with unwritten requirement to have employees' signatures witnessed; the Applicants did not possess petition at all times; petition was circulated at the workplace; petition did not state that the employees signing it were appointing the Applicants to represent them; and Applicant delivered petition to the Board while scheduled to work which could appear that petition was endorsed by management - Board not satisfied 50% of the affected employees voluntarily supported the application - Application for decertification dismissed - 100/00/LRA & 136/00/LRA - December 12, 2001 - Integrated Messaging Inc.

(Next Section: Sec. 16.4)

PRACTICE AND PROCEDURE

Board orders - Board examines the procedure to be followed when reconsidering an order that has been struck down on certiorari - No Number - May 28, 1976 - Gateway Construction Co. Ltd.

Amendment of proceedings - An amendment of an application to the Board is procedural only and does not affect the date of application - 529/76/LRA - Undated - Teledyne Canada Bell Foundary.

Board reviews applicable considerations when determining intervenor status in proceedings before the Board - Subsection 1(s) and Regulation 5(1) of ***The Labour Relations Act*** considered - 554/81/LRA - June 10, 1982 - Legal Aid Service Society of Manitoba.

Notice of Intention - Board allows documentation filed after the expiry date for replies - 439/84/LRA - October 1, 1984 - The T. Eaton Company Ltd.

Board considers that matter could be adequately determined under the provisions of the collective agreement - Subsection 142(5)(e) of ***The Labour Relations Act*** considered - Sustantive Order - Reasons not Issued - 215/85/LRA - May 22, 1985 - Winnipeg Convention Centre.

Time Limits - Change in working conditions - Board grants 45 day extension to 90 day period restricting changes in working conditions as per Section 10(3) of ***The Labour Relations Act*** - Substantive Order - Reasons not issued - 860/85/LRA - Nov. 6, 1985 - Versatile Corporation t/a Versatile Farm Equipment Company.

Requirement to hold formal hearing - Held submissions from parties in initial applications provided sufficient information to deal with application for extension under Section 10(3) without conducting formal hearing - Substantive Order - Reasons not issued - 860/85/LRA - November 6, 1985 - Versatile Corporation t/a Versatile Farm Equipment Company.

Although Application fails under section 12(2) of ***The Labour Relations Act***, Board decides on "its own motion" that while an ad of a struck employer was in the Advertising Department, it was a separate and identifiable product and an employee could refuse to handle the work under section 12(1) of the **Act** as disruption to work minimal - 1063/85/LRA - March 10, 1986 - Winnipeg Free Press, Canadian Newspaper Company Limited.

Board held that omission of individual names on application under subsection 12(2) of ***The Labour Relations Act*** was a defect in form and by section 115 the proceeding would not be deemed invalid - 1063/85/LRA - March 10, 1986 - Winnipeg Free Press, Canadian Newspaper Company Limited.

Failure to submit proper documentation - Counsel for a group of objecting employees denied status at certification hearings - 132/86/LRA - December 17, 1986 - Ross Foods and 41185 Manitoba Ltd.

PRACTICE & PROCEDURE

Union capable of filing an application on behalf of an employee - Union acts as representative - 924/86/LRA - March 17, 1987 - Westfair Foods Ltd.

Intervenor not properly constituted union and agreement between Employer and Intervenor not collective agreement as defined in ***The Labour Relations Act*** - Intervenor has no status in application for certification proceedings - Reasons not issued - 1139/89/LRA - February 26, 1990 - Bogardus Wilson Ltd.

Board rules that the onus was on the Employer to proceed first, even though the application was initiated by the Certified Bargaining Agent - Subsection 142(5)(a) and (d) of ***The Labour Relations Act*** considered - 1141/89/LRA - May 31, 1990 - Victoria General Hospital – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

The Association is not estopped from filing an application with the Board even though it initially filed the matter under the grievance procedures of the collective agreement - 352/90/LRA - September 18, 1990 - The Winnipeg Art Gallery.

Notice of Intention - Due to serious nature of allegations that Union acted fraudulently, Board does not consider improper filing "technicality", but hears matter fully - 626 & 738/90/LRA - May 10, 1991 - Intelicom Ltd. t/a Trojan Security Services.

Consolidation - Although same parties involved in expedited arbitration referral, facts of two grievances not related - Not appropriate case for consolidation - Reasons not issued - 718 & 740/91/LRA - August 6, 1991 - Canada Packers.

Particulars of case do not satisfy Board that a "prima facie" case had been presented to warrant matter proceeding to hearing - Application dismissed - Reasons not issued - 441/92/LRA - June 2, 1992 - St. Boniface Hospital.

Undue delay - Application alleging unfair labour practice filed 5 months after allegations occurred - Board dismisses application pursuant to Section 30(2) of ***The Labour Relations Act*** - Reasons not issued - 438/92/LRA - June 2, 1992 - Province of Manitoba, Government Services.

Applications pending are to be scheduled in the chronological order in which the parties filed them with the Board - Order No. 979 - 1036/91/LRA & 1001 & 1028/92/LRA - December 15, 1992 - Victoria General Hospital.

Board departs from past reliance on date of application as evidentiary cut-off date - Held that a period of six months from the date the position was filled was a reasonable cut-off date - 638/92/LRA - December 22, 1992 - Flin Flon General Hospital.

"Transitional" period for amended **Labour Relations Act** - Section 40 of the **Act**, as it existed at date application filed, governs the determination of support level for an application for certification - 1103/92/LRA - February 5, 1993 - Gourmet Baker Inc.

PRACTICE & PROCEDURE

Board declined to dismiss technically defective petition because employees were not professional union representatives and intent of document clear - However, Board required sworn viva voce evidence to prove employees supported application - 960/92/LRA - February 18, 1993 - Western Egg Co. Ltd.

Cut-off date for evidence regarding whether persons are employees determined to be the date of hearing - 762/92/LRA - March 8, 1993 - Winnipeg Free Press.

Onus on Employer/Respondent to adduce evidence first, although application initiated by Bargaining Agent - 762/92/LRA - March 8, 1993 - Winnipeg Free Press.

Standing - Based on past practice, Persons Concerned do not have status in an application to determine if persons are employees - 762/92/LRA - March 8, 1993 - Winnipeg Free Press.

Consolidation - Two applications for certification filed for same health care facility - Board reluctant to apply evidence mutatis mutandis without consent of parties - Decides to hear first application and adjourn second - 843/92/LRA - April 15, 1993 - Middlechurch Home of Winnipeg.

Particulars - Applicant required Respondent to provide additional particulars to Reply - Board satisfied a Reply pursuant to ***Rule 22*** does not require the same specificity of facts as does ***Rule 3(1) and (2)*** relating to the allegations of improper conduct - Reasons for Decision not written - 158/93/LRA - April 22, 1993 - Unicity Taxi Ltd.

Board held there were no employees within the applied for unit as per Rule 28 of the ***Rules of Procedure*** as all personnel were either casual or part-time and were employed on on-call basis - Application for Certification dismissed - Substantive Order - Case No. 217/93/LRA - June 9, 1993 - Royal Crown Dining Room.

Application filed under Section 49(1) of ***The Labour Relations Act*** - Reference made to Section 49(3), but no evidence adduced with respect to that section - Board finds application untimely - Application dismissed - 410 & 741/93/LRA - August 26, 1993 - Linda Tyndall t/a 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Substantive Order - Union alleged Employer was fraudulent in an earlier matter before the Board - No time limit on fraud - Allegation must be established by evidence under Oath and in the presence of a Court Reporter - Preliminary Ruling - 634/93/LRA - September 20, 1993 - D.J. Provencher Limited, Canadian Tire.

Admissibility - Board maintained date of application as evidentiary cut-off date - Employer not allowed to introduce evidence from period between date of application and date of hearing especially when attempt made three days into hearing - 958/92/LRA - October 18, 1993 - Maples Personal Care Home.

PRACTICE & PROCEDURE

Consolidation - Employer filed application during hearing respecting same positions being considered in hearing - Board refused to consolidate applications as it viewed filing of second as attempt to avoid Board decision not to allow evidence past evidentiary cut-off date - 958/92/LRA - October 18, 1993 - Maples Personal Care Home.

Particulars - Preliminary issue raised as to filing of further particulars - Held Applicant required to provide specific time frame within which incidents contained in the original application allegedly occurred - No further particulars required - 943/93/LRA - December 9, 1993 - G. Robinson, N. Meadows, The Sharon Home

Particulars - Preliminary Issue - Reply to an application, filed pursuant to ***Rule 22***, does not require the same specificity of facts as application filed pursuant to ***Rules 3(1) and 3(2)***, especially as case is a direct onus situation - Matter to proceed to hearing - - 497/94/LRA - September 27, 1994 - Klaus Scheurfeld, Domtar Inc.

Adjournments - Witnesses not available as Union told them hearing was adjourned - Union claimed Employer agreed to adjournment pending outcome of private mediation - Board satisfied no agreement, but Union honestly thought hearing adjourned - However, held Union should have confirmed with the Board before cancelling witnesses - Request denied - 753/93/LRA - October 14, 1994 - Selkirk Cooperative on Abuse Against Women Inc.

Subpoena - Union requests subpoena for Telephone Systems records and numerous documents from Employer - Board limits subpoena to documents extensively referenced during hearing, because Union previously rejected offers to access some of the documentation and to cross-examine Telephone System representative - 753/93/LRA - October 14, 1994 - Selkirk Cooperative on Abuse Against Women.

Board held the review application was based on issues known to the Applicants at the time application for certification was considered and should have been raised then - Application for review and reconsideration dismissed - Substantive Order - Reasons not issued - 754/94/LRA - December 7, 1994 - Plan-it Recycling Inc.

Undue delay - Filing of application 28 months after termination extreme undue delay - Obtaining poor advice and ignorance of law no excuse - Application dismissed for extreme undue delay - 497/94/LRA - February 6, 1995 - Domtar Inc.

Particulars - Employee alleged Union unfairly decided not to refer grievance to arbitration - Board aware of 7½ month delay in filing application, but dismissed application on basis *prima facie* case not made out for failure to provide particulars to support application - Rule 3(1) and 3(2) of ***Manitoba Labour Board Rules of Procedure*** - 207/95/LRA - July 25, 1995 - Gemini Fashions of Canada, Dudnath Sumar.

PRACTICE & PROCEDURE

Union's decision not to refer reclassification grievance to arbitration not breach of Section 20 of ***The Labour Relations Act*** unless actions arbitrary, discriminatory or in bad faith - Material filed by Employees did not disclose that Union acted in such a manner - Application dismissed without formal hearing on basis *prima facie* case not made out - 168/95/LRA - September 28, 1995 - City of Winnipeg, Marlene Guyda, Larry Wilson.

"New evidence" - Union requested review of Board decision to omit proposed vacation clause as omission would result in employees getting less than minimum entitlement provided under pre-existing conditions of employment - During hearing, Board proceeded on assumption no employees affected and Union did not disagree - Board could not later hear evidence from the Union because it was not "new evidence" - In the absence of any indication that any employee would be affected, issue best addressed in future negotiations - Request for review declined - 509/95/LRA - October 31, 1995 - R.M. of St. Andrews.

Status -Incumbent Union has clear interest in determination of voting constituency - Has status to present argument for determination of unit for purpose of calculating support for Association - However, Employer had no part in proceedings with respect to consent issue under Section 35(5) of ***The Labour Relations Act*** - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Voting Constituency to include all persons employed within original bargaining unit on date immediately preceding date strike commenced and all persons employed within Applicant's applied-for-unit as at date of the filing of its application - Vote conducted during course of hearings and ballots sealed pending final determination of all matters - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Consent to file application - Onus - Applicant union established prima facie case that consent should be granted, because strike on-going for three years with no likelihood of resolve - Onus shifts to incumbent union to show why consent should be granted - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Board ruled sale of business and intermingling occurred - As at date of hearing, the ultimate operating name of the successor employer had yet to be finalized - Unit determined by the Board to be appropriate for collective bargaining deemed to include the name finally chosen - Substantive Order - Reasons not issued - 802/95/LRA - March 8, 1996 - Cottrell Transport Inc. & Cottrell Freight Systems.

Intermingling - Preliminary Objection - Union filed application 1½ months prior to the proposed date of purchase of the company - Current Bargaining Agent contended application was premature as merger or intermingling had not occurred - Parties agree to treat hearing as if it commenced two weeks later - Substantive Order - Reasons not issued - 802/95/LRA - March 8, 1996 - Cottrell Transport Inc. & Cotrell Freight Systems Inc.

PRACTICE & PROCEDURE

Hearing to be treated as if it commenced two weeks later so evidence presented relating to what was to occur on purchase date of company was not treated as hypothetical, but was considered as factual - Substantive Order - Reasons not issued - 802/95/LRA - March 8, 1996 - Cottrell Transport Inc. & Cottrell Freight Systems Inc.

Board does not accept Employer's submission of Statutory Declaration with respect to previously submitted particulars as Counsel aware it is to be filed at time of initial application - Cases dismissed as disclosed particulars do not satisfy Board that prima facie case established - Substantive Order - Reasons not issued - 453/96/LRA - July 25, 1996 - Westin Hotel Company.

Electioneering on voting day - Particulars filed fail to establish that Union engaged in electioneering on day of certification vote - Substantive Order - Reasons not issued - 453/96/LRA - July 25, 1996 - Westin Hotel Company.

Board does not accept Employer's submission of Statutory Declaration with respect to previously submitted particulars as Counsel aware it is to be filed at time of initial application - Cases dismissed as disclosed particulars do not satisfy Board that prima facie case established - Substantive Order - Reasons not issued - 470/96/LRA - July 25, 1996 - Westin Hotel Company.

Particulars - Board denied Union's request for particulars to Objecting Employees allegations of impropriety so as not to compromise confidentiality of individuals filing objections - Rule 3 of the Manitoba Labour Board Rules of Procedure - 206/96/LRA - September 6, 1996 - 3322785 Manitoba Ltd. t/a The Sheraton Hotel.

Standing - Objecting Employees no longer wishing Union to represent them does not qualify as grounds for filing objection as per Section 47(2) of ***The Labour Relations Act*** - Objecting Employees had no further status in proceedings - 650 & 738/96/LRA - February 14, 1997 - East Side Ventilation – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; COURT OF APPEAL REVERSED DECISION OF COURT OF QUEEN'S BENCH; LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

Standing - Objecting Employees did not file any new material or allegations of improprieties as specified in Section 47(2) of ***The Labour Relations Act*** that would alter Board's decision in certification issue - Request to reconsider denied - Objecting Employees had no further status in proceedings - 650 & 738/96/LRA - February 14, 1997 - East Side Ventilation – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; COURT OF APPEAL REVERSED DECISION OF COURT OF QUEEN'S BENCH; LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

Subsequent to issuing certificate, chief engineer sought management exclusion from bargaining unit - Board denied his request as it could not amend the certificate until the Employer acquiesced or provided submissions to the contrary - 126/97/LRA - Dec. 2, 1997 - Winnipeg Enterprises Corporation.

PRACTICE & PROCEDURE

Applicant filed claim almost a year after he signed “Last Chance Agreement” negotiated by Union - Board’s normal practice not to entertain complaints filed more than six months beyond facts complained of - Applicant’s concerns appear to focus on perception his discharge was unjust - Failed to submit facts that would establish prima facie case in his favour - Application dismissed without need for hearing - 549/97/LRA - February 10, 1998 - Motor Coach Industries.

Union requested that the Board dismiss the applications without a hearing as the documentation did not disclose on its face a violation of *The Labour Relations Act* - Board satisfied that particulars provided by the Employees had failed to establish a *prima facie* case - Applications dismissed - Substantive Order - Reasons not issued - 400-402 & 427/96/LRA - September 26, 1998 - Assiniboine Community College.

Rule/Regulations - Board determined that in particular instance six month bar referred to in Rule 8(14) of the *Manitoba Labour Board Rules of Procedure* did not apply - Substantive Order - Reasons not issued - 596/98/LRA - October 13, 1998 - City of Winnipeg (Winnipeg Ambulance Service).

Preliminary Issue - Admissibility - Audio tapes to be admitted and heard on condition that complete transcripts be provided; person who made the recordings to testify and be cross-examined; that the tape be the original with no additions or deletions; and, Board to attribute weight to the evidence that it deemed appropriate - 528, 595 & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Interference - Employer filed application alleging Union and District Managers interfered in selection of union as newspaper carriers knew decision to join Union was being observed - Cornerstone of collective bargaining relationship was that employer has no status in certification applications - Board noted any breach of employment not an issue for it to decide - Board could not find evidence of fraud, coercion, intimidation by Union - Application dismissed - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Employer requested information on number of membership cards witnessed by District Managers - Board upheld sanctity and confidentiality of membership information as mandated by *The Labour Relations Act* - Request for information denied - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

Union submitted Employer did not have status to bring unfair labour practice application as sections of act allegedly violated were not properly identified - Employer agreed to particularize relevant sections of the *Act* - Board ruled premature to conclude Employer had no status or had not established *prima facie* case - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

PRACTICE & PROCEDURE

Application to cancel certificate dismissed as Applicant failed to file a From "A" in accordance with Rule 2(1) of *the Manitoba Labour Board Rules of Procedure* - Substantive Dismissal - Reasons not issued - 125/99/LRA - April 9, 1999 - Northern Inn and Steak House.

Standing - Applicant employed less than 12 consecutive months has not acquired rights pursuant to Section 60(1) of *The Employment Standards Code* - Prima facie case not established - Application dismissed - Substantive Order - Reasons not issued - 639/99/LRA - November 17, 1999 - Canad Inn - Transcona.

Amendments - Parties signed a Memorandum of Settlement stating Sales Representatives would be included in the bargaining unit while Key Account - Sales Representatives would be excluded - Employer submitted certificate should not be amended, as it was not specifically noted or agreed in the settlement that it would be amended and any agreement reached was on a temporary basis pending negotiations - Board held plain and simple meaning of the Memorandum of Settlement was that sales representatives are to be included in the bargaining unit - Board follows usual practice to grant amendments to certificates when there has been agreement between the parties - 657/98/LRA - January 10, 2000 - Pepsi-Cola Canada Beverages (West).

Health Care - Majority of employees chose to become members of bargaining agent who did not have a presence in personal care home - Board determined that the bargaining agents who already represented other classifications within the unit had no status to appear on the ballot being utilized in representation vote to determine wishes of the affected employees - 272/99/LRA - February 13, 2000 - Deer Lodge Centre Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Employer submitted Union proceed first as union membership must first be established - To avoid fragmentation of case Board directed Employer give evidence first on all matters without that creating any improper onus with respect to other issues before the Board - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc.

Preliminary objections - Employer made motion to strike out paragraphs in Union's application it claimed were vague - Board noted allegations contained sufficient particularity that allowed the Employer to file a Reply - Motion denied - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc

Board concurs with ruling made by the Returning Officer pursuant to Rule 26(6) of the *Manitoba Labour Board Rules of Procedure,* to include a ballot marked with a check mark as a valid ballot, as it clearly indicated the intention of the voter - Ballot which was blank and devoid of any markings deemed not to be a ballot to be included in the determination of the majority of the employees' wishes - Substantive Order - Reasons not issued - 579/00/LRA - Sept. 26, 2000 - Intercontinental Truck Body

PRACTICE & PROCEDURE

Employer seeking review of finding of successorship arguing Board adopted a 'functional approach" as opposed to an "instrumental approach - Board could not find anything in the Reasons for Decision that would indicate that it took a functional approach - Employer's submission lacked particularity regarding the Board's alleged misapplication of the test of functional economic vehicle – 99/00/LRA – May 3, 2001 – CanWest Galvanizing - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Employee raised issue as to employee status - Board allowed Union objection to make no determination on issue as the application did not place issue before Board – 61/98/LRA – June 18, 2001 – Dairyworld Foods.

Voluntariness of petition implied by *The Labour Relations Act* - Petition tainted as it did not comply with unwritten requirement to have employees' signatures witnessed; the Applicants did not possess petition at all times; petition was circulated at the workplace; petition did not state that the employees signing it were appointing the Applicants to represent them; and Applicant delivered petition to the Board while scheduled to work which could appear that petition was endorsed by management - Board not satisfied 50% of the affected employees voluntarily supported the application - Application for decertification dismissed - 100/00/LRA & 136/00/LRA - December 12, 2001 - Integrated Messaging Inc.

Burden of Proof - Employee filed application under Section 7 of *The Labour Relations Act* and Section 133(1)(a) of *The Employment Standards Code* - Employer failed to discharge the onus placed upon it by the legislation as it did not attend the hearing - Application allowed and compensation ordered - Substantive Order - Reasons not issued - 105/02/LRA - June 12, 2002 - Roland's Auto Service/Roland Hufgard.

Prima facie - Applicant failed to file supporting particulars - Prima facie case not established - Application alleging unfair labour practice contrary to Section 20(a)(ii) of The Labour Relations Act dismissed - Board Reasons not issued - 390/02/LRA - July 8, 2002 - Union Centre Inc. - **APPEAL TO COURT OF QUEEN'S BENCH DENIED - APPEAL TO COURT OF APPEAL DENIED.**

Preliminary Issue - Board satisfied that the collective bargaining process did not fall within the meaning of Section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order - Reasons not issued - 746/02/LRA - April 22, 2003 - Borreson Trucking and Tolko Industries.

Board could not satisfy itself that a majority of the employees supported the decertification application as the document containing the employee signatures was undated, did not contain a statement of purpose, did not appoint a Representative and did not include witness signatures - Application dismissed - Substantive Order - Reasons for Decision not issued - 504/03/LRA - August 29, 2003 - Emerald Foods t/a Bird's Hill Garden Market IGA.

PRACTICE & PROCEDURE

Prima facie – Applicant alleged Shop Steward unfairly attempted to compel or induce him to oppose and not support an application for decertification – Held reasonable employee would not view Steward's statements that wages would be cut and jobs were in jeopardy to be intimidation, fraud or coercion – Prima facie case not established – Application dismissed - 18/02/LRA – Dec. 4, 2003 - Faroex Ltd.

While Applicant Employee disagreed three employees be included on nominal roll, Employer and Union in best position to know who is considered an employee - Maintenance employee included as Employer and Union recognized him as being in bargaining unit although his position excluded - Also two individuals on Workers Compensation included as Employer had taken no action toward their employment status - Application dismissed as it had less than fifty per cent support - 1010/01/LRA - December 4, 2003 - Faroex Ltd.

Application for certification dismissed because Union failed to meet requirements as set out in Rule 7(3) of the Manitoba Labour Board Rules of Procedure when it failed to submit confirmation as to the adoption of the Union's Constitution - Substantive Order - Reasons not issued - 42/04/LRA - February 2, 2004 - Xpotential Products.

Undue Delay - Employee did not file application until 14 months after the alleged incident and 10 months after receipt of last letter from Union - Being busy or ascribing priority to other applications not an acceptable explanation for the delay - Application dismissed - 458/03/LRA - March 24, 2004 - Burntwood Regional Health Authority - APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED.

Board declined to issue declaration that Employer not bargaining in good faith as there were no employees in the bargaining unit - Substantive Order - Reasons not issued - 191/04/LRA - June 29, 2004 - JVS Erection Services Ltd.

Proposed unit of substitute teachers appropriate for collective bargaining - For determination of employee support, Board modified Rule 28 of Manitoba Labour Board Rules of Procedure to meet the circumstances of the particular case - Board ruled that it would include any teacher, (1) whose name appeared on the Division's list of substitutes on the date of application, and (2) who had worked at any time during the 12 weeks prior to date of application, excluding Christmas break from the 12 week period - 776-778/03/LRA & 149/04/LRA - December 6, 2004 - Portage La Prairie School Division, Flin Flon School Division, Pine Creek School Division & Swan Valley School Division.

Onus of Proof - Board asked to determine if Confidential Secretary to President was excluded from bargaining unit - This was not exclusion case of first instance as Secretary had been included in bargaining unit covered by successive collective agreements - Onus of proof rested on applicant to satisfy Board that material and significant changes were made to duties to sustain exclusion - Substantive Order - Reasons not issued - 246/04/LRA - January 26, 2005 - United Food and Commercial Workers Union, Local 832.

PRACTICE & PROCEDURE

Official Language - Employee filed Review Application asserting she had the right to be heard in French - Initial application filed in English, hearing evidence and argument presented in English and right to be heard in French not asserted until after Dismissal Order issued - Request to be heard in French not timely - Review application dismissed - 295/04/LRA - June 9, 2005 - Burntwood Regional Health Auhtority.

Hearings - Fair - Employee claimed she did not have the right to call witnesses or to question the union witness - Board noted she did not request that witnesses be summoned and compelled to give oral or written evidence, nor did she request opportunity to question union witness - Rights to fair hearing not infringed - 295/04/LRA - June 9, 2005 - Burntwood Regional Health Auhtority.

Official Language - Authorities submitted and Brief of the Attorney General of Manitoba do not support Employee's argument that the Board's staff obligated to actively offer services in French - 295/04/LRA - June 9, 2005 - Burntwood Regional Health Auhtority.

Timeliness - Preliminary Objections - Certified Bargaining Agent contested revocation application on grounds that it was filed in an untimely manner - Held the application was filed within the open periods under both Sections 35(2)(d) and (e) of the Act and, accordingly, was filed in a timely manner and a hearing would continue to address the remaining issues - Substantive Order - 178/05/LRA - July 18 & Nov. 30/05 - Frontier School Division.

Oral Hearing - Board dismissed unfair labour practice application and review application based on written submissions - Board not required to hold an oral hearing - Subsections 30(3)(c) and 140(8)of The Labour Relations Act provide that the Board may decline to take further action on the complaint at any time during the application process - 525/05/LRA & 649/05/LRA - March 10/06 - Boeing Canada - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Res judicata - Jurisdiction - Deferral To - Employee's complaints addressed in prior, binding and final disciplinary proceedings through grievance and arbitration provisions - Based on doctrine of res judicata or alternatively issue estoppel, Board lacked jurisdiction to consider application - Application dismissed pursuant to Sections 140(7) and 140(8) of The Labour Relations Act - Substantive Order - 91/06/LRA - April 7, 2006 - Manitoba Lotteries Corporation - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Prima facie - Upon review of application and replies filed, Board found Union investigated Employee's issues and obtained legal advice before deciding not to file grievance - Union did not act arbitrarily, discriminatorily or in bad faith - As per section 140(8) of The Labour Relations Act, Board dismissed application without a hearing as application found to be without merit - 138/06/LRA - May 9, 2006 - Manitoba Hydro.

PRACTICE & PROCEDURE

Delay - Employer refused Employee's request to re-hire him two months after he voluntarily resigned - Held Employee's request for a Board order directing Employer to re-hire him was without merit due to seven week delay which elapsed after Employee quit his employment and prior to his asking to be re-hired - Application dismissed - Substantive Order - 194/06/LRA - Aug. 1, 2006 - Melet Plastics.

Discrimination - Prima Facie - Employer refused Employee's request to re-hire him two months after he voluntarily resigned - Subsequently, Employee filed a complaint with Manitoba Human Rights Commission and an unfair labour practice application based on Human Rights complaint - Employee failed to establish prima facie case that Employer violated Section 7 of the Act because Employer's refusal to hire Employee occurred two weeks prior to filing complaint with the Commission - Substantive Order - 194/06/LRA - Aug. 1, 2006 - Melet Plastics.

Amalgamation - Intermingling - Res Judicata - Amalgamation of two health authorities resulted in Home Care Case Co-ordinator classification falling into two bargaining units - Employer requested Board Determination to which bargaining unit classification should be assigned - MGEU raised preliminary objection under principles of res judicata/issue estoppel - Held even where elements of res judicata and issue estoppel exist, Board retains discretion whether doctrines ought to be applied - In current application, elements had not been met given emergence of new employer and changes to Home Care Case Co-ordinators classification - Matter to proceed to hearing - Substantive Order - 474/06/LRA - Nov. 22, 2006 - Assiniboine Regional Health Authority.

Undue Delay - Application in October 2006 relied on events which occurred in 2004 and 2005 - Held Employee had unduly delayed filing application - Substantive Order - 629/06/LRA - Dec. 14, 2006 - Daimler-Chrysler Canada.

Standing - Intervention - International Union of Operating Engineers granted certification for a unit previously represented by Services Employees' International Union, Local 308 - SEIU Local advised it did not object to application - SEIU "International" applied to be granted Intervenor or Interested Party status, Review and Reconsideration of issuance of certificate for IUOE and withdrawal of consents filed by SEIU Local - Held SEIU Local as previously certified bargaining agent had legal authority to advise it did not oppose application - SEIU International did not represent affected employees on date of application and had no valid ground to intervene or to apply for review and reconsideration - Substantive Order - Dec. 21, 2006 - 633/06/LRA - Tudor House Personal Care Home & 634/06/LRA - Gimli Recreation Authority & 635/06/LRA - St. Adolphe Personal Care Home & 645/06/LRA - Swan River Valley Hospital District No. 1, Benito Health Centre, Swan Valley Lodge & 647/06/LRA - Town of Minnedosa & 740/06/LRA - Betel Home Foundation.

PRACTICE & PROCEDURE

Standing - Intervention - International Union of Operating Engineers filed for certification of a unit represented by Services Employees' International Union, Local 308 - SEIU "International" applied to be granted Intervenor or Interested Party status - Held SEIU International did not represent the affected employees on the date of the application and had no valid ground to intervene in the matter - Substantive Order - 699/06/LRA - Dec. 21, 2006 - Rural Municipality of Gimli.

Effective date of collective agreement was January 22, 2006 to January 31, 2009 - Union gave notice to commence collective bargaining on August 10, 2006 - Union's notice not within time frames of Section 61 of *The Labour Relations Act* to oblige Employer to commence bargaining - Application dismissed - Substantive Order - 756/06/LRA - Jan. 2, 2007 - Tolko Industries.

Burden of Proof - Where position has historically been excluded from bargaining unit covered by successive collective agreements, onus of proof rests with Union who must satisfy Board that material and significant changes have occurred sufficient to conclude that excluded positions ought to be from then on included in bargaining unit - Substantive Order - 394/05/LRA - January 10, 2007 - University of Manitoba.

Failure to Process Grievance - Employee filed unfair labour practice application during which time the Union was in contact with Employee's counsel to facilitate signing of grievance - Grievance was filed as soon as Grievor signed form - Application premature as grievance/arbitration procedure not exhausted - Substantive Order - 832/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Res Judicata - Issues raised in unfair labour practice application that were raised in a prior application were improperly before the Board - Substantive Order - 832/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Vote Complaint - Group of employees filed complaint under Section 70 of *The Labour Relations Act* - Held Union complied with the requirements of Section 69 and 93 of the *Act* as it gave reasonable notice to the employees of ratification/strike vote and its dual purpose; and employees had reasonable opportunity to cast votes by secret ballots on voting day - Application dismissed - Substantive Order - 65/07/LRA - March 14, 2007 - Red River College.

Prima facie - Employee was laid off and not dismissed - Therefore as per Section 20(b) of *The Labour Relations Act* relevant standards were arbitrariness, discrimination and bad faith - Employee failed to establish *prima facie* case because application did not reveal, on its face, that Union acted in an arbitrary or discriminatory manner or in bad faith - Application dismissed - Substantive Order - 102/07/LRA - April 4, 2007 - Riverview Health Centre.

PRACTICE & PROCEDURE

Scope of Duty - Employee's unfair labour practice allegations related to collective bargaining negotiations between Employer and Union which amended shift provisions in collective agreement - Held Board did not have jurisdiction under Section 20 regarding a collective bargaining process as that process does not involve "representing the rights of any employee under the collective agreement" - Substantive Order - 133/07/LRA - April 5, 2007 - Boeing Canada Technology.

Termination - Decision - Board ordered bargaining rights terminated but declined Applicant's request for Board to exercise its discretion to depart from its usual practice to deem that the bargaining rights of the Union has ceased to a date other than date of Board Order - Substantive Order - 11/07/LRA - April 12, 2007 - AAA Electric (1988).

Subsequent collective agreement - Board was not in a position to make determinations required by Section 87.1(3) of *The Labour Relations Act* within the mandated 21-day period, based solely on material filed. Board exercised its discretion under Section 87.1(4) and delayed making the determination required under Section 87.1(3) until it was satisfied that the party making the application has bargained sufficiently and seriously with respect to those provisions of the collective agreement that were in dispute between the parties - Substantive Order - 85/07/LRA - May 15, 2007 - Fort Rouge and Imperial Veterans Legion.

Stay of Proceedings - Judicial Review - Employer challenged Board's jurisdiction to deal with issue of quantum of compensation as judicial review proceedings had been commenced - Held Board had jurisdiction to proceed as commencement of judicial review does not stay Board's proceedings - Substantive Order - 448/06/LRA - June 12, 2007 - Integra Castings.

Standing - Employee had standing to make unfair labour practice complaint directly in his own right even though he was represented by employees association - Right to file is statutory right conferred on a person and organization as per subsection 30(1) of *The Labour Relations Act* regardless of individual's membership in a union or employee association - 211/07/LRA - June 12, 2007 - Integra Castings.

Regulations/Rules - *Prima facie* - Employee filed unfair labour practice application for wrongful termination due to a medical disability - Application did not disclose any facts which arguably constituted prima facie case under any substantive unfair labour practice provisions of Part I of *The Labour Relations Act* as required under Section 3(2)(b) of Board's Rules of Procedure - Application dismissed - Substantive Order - 324/07/LRA - June 20, 2007 - University of Manitoba.

Undue Delay - Employee filed application 2½ years after last event unduly delayed filing application - Board applied principle that unexplained delay beyond 6 to 9 months following event complained of constitutes unreasonable/undue delay - Employee relied upon *The Limitations of Actions Act* but that act had no application to Board's proceeding- Substantive Order - 281/07/LRA - July 5, 2007 - Province of Manitoba, Winnipeg Child and Family Services.

PRACTICE & PROCEDURE

Amalgamation of health facilities into Health Authority resulted in intermingling of three unions - Employer submitted that MGEU should not be included on representation vote as it did not represent 20% or more of affected employees - MGEU questioned existence of Board rule for threshold of support in order to be placed on ballot - Board order MGEU to be on ballot - Substantive Order - 337/07/LRA - November 16, 2007 - Parkland Regional Health Authority.

Employee filed vote complaint application 4 months after ratification vote - Held Employee unduly delayed filing application as she was aware of date of vote and as per Section 70(1) of The Labour Relations Act complaint must be filed within 15 days of a vote - Substantive Order - 501/07/LRA - November 27, 2007 - Addictions Foundation of Manitoba.

Voluntariness - Application - Applicant shown as witness to all signatures on Petition but she did not witness every employee who signed Petition - No other evidence before the Board as to date or place each individual signed Petition and that an individual witnessed an employee signing it - Also number of employees signed Petition under Applicant's mistaken belief that collective agreement would continue for a period of time after any decertification was issued - As well, Employee failed to swear Statutory Declaration before Commissioner of Oaths or other authorized person - Application dismissed as Board not satisfied that 50 percent or more of the employees in the unit supported the Employee - Substantive Order - 508/07/LRA - April 15, 2008 - Betel Home Foundation.

Timeliness - Delay - Employee unduly delayed filing application because core events relied upon in application occurred 33 months prior to date Application filed and arbitration was scheduled to proceed 11 eleven months prior to filing of Application - Substantive Order - 123/08/LRA - June 30, 2008 - Motor Coach Industries.

Union submitted Section 20(a) of The Labour Relations Act did not apply as Employee was laid off and not discharged - Where alleged discharge is in guise of layoff, Board may determine that obligation to exercise reasonable care as per Section 20(a)(ii) ought to be applied - Substantive Order - 39/08/LRA - July 23, 2008 - University Of Manitoba.

Employee filed Rebuttal to Employer's and Union's Replies - Board's Rules of Procedure do not contemplate or allow rebuttal or reply to be filed in response to reply of another party - Board exercised its discretion and reviewed the Rebuttal in circumstances of the case - Substantive Order - 265/08/LRA - October 15, 2008 - Middlechurch Home of Winnipeg.

As no new evidence filed, application for review of Dismissal Order to be tested under Rule 17(1)(c) of Manitoba Labour Board Rules of Procedure - Submissions made by Applicant were re-casting and re-submission of arguments and positions advanced on original application - Further, original decision did not set precedent that amounted to significant policy adjudication warranting review - Application Dismissed - Substantive Order - 265/08/LRA - October 15, 2008 - Middlechurch Home of Winnipeg.

PRACTICE & PROCEDURE

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- 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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- 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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 - 23/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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 thirteen months from date Union advised it was not willing to proceed with grievances and three 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 - 405/08/LRA - May 19, 2009 - City of Winnipeg.

Board's *Rules of Procedure* does not provide for filing of reply to a Reply - 327/08/LRA - June 17, 2009 - Government of Manitoba, Manitoba Civil Service Commission / Organization & Staff Development.

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 - 204/09/LRA - August 10, 2009 - Howard Johnson Hotel.

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 - 227/09/LRA - August 28, 2009 - Buhler Trading.

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 - 229/09/LRA - September 11, 2009 - International Union of Operating Engineers, Local 987.

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 - 91/09/LRA - October 26, 2009 - TC Industries of Canada Company West.

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 - 251/09/LRA - October 30, 2009 - Weston Bakeries Limited.

Decision - Board denied request for Written Reasons as Dismissal Order adequately set out basis for Board decision - Substantive Order - 256/09/LRA - November 5, 2009 - Government of Manitoba, Manitoba Civil Service Commission, Organization & Staff Development.

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- 256/09/LRA - November 5, 2009 - Government of Manitoba, Manitoba Civil Service Commission, Organization & Staff Development.

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 - 112/09/LRA – November 27, 2009 - Brandon University.

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 - 112/09/LRA - November 27, 2009 - Brandon University.

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 - 276/09/LRA - December 4, 2009 - City Of Winnipeg and Employee Benefits Board.

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 - 169/09/LRA - December 16, 2009 - Real Canadian Wholesale Club and Cash & Carry Division of Westfair Foods Ltd, Western Grocers, Division of Westfair Foods – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Res Judicata - Current Application touched upon matters Employee raised in prior applications withdrawn or dismissed by Board – Prior applications disposed of matters with finality and matters could not be raised under current Application – 18/09/LRA – May 31, 2010 – Winnipeg School Division.

Union asserted that Employer's review application and request for reasons both untimely as application for review cannot be filed after more than ten days have elapsed following date of decision - Review application was filed on tenth day following receipt of original decision - Board granted leave pursuant to Sections 4(4) which allowed enlargement of time for filing of review application – Substantive Order - 257/10/LRA – Nov. 1, 2010 - Rural Municipality of Springfield.

Witness – Board issued Letter of Direction in which scope of hearing limited to specific allegations contained in Particulars in respect of three named employees - Union asserted Letter too restrictive and it ought to be allowed to adduce evidence beyond the three named employees - Board amended Letter indentifying other individuals eligible to be called as witnesses and ruled parties were free to call other witnesses provided that evidence directly related to scope of issues defined in Letter - Substantive Order - 248/10/LRA - December 17, 2010 - Manitoba Lotteries Corporation.

PRACTICE AND PROCEDURE

Statutory declaration - Union submitted Application be dismissed on ground that statutory declaration sworn in support of Application did not satisfy Board's Rules of Procedure - Employee filed revised statutory declaration that was attached to new Application - Union submitted new Application constituted attempt to refile original Application - Board satisfied statutory declaration, as signed by Employee, was irregular as different person named as declarant - Board satisfied defect was technical irregularity and filing of new statutory declaration cured defect - Purpose of new Application was to perfect original Application, not intended to raise new grounds - Substantive Order- Substantive Order - 64/11/LRA - June 21, 2011 - CG Power Systems Canada Inc.

On May 30th, Union posted notice of ratification vote or information meetings to take place on June 4th and 5th - Tentative collective agreement reached on June 2nd - On June 3rd, Union posted special notice meetings would be for vote - Employee, who attended meeting, filed complaint alleging Union failed to provide reasonable notice of vote - Held notice not indicating length of meetings was not deficiency; providing start time sufficient - Notice stating purpose of meeting may be either to ratify tentative agreement or information meeting was not misleading - Reasonable employee would be aware of significance of alternative purposes of meeting - Complaint dismissed - Substantive Order - 186/11/LRA, 187/11/LRA and 188/11/LRA - July 19, 2011 - Manitoba Lotteries Corporation.

Teamsters filed Application for Review of certificate MLB-6824 and Interim Order 1494 - Board did not accept CAW's position that Teamsters filed a review of an earlier review application for Order 1491 - Board was satisfied its disposition of the Order 1491 did not preclude Teamsters from filing application for review of Order 1494 as that order was issued following completion of a full hearing and specific rulings on evidence adduced at the hearing and factual and legal contexts were different - Substantive Order - 55/11/LRA - September 7, 2011 - Manitoba Lotteries Corporation.

Employee filed vote complaint and attached list of 31 bus operators whom he asserted did not have opportunity to vote and had asked that he represent them – Held claim to represent employees not sustainable under the *Act* - 396/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Interim Order - Reinstatement - Union sought Board to exercise its power to make an Interim Order under Section 31(2) of *The Labour Relations Act* to reinstate employee pending outcome of proceedings - Board satisfied unfair labour practice complaint not frivolous and vexatious and Union advanced arguable case - Board exercised its power and ordered employee to be reinstated - Substantive Order - 41/12/LRA - March 14, 2012 - City of Brandon and B.D.

PRACTICE AND PROCEDURE

Res Judicata - Employer submitted Union had elected to use grievance arbitration provisions and Board did not have jurisdiction to hear matter - Held principles relating to res judicata only applied when another tribunal had already issued decision and party to that earlier proceeding sought to re-litigate same matter before another tribunal - Board satisfied jurisdictional argument not applicable because no prior decision had been made by another tribunal - Substantive Order - 291/11/LRA - Mar. 30/12 - Burntwood Regional Health Authority and T.L.

Adjournment - Union filed application for Board Determination on whether position of Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Position vacant at time Application filed - Board, noting position in dispute was vacant, determined matter be adjourned until an incumbent occupied position for six months, in keeping with Board's practice and policy - Substantive Order - 32/11/LRA - August 17, 2012 - University of Manitoba.

Regulations/Rules - Applicant filed application seeking cancellation of certification - Board noted Application filed on Form VIII, which contemplated cancellation of certification but Application contained no reference to any certificate nor did it contain any description of bargaining unit - Union clarified Application concerned voluntarily recognized clerical bargaining unit - Board accepted Application and treated it as an application filed pursuant to Section 49(1) of *The Labour Relations Act* to terminate bargaining rights - Board satisfied that more than 50 percent of employees in unit supported Application and ruled bargaining rights of Union be terminated - Substantive Order - 231/12/LRA - April 12, 2013 - Rural Municipality of Birtle.

Union filed grievance day after Employee terminated for allegedly violating Respectful Workplace Policy on multiple occasions - Union referred grievance to arbitration, assigned its legal counsel to advance grievance, and Union met with Employee on number of occasions to prepare for hearing - When Employer made motion to adjourn arbitration hearing, Union argued against adjournment and requested Employee be placed back on payroll until grievance was determined - Arbitrator ordered hearing be adjourned and did not agree Employee entitled to interim reinstatement - New arbitration hearing dates were scheduled at earliest opportunity - Prior to date of rescheduled hearing, Employee filed duty of fair representation application - Board determined Employee had not established *prima facie* violation of section 20 of *The Labour Relations Act* - Material filed by Employee suggested Union had taken considerable care in representing her - Moreover, Board noted that arbitration procedure had not been exhausted and, therefore, application was premature and was dismissed pursuant to section 140(8) of the *Act* - Substantive Order - 150/13/LRA - August 21, 2013 - Concordia Hospital.

PRACTICE AND PROCEDURE

Adjournment - At commencement of hearing, Applicant informed Board that witness he wished to call was not available to attend hearing in person on that date, but would be available to appear at later date - Board, having satisfied itself that Applicant had closed his case, denied motion to adjourn hearing to call his witness, or alternatively to submit witness' written statement - Substantive Order - 208/12/LRA - October 11, 2013 - Carpenters Union, Local 343.

Mootness - Union filed application seeking Board Determination that individuals in classification of clinical specialist – radiation oncology systems were employees as contemplated by *The Labour Relations Act* and fell within scope of certificate and collective agreement - Employer advanced preliminary motion that application be dismissed on basis matter was moot because clinical specialist classification had been permanently discontinued resulting from *bona fide* operational changes - Board satisfied matter lacked live controversy as tangible and concrete dispute had disappeared - Board satisfied that once classification was permanently eliminated, adversarial context also ceased to exist - Board satisfied issue with respect to classification was narrow one, resolution of which no longer had effect on rights of parties - No compelling rationale for Board (or parties) to devote scarce resources to resolve an issue regarding classification that no longer existed - Board should not determine question, Union raised whether employees should be in bargaining unit by reason of certain required qualifications, in absence of proper factual context involving classification that actually existed - Board satisfied that no reasonable labour relations purpose served by having parties argue over a moot point - Substantive Order - 126/11/LRA - October 24, 2013 - CancerCare Manitoba.

Wishes of Employees - Employee filed application for Termination of Bargaining Rights but Board noted it had issued a Certificate, existence of which meant application ought to be filed as application seeking cancellation of Certificate - Notwithstanding that Union submitted vote should be conducted regardless of irregularities it referred to in its Reply, Board must *first* satisfy *itself* that material filed in support of application revealed that majority of employees no longer wished to have Union represent them - Board noted petition or statement filed in support of application did not explicitly state its purpose which would allow Board to satisfy itself employees who signed petition did so with basic understanding of its purpose and they were signing petition in support of that purpose and reasons stated - Also, document filed in support of application only listed names of certain individuals - Board was unable to ascertain if individuals actually signed document - Further, each signature obtained should be witnessed by individual who circulated petition and date of signing by each individual ought to be inserted - Irregularities led Board to conclude that it cannot satisfy itself majority of employees no longer wished to have Union represent them - Application dismissed - Substantive Order - 274/13/LRA - November 22, 2013 - Bayview Construction.

(Next Section: Sec. 18.0)

RAID

Board grants consent under Subsection 35(5) of ***The Labour Relations Act*** as Incumbent Union did not contest displacement application - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

Objecting employees have no standing in application as Petition did not include allegations against the Union as required by Subsection 47(2) of ***The Labour Relations Act*** - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

Employees terminated during lockout eligible to vote in displacement application because they were on the payroll the day immediately before the lockout commenced - Employees who had resigned out of economic necessity could be eligible to vote - However, replacement workers not eligible as not on the payroll before lockout and did not share community of interest with locked-out employees - Subsection 35(6) discussed - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

Voting Constituency to include all persons employed within original bargaining unit on date immediately preceding date strike commenced and all persons employed within Applicant's applied-for-unit as at date of the filing of its application - Vote conducted during course of hearings and ballots sealed pending final determination of all matters - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd..

Association filed displacement application which expanded on unit of truck drivers by inclusion of owner-operators - Board does not allow application as filed as it could be used to uproot Incumbent Union which was in the midst of lengthy strike and owner-operators shared little community of interest with unit members - As per discretion given in Section 39 of ***The Labour Relations Act***, Board splits unit into two - Certification issued for Association to represent unit of owner-operators - Certification application dismissed for other unit as less then 40% supported Association - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Consent to file application - Onus - Applicant union established prima facie case that consent should be granted, because strike on-going for three years with no likelihood of resolve - Onus shifts to incumbent union to show why consent should be granted - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Consent to file application - Intent of 35(5) of ***The Labour Relations Act*** to protect collective bargaining process, but not the particular union which was a party to the agreement - Board determines other criteria for giving consent - Association established prima facie case - Board grants consent to file application for certification - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

RAID

Displacement Certificate - During hearing, parties reached agreement and Intervenor no longer opposed displacement certificate being issued - Board, noting the agreement of the parties verbally confirmed during the hearing, issued the certificate - Substantive Order - Reasons not issued - 645/99/LRA - November 26, 1999 - Western Grocers, Div. of Westfair Foods.

Incumbent bargaining agent objected to Union's Application for Certification and alleged Union committed fraud in obtaining membership support of seven employees – Evidence did not disclose fraud by Union for signing of first employee's card – Second employee's evidence of misrepresentation of nature of membership card stood uncontradicted – Some concerns surrounded signing of third employee's card, but his evidence, standing alone, did not objectively reveal Union representative knowingly misrepresented nature of membership card – Witnessing of membership cards for four other employees raised concerns not of technical irregularities but of negligence or carelessness - Even if membership evidence of employees were not counted, Union met threshold level of support for certification - Proper remedy for irregularities disclosed was to count ballots cast of previously conducted Representation Vote – Substantive Order - 178/10/LRA - February 22, 2011 - Manitoba Lotteries Corporation.

RATIFICATION

Union led Employer to believe collective agreement had been ratified - Union estopped from denying collective agreement had been entered into - No Number - Undated - Manitoba Forestry Resources Ltd.

Board does not possess the discretionary power to permit parties, whose bargaining unit is multi provincial, to hold ratification vote - Subsection 69(1) of ***The Labour Relations Act*** considered - 672/90/LRA - August 7, 1990 - The Boilermaker Contractors Association.

Agreement negotiated and signed by out-of-province director and ratified by members not in good standing - Local officials and members play no part in negotiations or ratification vote - Collective agreement not a collective agreement pursuant to Section 69 of ***The Labour Relations Act*** - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc. – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Hiring Hall - Two members of an out-of-province local sent to northern hydro job site contrary to Manitoba Hydro's northern hiring policy and with no documentary proof membership transferred to Manitoba local - Two others did not pay initiation fee as per Constitution and By-laws - Held none were members in good standing and collective agreement not properly ratified - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc. – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Craft Unit - Board found collective agreement covering all trades contrary to its practice of recognizing individual craft units - Also members in good standing can only ratify portions of collective agreement which apply to their craft - 154/96/LRA - June 3, 1996 - GEC Alsthom Electromechanical Inc. – **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Union held ratification vote within 30 days of reaching agreement as per Section 69(1) of ***The Labour Relations Act***, but employees refused to vote - Union argued as no complaints filed under Section 70(4) on its failure to comply with voting requirements, Board should declare collective agreement in effect - Board held Section 70(4) did not apply to case where no votes were cast - Application dismissed - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Employees refuse to vote at ratification meeting - Union requests Board use its discretion under Section 50(4) of ***The Labour Relations Act*** to declare the collective agreement was binding - Held Section 50(4) only applied to application for decertification - Request denied - 806/96/LRA - Aug. 26, 1997 - Anixter Canada Inc.

Interference - Board held that Employer knowing about outcome of ratification meeting did not indicate interference - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Interference - Witness told Union he was afraid if he voted he would lose his overtime - Based on conversation, Union alleged Employer interfered with ratification process by creating a climate of fear - At hearing, witness denied comment - Board concluded witness made comment to mislead Union - Although other witnesses were apprehensive, and seemed to be coached, evidence did not establish Employer interfered in achieving collective agreement - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

RATIFICATION

Ratification vote not conducted by secret ballot - Board does not recognize vote as being valid - Ordered new vote conducted pursuant to Section 70(2) of *The Labour Relations Act* - Substantive Order - Reasons not issued - 342/98/LRA - June 11, 1998 - Winnipeg Enterprises Corporation.

Voting Constituency - Applicants alleged that, pursuant to internal Union documents, they were entitled to separate ratification privileges in collective bargaining process - Intent of *The Labour Relations Act* clearly defined voting constituency as "those employees in the unit or craft unit" as described in Certificate issued by Board and not separate group of employees which are included in the larger certified unit - 269/04/LRA - June 9, 2004 - Griffin Canada.

Employee raised concerns regarding ratification vote for "Surveillance/Administration" bargaining unit - Complaint dismissed as vote was held within 30 days of concluding tentative agreement; reasonable notice of vote was given to affected employees; reasonable opportunity was given to employees to cast a ballot; and vote was conducted by secret ballot - Substantive Order - 193/07/LRA - May 10, 2007 - Manitoba Lotteries Corporation.

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 - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

RECEIVER/MANAGER

Court-appointed receivers, as distinguished from privately-appointed receivers, are agents of the court, not agents of the company - Held Receiver was successor employer - Board found corporate dissolution of owner because of failure to file annual returns not significant to the determination of the issue - 193/92/LRA - May 17, 1993 - Flin Flon Hotel, Dunwoody Limited.

RELIGIOUS EXEMPTION

Collective agreement required membership in union as a condition of employment - Applicant requests exemption from union on religious grounds - Mc-6-16 - Undated - McGavin Toastmasters Ltd.

Applicants, though not required to join the union, object to the payment of the equivalent of union dues on religious grounds - Section 68(3) of ***The Labour Relations Act*** considered - No Number - March 4, 1976 - Westman Nursing Home.

Employee seeks exemption from union membership on grounds of religious beliefs - Board examines "two-fold test" - Sections 68(3) and 68.1 of ***The Labour Relations Act*** discussed - 690/86/LRA - October 10, 1986 - Inco Ltd.

Applicant seeks exemption from membership in a professional association on grounds of religious beliefs - Board applies "two-fold" test - Sections 68(3) and 68.1 of ***The Labour Relations Act*** discussed - 680/86/LRA - March 25, 1987 - Tri-Lake Health Centre.

Church tenets allow membership in a professional association but not a union - Nurse's application for status as religious objector denied - Subsection 68(3) of ***The Labour Relations Act*** considered - 163, 225/87/LRA - June 22, 1987 - Carman Memorial Hospital - **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; BOARD ORDER QUASHED; MATTER REMITTED TO BOARD.**

REMEDY

Interest - Anti-union Animus - Compensation - Employees laid off for participating in union organizational campaign - Board awarding interest as part of compensation package - Calculation of interest determined on net amount using Bank of Canada interest rate as of date complaint filed - Reasons not issued - 60/91/LRA - July 13, 1992 - Northern Meats – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Compensation - Discrimination - Burden of Proof - Employer failed to discharge the reverse onus to satisfy the Board that it did not commit an unfair labour practice in contravention of Section 7(h) of The Labour Relations Act - Board awarded Applicant $1000 compensation - Substantive Order, Reasons not issued - 703 & 713/94/LRA - May 15, 1995 - W.A Hutchinson Ltd., Canadian Tire Associate Store 270, Joe Casiano, Elliott Clarke.

Refusal to work - Held Employee was terminated for refusing to work Sundays in contravention of Section 7 of ***The Labour Relations Act*** - Employer ordered to reinstate Employee, to compensate him for loss of income and other employment benefits, including profit sharing entitlement, and to cease and desist from any activity which interfere with the Employee's statutory right pursuant to ***The Employment Standards Act*** to refuse work on Sundays - Substantive Order - Reasons not issued - 664/94/LRA - March 28, 1995 - W.A Hutchison Ltd., Canadian Tire Associate Store 270.

Six years after Revocation Order issued, Board finds Employer interfered during decertification process - Certificate reinstated and old collective agreement deemed in full force and effect, except where current conditions more generous - Employer ordered to commence good faith bargaining, to pay the Union $2,000, to allow the Union to meet with employees during work time on Employer's premises, to compensate the Union for expenses incurred in conducting the meetings; and to post one copy of Order at workplace and to send copy of Order by certified mail within 10 days of receipt to each employee - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Interference - Collecting of dues for Employee Association in competition with Union involved in very long strike is unfair labour practice as per Section 6 of ***The Labour Relations Act*** - Employer ordered to cease and desist deducting dues and to reimburse dues to employees within scope of Union's unit - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Union decides not to proceed to arbitration with Employee's grievance regarding removal of letter from his personnel file - Employee requested Board order letter removed - Board does not have jurisdiction to order the remedy sought - 829/96/LRA - May 12, 1997 - Winnipeg Hydro.

Anti-union animus - Compensation - Employer's decision to delete all Licensed Practical Nurse positions and replace them with Registered Nurses' made in good faith and for the purpose of enhancing resident care - However, implementation date accelerated due to Employer's anger over previous unfair labour application - Ordered to pay each affected employee $500 compensation even though they suffered no direct monetary loss - 582/96/LRA - Dec. 15, 1997 - Vista Park Lodge.

REMEDY

Interference in Union - Letter circulated to employees constituted bargaining directly with employees - Compensation limited due to delay in filing application - Substantive Order, full Reasons not issued - 560/97/LRA - May 25, 1998 - Province of Manitoba.

Held Employer committed unfair labour practice contrary to Section 7(h) of *The Labour Relations Act* - Ordered to pay Employee two weeks' wages in lieu of notice and to pay an amount equal to two weeks' pay as compensation for diminution of income resulting from the unfair labour practice in accordance with Section 31(4)(d) of the *Act* - Substantive Order - Reasons not issued - 392/98/LRA - October 15,1998 - Willten Manufacturing.

Employer committed an unfair labour practice contrary to Section 7 of *The Labour Relations Act* by terminating employment of Employee - Employer ordered to reinstate Employee; compensate for diminution of income and other employment benefits from date of termination to the date of reinstatement; and, post copies of the order on the premises for 30 days - Substantive Order - Reasons not issued - 532/98/LRA - October 30, 1998 - Louisiana-Pacific Canada.

Disclosure - Employer fails to disclose all information as required by Section 66(1)(b) of *The Labour Relations Act* - Employer ordered to provide list of route types for each delivery and collection routes; list of route bonuses for each route; and pay Union $2,000 for interfering with rights of the Union - Substantive Order - Reasons not issued - 664/98/LRA - December 17, 1998 - Winnipeg Free Press.

Change in Working Conditions - Employer increases wages and makes changes to hours of work and shifts - Changes contrary to section 10(1) of *The Labour Relations Act* - Employer ordered to pay $1,000 to the Union - 528, 595, & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Employer's hard bargaining tactics precipitated strike - Ordered to cease and desist - Remedies to be compensatory, and not punitive and intended to bring the employees back to status prior to the strike - Each employee who was a member of the bargaining unit and who was employed by the Employer at the time the strike commenced to be compensated for all lost wages and employment benefits they would have earned had the strike not occurred, less monies earned, exclusive of strike pay - Union to be compensated for strike expenditures, but not its legal and expert witness fees - Employer ordered to pay interest at the prime rate on all monies payable – 220/01/LRA – July 30, 2001 – Buhler Versatile Inc.

REMEDY

Cease and Desist - Board considered Employer attempted to negotiate with Union and also sought mediative efforts before entering into separate written contracts with some staff - Employer ordered to cease and desist negotiating terms and conditions of employment with individuals and refrain from entering into any further individual contracts - Order does not apply to those incentives already granted – 760/00/LRA – September 5, 2001 – Churchill Regional Health Authority & Province of Manitoba - **APPEAL TO COURT OF QUEEN'S BENCH WITHDRAWN**.

Bargaining Directly with Employees - Board ordered Employer to cease and desist from offering tuition reimbursement allowances and rental subsidies to nurses in remote northern communities - Board is aware of difficulty with recruitment and retention of nurses, but continuing to allow any monies or benefits to be paid under the individual contracts negotiated with bargaining unit members would undermine the Union's exclusive authority to represent the nurses in the unit – 762/00/LRA – December 7, 2001 – Burntwood Regional Health Authority.

Board has no authority to order vote in decertification application in absence of specific language in Labour Relations Act - 1010/01/LRA - December 4, 2003 - Faroex Ltd.

Board dismissed Employer's and Union's request for costs against Applicant as he believed he was victim of an injustice and Association's conduct, while not arbitrary, was questionable - 549/02/LRA - February 20, 2004 - Monarch Industries Ltd.

Interference - Board found Employer committed an unfair labour practice contrary to Section 7 of *The Labour Relations Act* and Section 133(1) of *The Employment Standards Code* - Board ordered Employer to pay $1500 for the interference of Employee's rights - Substantive Order - Reasons not issued - 351/04/LRA - June 28, 2004 - Laural Food Services Inc.

Reinstatement - Waiter's Gratuities or Tips - Parties unable to resolve amount of compensation owing to Persons Concerned - Board calculates wages owing but denied claims for lost gratuities as Union was not able to provide amounts claimed on the individuals' income tax returns for the previous two years - Substantive Order - Reasons not issued - 678/02/LRA - July 8, 2004 - Branigan's at the Forks.

Board held caretaker terminated by reason of an unfair labour practice - Board ordered caretaker be reinstated at same rate of pay as of date of termination; that he be compensation for the loss of income or other employment benefits; that he be provided with rental accommodation equivalent to that provided prior to the termination at the same rental rate; and that he be paid $250 compensation for moving expenses - - Substantive Order - Reasons not issued - 619/05/LRA - November 24, 2005 - Edison Rental Agency.

REMEDY

Ordering Employer to provide letters of references and matters arising from what may have transpired with other prospective employers did not fall within ambit of Section 20 of *The Labour Relations Act* - Substantive Order - Substantive Order - 677/06/LRA - Feb. 8, 2007 - Health Sciences Centre.

Board not satisfied that Employer did not discharge Employee because he was exercising his rights to receive benefits under *The Workers' Compensation Act* - Employer ordered to reinstate Employee and to compensate him for lost income, less earned income from alternate employment he worked since being discharged - 448/06/LRA - March 13, 2007 - Integra Castings - **PENDING BEFORE COURT OF QUEEN'S BENCH.**

Admissibility - Compensation - Board conducted hearing on issue of compensation due to Employee - Methods proposed by Employee and Employer based on facts and information which were not properly in evidence before Board - Board did not adopt either method proposed but instead determined quantum based on best and most reliable evidence which was introduced - Substantive Order - 448/06/LRA - June 12, 2007 - Integra Castings - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Compensation - Employer introduced employment model under which athletic team coaches would no longer hold academic rank and therefore fell outside bargaining unit - Employer unlawfully removed coaches from bargaining unit and deprived the Union of dues to which it was entitled - Employer ordered to pay union dues itself and not by deducting amounts from coaches' salaries - October 4, 2007 - 109/06/LRA & 111/06/LRA - University of Manitoba - **APPEAL TO COURT OF QUEEN'S BENCH ABANDONED.**

Employer committed unfair labour practice contrary to Section 6(1) of *The Labour* Relations *Act* for posting on its premises memorandum addressed to all staff in the bargaining unit - Board ordered Employer to post Order in same location memorandum was posted - Substantive Order - Reasons Not Issued - 120/08/LRA - September 29, 2008 - Assiniboine Regional Health Authority.

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 - 204/09/LRA - August 10, 2009 - Howard Johnson Hotel.

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 - 379/08/LRA - October 2, 2009 - Triple Seal Ltd., t/a Northwest Glass Products.

Employee sought reinstatement as remedial relief in duty of fair representation application - Board does not function as surrogate arbitration board - In any event reinstatement not available remedy under a Section 20 application - Substantive Order – 63/10/LRA – June 28, 2010 – Club Regent Casino.

Closure of business – Union requested Board pierce corporate veil and declare Respondent to be actual employer and find Respondent, as an individual, committed unfair labour practices – Board satisfied Respondent, as directing mind of employer, regardless of corporate forms used from time to time, had failed to recognize Union as bargaining agent and had failed to recognize legitimacy of collective bargaining and arbitration process and had committed unfair labour practices - Accordingly, Board satisfied Respondent was responsible to comply with Order originally decided against corporate entity because section 63(1) of *The Labour Relations Act* required that either parties must commence collective bargaining or parties must "cause authorized representatives on their behalf" to commence collective bargaining - Board declined Union's request to order Respondent pay $2,000 to each union member under subsection 31(4)(e) of the *Act* as that claim for relief was speculative in nature – Substantive Order - 90/10/LRA - January 12, 2012 - D.G.

Interim Order - Reinstatement - Union sought Board to exercise its power to make an Interim Order under Section 31(2) of *The Labour Relations Act* to reinstate employee pending outcome of proceedings - Board satisfied unfair labour practice complaint not frivolous and vexatious and Union advanced arguable case - Board exercised its power and ordered employee to be reinstated - Substantive Order - 41/12/LRA - March 14, 2012 - City of Brandon and B.D.

REMEDY

Employer - Proper Party - Employee asserted Employer violated collective agreement in not proceeding with his job reclassification and for discontinuing his vehicle benefit - Board held no basis under section 20 of The Labour Relations Act to seek ruling that Employer violated collective agreement nor to claim substantive relief against Employer - Board not forum where disputes resolved on merits - Board agreed with Employer that Board lacked jurisdiction to appoint arbitrator to conduct job analysis review and compensation review, but disagreed Employer was not party to proceedings - In section 20 applications, employers are interested parties because of employer's interest in potential remedial relief - Board has no jurisdiction to order Union and Employer make Employee "whole" by ordering payment of an (undefined) amount as compensation for diminution of income or other employment benefits or losses suffered - Employee also sought compensatory relief on behalf of any other person affected by reclassification - Awarding relief for unnamed persons beyond Board's jurisdiction within scope of section 20 application - Application dismissed - Substantive Order - 45/12/LRA - April 13, 2012 - City Of Winnipeg.

Interference - Board determined Employer violated subsection 7(h) of *The Labour Relations Act* by not continuing to employ Employee after he raised concerns about his rights regarding wages payable under *The Employment Standards Code* - As remedial relief, Board satisfied order for wages or benefits not appropriate, but Employee entitled to award of $2000 pursuant to subsection 31(4)(e) of the *Act* for Employer's interfering with Employee's exercise of his rights under *The Employment Standards Code* - Substantive Order - 411/11/LRA - May 3, 2012 - Bri's Stucco Service.

Standing - Collective Agreement - Employees filed application for decertification alleging Union lost support of majority of employees in bargaining unit because it was unable to assist members with pension concerns - Employer filed Reply asserting grounds stated by employees insufficient and contrary to principles of collective bargaining - Employer submitted Board should order current collective agreement binding on members of Union for its entire term; was to remain in full force and effect for its entire term; and that provisions relating to pension plan and pension contribution rates were terms of employment until collective agreement expired - Board determined resolution of issues raised by Employer not matter over which Board had jurisdiction - Section 54 of *The Labour Relations Act* provides where certification of bargaining agent cancelled, employer not required to bargain collectively with bargaining agent and subject to clause 44(c) any collective agreement in force and effect between parties was terminated - Based on provisions of the *Act*, Board could not entertain orders sought by Employer which had no role in determining whether or not employees wish to be represented by Union - Substantive Order - 244/12/LRA - Dec. 6, 2012 - Manitoba Teachers' Society.

REMEDY

Board found Union failed in its duty of fair representation and concluded that, notwithstanding possibility of prejudice to Employer's case caused by delay, that original grievance proceed to arbitration - Parties would be able to either settle grievance, or have it determined through arbitration hearing - Employer to process grievance without objection relating to time limits or other procedural deficiencies arising from delay - Union to engage, at its cost, lawyer experienced in labour relations in Manitoba, jointly selected by Union and Employee - Union may be responsible for portion of damages payable to Employee representing compensation for monetary losses - 157/12/LRA - August 16, 2013 - Phillips & Temro.

Employee filed duty of fair representation application alleging Union failed to ensure he was being paid in accordance with April 2005 Letter of Agreement - As remedial relief, he requested salary of job classification be adjusted and requested retroactive pay - Union denied allegations and asserted matters raised were res judicata as they were same as Duty of Fair Representation application Employee filed in January 2012 - Board determined Application without merit as it was essentially re-litigating essence of January 2012 complaint which was disposed of with finality, particularly having regard that Employee did not file application for review and reconsideration - Further, nature of relief Applicant was seeking would require Board to function as surrogate interest arbitrator and award substantive monetary relief against Union and Employer on retroactive basis beyond Board's jurisdiction under section 20 of The Labour Relations Act - No breach of section 20(b) of the Act revealed in factual circumstances - Application dismissed - Substantive Order - 123/12/LRA - August 21, 2013 - University of Manitoba.

Costs - Employee filed application under section 7 of *The Labour Relations Act* - Employer requested Board dismiss application with costs given unfounded and baseless allegations made by Applicant - Board denied claim for costs - Based on reasoning in Supreme Court of Canada decision, Board does not possess authority under *The Labour Relations Act* to award costs- Substantive Order - 314/12/LRA - September 18, 2013 - Government of Manitoba; Manitoba Family Services and Labour (Selkirk Office).

Union filed application seeking clarification and review of paragraphs 4, 5 and 6 of remedies section of Order No. 1576 submitting they were not sufficiently clear – Board noted paragraph 4 simply confirmed jurisdiction of arbitrator to deal with evidentiary matters that may arise having regard to passage of time since date of Employee's termination - Board's intent was to hold Union responsible for any amounts owing to Employee as result of one or both grievances during period in which Employer was saved harmless - Board satisfied paragraph 6 ought to be reviewed and reconsidered having regard to submissions which noted Employee was responsible for significant delays with respect to filing and hearing of his unfair labour practice application - Remedy with respect to apportionment of damages to take into account Employee's delays and should be fairly adjusted so that Union was not responsible to Employee for all damages for period in which Employer was saved harmless – Substantive Order - 345/13/LRA - February 27, 2014 - Bristol Aerospace.

REVIEW

Board varies certificate to avoid uncertainty as to who would be included in the bargaining unit - Subsection 121(2) of ***The Labour Relations Act*** applied - 637/83/LRA - June 25, 1985 - The City of Winnipeg.

Apprehension of bias - Questions asked by the Board in an attempt to determine the voluntariness of a petition of objection within jurisdiction of Board - 612/85/LRA - October 18, 1985 - Westfair Foods Ltd.

Privately obtained information - Chairperson refers to an announcement in the Winnipeg Free Press at hearing - Application for review denied - 612/85/LRA - October 18, 1985 - Westfair Foods Ltd.

Board alters its criteria of voter eligibility for a certification application to those employees within the bargaining unit and on the payroll up to and within two weeks of a vote ordered subsequent to the application - 190/85/LRA - February 28, 1986 - University of Manitoba.

Expanded panel of Board reviews whether or not original panel misinterpreted a past practice or policy of the Board - Subsections 121.3(3), 120(2) and 120(5) of ***The Labour Relations Act*** applied - 308/85/LRA - 892/84/LRA - April 29, 1986 - St. Boniface General Hospital.

Board reviews its decision as to the appropriateness of a bargaining unit restricted to the Faculty of Arts - 846/86/LRA - December 31, 1986 - University of Manitoba.

Parties seek reconsideration and review for the rescission of a Board decision - Only events which occurred subsequent to the issuance of an order by the Board deemed relevant - 139/86/LRA - February 13, 1987 - Tan Jay Co. – **APPEAL TO COURT OF QUEEN'S BENCH ADJOURNED**.

Application for review and reconsideration of dismissal of decertification application denied as no new evidence submitted to support need to review - 410 & 741/93/LRA - August 26, 1993 - Linda Tyndall t/a 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Board held the review application was based on issues known to the Applicants at the time application for certification was considered and should have been raised then - Application for review and reconsideration dismissed - Substantive Order - Reasons not issued - 754/94/LRA - December 7, 1994 - Plan-it Recycling Inc.

In proposed vacation entitlement clause, Union referred to "permanent" employees while Employer "referred" to full-time employees - Union contended Board obligated "to accept, without amendment, any provisions agreed upon in writing by the parties" as per Section 87(6) of ***The Labour Relations Act*** - Difference in wording could not be seen as agreement - Request for review declined - 509/95/LRA - October 31, 1995 - R.M. of St. Andrews.

REVIEW

"New evidence" - Union requested review of Board decision to omit proposed vacation clause as omission would result in employees getting less than minimum entitlement provided under pre-existing conditions of employment - During hearing, Board proceeded on assumption no employees affected and Union did not disagree - Board could not later hear evidence from the Union because it was not "new evidence" - In the absence of any indication that any employee would be affected, issue best addressed in future negotiations - Request for review declined - 509/95/LRA - October 31, 1995 - R.M. of St. Andrews.

Six years after Revocation Order issued, Union filed application for review alleging Employer committed unfair labour practices during decertification process - Employer submitted application untimely as issue regarding allegations settled at first hearing - Board found matter not settled as applications seeking remedy for alleged unfair labour practice not filed at first hearing - Board not precluded from dealing with the allegations of an unfair labour practice - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Six years after Revocation Order issued, Board finds Employer interfered during decertification process - Certificate reinstated and old collective agreement deemed in full force and effect, except where current conditions more generous - Employer ordered to commence good faith bargaining, to pay the Union $2,000, to allow the Union to meet with employees during work time on Employer's premises, to compensate the Union for expenses incurred in conducting the meetings; and to post one copy of Order at workplace and to send copy of Order by certified mail within 10 days of receipt to each employee - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Standing - Objecting Employees did not file any new material or allegations of improprieties as specified in Section 47(2) of ***The Labour Relations Act*** that would alter Board's decision in certification issue - Request to reconsider denied - Objecting Employees had no further status in proceedings - 650 & 738/96/LRA - February 14, 1997 - East Side Ventilation – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; COURT OF APPEAL REVERSED DECISION OF COURT OF QUEEN'S BENCH; LEAVE TO APPEAL TO COURT OF APPEAL DISCONTINUED**.

Applicant has no new evidence, but felt he did not present all evidence at first hearing - Board held the additional evidence did not constitute reasonable basis for review - Board noted Employer should be penalized under ***The Workplace Safety and Health Act*** , but that ***Act*** was not under its jurisdiction - Original findings upheld that claim for unfair labour practice for safety violations be dismissed - 348/96/LRA - February 21, 1997 - Pointe River Holdings Ltd. (Geoplast).

New evidence - Held Applicant provided no new evidence that was not available at the time of original application to constitute a reasonable basis for review - Application for Review and Reconsideration declined - 469/98/LRA & 575/98/LRA - November 9, 1998 - Coca-Cola Bottling - **APPEAL TO COURT OF QUEEN'S BENCH DENIED; APPEAL TO COURT OF APPEAL DENIED**.

REVIEW

Employer seeking review of finding of successorship arguing Board adopted a 'functional approach" as opposed to an "instrumental approach - Board could not find anything in the Reasons for Decision that would indicate that it took a functional approach - Employer's submission lacked particularity regarding the Board's alleged misapplication of the test of functional economic vehicle – 99/00/LRA – May 3, 2001 – CanWest Galvanizing - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Employer seeking review and reconsideration of finding of successorship - New evidence would not lead Board to any different disposition – 99/00/LRA – May 3, 2001 – CanWest Galvanizing - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Freedom of Speech - Employer Communications - Captive Audience - Employer Interference - Expanded panel confined its role to defining and clarifying policy issues on employer communications to employees and to what extent employer's freedom of speech is fettered by the provisions of *The Labour Relations Act* - 624/00/LRA - September 28, 2001 - Marusa Marketing Inc.

Board took exceptional step of proceeding on own motion to review order on constitutional jurisdiction issue as it had never addressed that important issue - 363/02/LRA - July 25, 2003 - Southeast Resource Development Council t/a Southeast Medical Referral - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Fact that an employer may not employ any employees in a bargaining unit after the Board issues a certificate does not affect validity of certificate - Certificate continues to be operative in event employer does employ employees falling within scope of bargaining unit - Substantive Order - 351/06/LRA - June 9, 2006 - B & M Land Company JV.

New Evidence - Union requested review of Board's Order deferring unfair labour practice application regarding Employer's unilateral imposition of bilingual qualification for nursing positions to grievance procedure - Union submitted Employer's failure to bargain "term and condition" of employment was focus of application - In absence of new evidence, Union must show cause why Board should review original decision - Held Union seeking to have Board order that Employer may only impose bilingual qualification for selected positions through collective bargaining was same as requesting Board amend terms of the Collective Agreement contrary to accepted arbitral principles - Request did not support review or reconsideration of the original decision - Substantive Order - 725/06/LRA - Feb. 1, 2007 - St. Boniface General Hospital.

REVIEW

Employee provided no new evidence, within the meaning of Rule 17(1) of the *Manitoba Labour Board Rules of Procedure* that would constitute a reasonable basis for review of original Dismissal Order - Improper for Employee to raise, for the first time, an alleged breach of a section *The Labour Relations Act* on an application for review and reconsideration - Substantive Order - 187/07/LRA - May 31, 2007 - Red River College.

Witness - Employer submitted it was not aware of doctor's note Employee presented at hearing so Supervisor did not attend to testify that Employee had not given note - Parties to application are responsible to be ready to proceed when hearing convenes which includes ensuring availability of witnesses who can be reasonably expected to have knowledge of facts - Employer knew supervisor had direct knowledge of relevant facts and should have foreseen supervisor should have been available to testify at the hearing - Application for Review dismissed - 211/07/LRA - June 12, 2007 - Integra Castings.

Employer submitted that by the time Board received letter from Employee raising issues with his reinstatement, it was intending to seek Review - Held letter not relevant to Review Application - Application dismissed - 211/07/LRA - June 12, 2007 - Integra Castings.

Board considered document that Employee sought to introduce as new evidence - Board held that new evidence did not establish valid basis either for different decision or for convening of a hearing and Review Application did not otherwise show any cause why Board should review or reconsider its original decision on a principle of law or matter of policy - Application for review dismissed - Substantive Order - 259/08/LRA - August 14, 2008 - Manitoba Lotteries Corporation.

As no new evidence filed, application for review of Dismissal Order to be tested under Rule 17(1)(c) of *Manitoba Labour Board Rules of Procedure* - Submissions made by Applicant were re-casting and re-submission of arguments and positions advanced on original application - Further, original decision did not set precedent that amounted to significant policy adjudication warranting review - Application Dismissed - Substantive Order - 265/08/LRA - October 15, 2008 - Middlechurch Home of Winnipeg.

Board accepts Applicant Union's explanation that particulars of alleged misconduct not immediately available - Board rescinds ruling that Application be dismissed on the basis that no *prima facie* case established - Applicant limited to proving assertions based on particulars provided - Substantive Order - 157/09/LRA - July 2, 2009 - Lockerbie & Hole Eastern.

REVIEW

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 - 114/09/LRA & 239/09/LRA - Oct. 30, 2009 - Manitoba Hydro.

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 - 256/09/LRA - November 5, 2009 - Government of Manitoba, Manitoba Civil Service Commission, Organization & Staff Development.

New Evidence - Review Application recasting of Employee's submissions made in initial application - Did not fall within parameters of Section 17(1) (a) o Decision - Board denied request for Written Reasons as Dismissal Order adequately set out basis for Board decision - Substantive Order - 256/09/LRA - November 5, 2009 - Government of Manitoba, Manitoba Civil Service Commission, Organization & Staff Development.

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 - 256/09/LRA - November 5, 2009 - Government of Manitoba, Manitoba Civil Service Commission, Organization & Staff Development.

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 - 276/09/LRA - December 4, 2009 - City Of Winnipeg and Employee Benefits Board.

REVIEW

Employer filed application seeking review of certificate and reasons for Board's finding that “substantial employment connection” existed between this case and a prior certification decision involving different parties - Board did not accept Employer’s assertion that Board refused to exercise its jurisdiction and erred in law by failing to accept Employer’s argument that Sections 39(1) and 39(2)(b) of *The Labour Relations Act* allow Board to find proposed bargaining unit inappropriate on grounds advanced by Employer - As to consideration of prior case, Board’s determinations reflected unique circumstances of case before it which was assessed in its own circumstances - Substantive Order - 257/10/LRA – Nov. 1, 2010 - Rural Municipality of Springfield.

Witness – Board issued Letter of Direction in which scope of hearing limited to specific allegations contained in Particulars in respect of three named employees - Union asserted Letter too restrictive and it ought to be allowed to adduce evidence beyond the three named employees - Board amended Letter indentifying other individuals eligible to be called as witnesses and ruled parties were free to call other witnesses provided that evidence directly related to scope of issues defined in Letter - Substantive Order - 248/10/LRA - December 17, 2010 - Manitoba Lotteries Corporation.

New Evidence - Employee submitted co-worker's signed statement constituted new evidence for Board to review and reconsider Dismissal Order - Board satisfied witness upon whose statement Employee relied was interviewed twice by Union Representative prior to Union’s decision not pursue Employee’s grievance to arbitration - Union considered interviews in developing written opinion regarding whether or not to proceed with Employee’s grievance and interviews were known to Union Executive – Held co-worker's statement not “new evidence” within the meaning of Section 17(1)(b) of the *Manitoba Labour Board Rules of Procedure* as it was available prior to filing of original application - Review Application did not reveal sufficient cause, on principle of law or on matter of policy, pursuant to Section 17(1)(c) of the *Rules,* why Board should review or reconsider original decision - Substantive Order - 329/10/LRA - February 2, 2011 - City of Winnipeg.

New Evidence - Natural Justice - Union requested Board review, vary, rescind or rehear certificate and interim order - Board dismissed review application as positions advanced by Union were recasting and resubmission of arguments advanced at hearing - Assertions Board denied Union natural justice flowed from Union's disagreement with Board's rulings regarding scope and nature of evidence allowed to be adduced - Board satisfied its rulings fell within its statutory jurisdiction to determine scope and ambit of hearing - Union neither furnished new evidence nor showed sufficient cause why original decision should be reviewed or reconsidered on a question of law or policy - Substantive Order - 55/11/LRA - September 7, 2011 - Manitoba Lotteries Corporation.

REVIEW

Teamsters filed Application for Review of certificate MLB-6824 and Interim Order 1494 - Board did not accept CAW's position that Teamsters filed a review of an earlier review application for Order 1491 - Board was satisfied its disposition of the Order 1491 did not preclude Teamsters from filing application for review of Order 1494 as that order was issued following completion of a full hearing and specific rulings on evidence adduced at the hearing and factual and legal contexts were different - Substantive Order - 55/11/LRA - September 7, 2011 - Manitoba Lotteries Corporation.

New evidence - Board dismissed Union's unfair labour practice application as issues raised could be adequately determined through arbitration - Union filed application for review and reconsideration asserting new evidence was available within meaning of Rule 17(1)(a) of *Manitoba Labour Board Rules of Procedure* and, further, that an arbitrator could not grant relief claimed by Union in Application - Board noted documents filed with review Application were in existence and available at time original Application filed - Board re-affirmed that matters raised could be adequately determined under grievance and arbitration provisions as reinforced by broad definition of a grievance in collective agreement - Review Application dismissed - Substantive Order - 125/11/LRA - October 24, 2011 - City of Brandon (Brandon Fire and Emergency Services)

Board certified Union as bargaining agent for all employees of Employer employed in City of Brandon - Union requested Board rescind certificate and issue new certificate for bargaining unit encompassing all employees in Province of Manitoba - Union argued Board not empowered to vary description of bargaining unit and Board's jurisdiction limited to determining question as to whether or not bargaining unit proposed by Union was appropriate for collective bargaining - Held subsections 39(1) and 39(2) of *The Labour Relations Act* authorized Board to alter description of any proposed bargaining unit - Application did not reveal sufficient cause why Board should review or reconsider original decision - Application dismissed - Substantive Order - 294/11/LRA - October 27, 2011 - CancerCare Manitoba.

New evidence - Board certified Union as bargaining agent for all employees of Employer employed in City of Brandon - Employer requested Board review and reconsider its decision submitting Board erred in determining that existing collective agreement was not a collective agreement within meaning of *The Labour Relations Act* in respect of employees in Brandon - Employer asserted certifying Union for unit already covered by a collective agreement between same parties was inconsistent with the *Act* - Held Employer's submissions were reiteration and reformulation of arguments advanced at original hearing - Disagreement with Board's findings on evidence submitted did not, standing alone, constitute grounds for varying, rescinding, or dismissing order - Application for Review and Reconsideration dismissed - Substantive Order - 296/11/LRA - October 27, 2011 - CancerCare Manitoba.

REVIEW

New evidence - Original Application seeking termination of bargaining rights dismissed for being untimely - Petitions or signatures filed with review Application did not constitute new evidence within subsections 17(1)(a) and 17(1)(b) of Manitoba Labour Board Rules of Procedure - Time limits which define when application to terminate bargaining rights can be filed are fundamental provisions - Failure to file within defined "open periods" goes to essence of Board's jurisdiction - Review Application did not question or challenge core finding of Board that original Application untimely - Employee's disagreement with original decision did not, standing alone, constitute grounds for varying or rescinding previous ruling or order of Board - Application for review dismissed - Substantive Order - 369/11/LRA - December 8, 2011 - VAW Systems.

New evidence - Employee filed review application requesting Board review new documentation - Board satisfied documentation filed with review application did not constitute new evidence within meaning of Section 17(1)(a) and (b) of *Manitoba Labour Board Rules of Procedure* - Further, purported new evidence related to bargaining process and to ratification of collective agreement and that evidence was not relevant to Section 20 complaint - In any event, purported new evidence available at time original application filed - To accept review application would require Board to exceed its jurisdiction and award remedial relief by changing terms of settlement concluded by parties - Application dismissed – Substantive Order - 400/11/LRA - January 3, 2012 - Manitoba Lotteries Corp.

Technical Error - Bar - Previous application - Union filed review application requesting Board to allow it to file new application for certification for same bargaining unit within 30 days of dismissal of first application - It relied on subsections 8(14) and 8(15) of the *Manitoba Labour Board Rules of Procedure* under which Board can waive standard six month waiting period where prior application had been rejected for technical error or omission - It submitted error associated with timing of seasonal layoffs and miscommunication within Union regarding number of layoffs and status of workforce - Held application for certification dismissed as Board not satisfied union had support of required percentage of employees - Failure to meet threshold requirement of subsection 40(1) of *The Labour Relations Act* could not be characterized as technical error or omission - Application for Review and Reconsideration dismissed - Substantive Order - 406/11/LRA - January 13, 2012 - Bayview Construction Ltd. and Rocky Road Recycling Limited.

New evidence - Board satisfied exhibits attached to review application did not constitute "new evidence" as all were available to be filed in support of original application - In Review Application, Employee again raised issue of Union's prior practice when conducting votes - Board specifically addressed that issue in dismissal order - Review Application did not raise sufficient or any cause why Board should review original decision either on a principle of law or on a matter of policy - Application for review dismissed - Substantive Order - 70/12/LRA - Mar. 19/12, City of Winnipeg Transit Department.

REVIEW

As result of mail-in representation vote, MGEU was selected as certified bargaining agent for intermingled employees of technical/professional paramedical classifications of amalgamated Regional Health Authority - MAHCP filed application seeking Review and Reconsideration of certificate - Board addressed MAHCP's grounds for seeking review - Board acted within its jurisdiction and applied relevant provisions of *Freedom of Information and Protection of Privacy Act (FIPPA)* in refusing to provide residential addresses of employees, a position supported by Manitoba Ombudsman - Board was within its jurisdiction when it ordered representation vote be conducted by mail-in ballot - Pursuant to section 48(2) of *The Labour Relations Act*, Board has authority to make arrangements and give directions it considered necessary for proper conduct of vote - Board found MAHCP's position that telephone, post or possibly email was only effective means of communication overlooked additional means of communicating with employees - Crux of MAHCP's position is Board ought to facilitatecommunication by providing addresses - Board concluded section 2(b) *Charter* arguments Union advanced that Board abridged its rights to freedom of expression, did not meet "low threshold" of constituting serious issue to be tried - Further, submission that employees who voted for MAHCP without democratically held election were deprived of section 2(d) *Charter* rights to freedom of association founded upon unsupported assertion representation vote did not afford fair opportunity to employees to express their wish as to their choice of bargaining agent - Board satisfied vote conducted in fair and proper manner and submission with respect to section 2(d) of *Charter* was expression of dissatisfaction with vote result which did not constitute breach of freedom of association - Union's submission Board failed to follow its own procedure, as set by section 26(1) of the *Manitoba Labour Board Rules of Procedure*, by not affording Unions opportunity to examine the lists of employees' names and addresses was fundamental misreading of the *Rules* - Section 26(1) did not refer to provision of employees' addresses to unions involved in representation vote - Board acknowledged that it did not conduct oral hearings to determine issues regarding provision of addresses; decision to conduct mail-in vote; and MAHCP's refusal to sign fair vote certificate, but Board not required to conduct an oral hearing and Courts have repeatedly acknowledged that it was within Board's jurisdiction to make determinations under the *Act* without conducting oral hearing - Therefore, Board dismissed application seeking Review and Reconsideration - Substantive Order - 113/13/LRA - August 16, 2013 - Prairie Mountain Health; 114/13/LRA - August 16, 2013 - Southern Health - Santé Sud - **PENDING BEFORE COURT OF QUEEN'S BENCH.**.

REVIEW

Union filed application seeking clarification and review of paragraphs 4, 5 and 6 of remedies section of Order No. 1576 submitting they were not sufficiently clear – Board noted paragraph 4 simply confirmed jurisdiction of arbitrator to deal with evidentiary matters that may arise having regard to passage of time since date of Employee's termination - Board's intent was to hold Union responsible for any amounts owing to Employee as result of one or both grievances during period in which Employer was saved harmless - Board satisfied paragraph 6 ought to be reviewed and reconsidered having regard to submissions which noted Employee was responsible for significant delays with respect to filing and hearing of his unfair labour practice application - Remedy with respect to apportionment of damages to take into account Employee's delays and should be fairly adjusted so that Union was not responsible to Employee for all damages for period in which Employer was saved harmless – Substantive Order - 345/13/LRA - February 27, 2014 - Bristol Aerospace.

SCOPE OF COLLECTIVE AGREEMENT

Employees of dissolved districts not covered by the collective agreement of the Union representing the Division's employees - Thus, Division not bound to collect union dues from those employees on behalf of the Union - S-267-1 - July 13, 1967 - Assiniboine North School Division, No. 2

Board determines whether certain classifications in dispute are covered by the collective agreement - Subsection 121(1)(d) of ***The Labour Relations Act*** applied - 737/83/LRA - July 10, 1984 - R.M. of Strathclair.

Graphic Arts students employed on a special project not covered by the collective agreement - 402/84/LRA - July 17, 1984 - Health Sciences Centre.

Board examines Master Agreement between the Manitoba Government and the Manitoba Government Employees' Association - Manitoba Lotteries Foundation employees not included in Master Agreement - 791/88/LRA - January 31, 1989 - The Manitoba Lotteries Foundation, Province of Manitoba.

(Next Section: Sec. 19.3)

STATUS

Employer argues that the applicant was not a "union" within the meaning of ***The Labour Relations Act*** and therefore lacked status to apply for certification - No Number - April 28, 1978 - Tudor House Limited.

Board reviews applicable considerations when determining intervenor status in proceedings before the Board - Subsection 1(s) and Regulation 5(1) of ***The Labour Relations Act*** considered - 554/81/LRA - June 10, 1982 - Legal Aid Service Society of Manitoba.

International Representative of a union has authority to make an application for certification on behalf of the applicant - 64/83/LRA - April 20, 1983 - Mrs. K's Food Products Ltd.

Union capable of filing an application on behalf of an employee - Union acts as representative - 924/86/LRA - March 17, 1987 - Westfair Foods Ltd.

Definition - Criteria necessary in order to establish status as a "union" discussed - Intervenor not properly constituted union and agreement between Employer and Intervenor not collective agreement as defined in ***The Labour Relations Act*** - Intervenor has no status in application for certification proceedings - Subsection 1(x) the Act considered - 110/87/LRA - April 16, 1987 - Springhill Farms Limited.

Board determines the status of a group of objecting employees in an application for certification - Subsections 45(4) and 47(2) of ***The Labour Relations Act*** considered - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

Employer's status before Board on application for certification limited - Subsection 47(1) of ***The Labour Relations Act*** considered - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

To meet criteria of employment, incumbent required to maintain professional certification which required employment in the practice of nursing - Board determined that when the position was performed by a qualified nurse it fell within the Applicant's bargaining unit- 512/89/LRA - March 21, 1991 - Health Sciences Centre.

Board determined in an earlier decision that golf course employees were covered under collective agreement between Province and Union - Situation had not changed since expiry of agreement - Employers were still considered to be common employers and employees covered by new agreement - 315/92/LRA - April 26, 1993 - Province of Manitoba, Venture Manitoba Tours Ltd.

Although summer students have right to become members of Union, Board not satisfied Applicant was an employee of the Employer or was an employee at time application filed - Applicant did not have status to file under Section 20 ***The Labour Relations Act*** which contemplates application must be filed by employee - Substantive Order - No Reasons issued - 269/94/LRA - June 9, 1994 - Abitibi-Price Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH.**

STATUS

Individuals not hired as per the hiring hall provisions of the collective agreement not bona fide employees and hold no status to file application under Section 49(1) of ***The Labour Relations Act*** - Application for termination of bargaining rights dismissed - 221/94/LRA - January 23, 1995 - Linda Tyndall, 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; MATTER RETURNED TO THE BOARD.**

Objecting employees have no standing in application as Petition did not include allegations against the Union as required by Subsection 47(2) of ***The Labour Relations Act*** - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries.

Employees terminated during lockout eligible to vote in displacement application because they were on the payroll the day immediately before the lockout commenced - Employees who had resigned out of economic necessity could be eligible to vote - However, replacement workers not eligible as not on the payroll before lockout and did not share community of interest with locked-out employees - Subsection 35(6) discussed - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

Employer argued Employee hired for eight day project could not be considered employee for application under ***Rule 28 - Rule*** not applicable in the construction industry given short-term employment is the norm and casual employees are not an issue in this sector - 605/94/LRA - October 26, 1995 - TNL Industrial Contractors Ltd.

Union status - Board sets out criteria to determine if Association of owner-operators has status as union - Board held Association had union status as no irregularities occurred in its formation - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Applicant did not have status to file an application to cancel the certificate of the Union as he was employed through an individual contract and was not an employee within the bargaining unit as at the date of application - Application under Subsection 49(1) dismissed - 622/96/LRA - August 20, 1997 - Intelicom Inc./ Trojan Security Services.

Applicant filed request to inspect Financial Compensation Statements of the Union three months after he received his final cheque from the Employer - Board satisfied he was a member in good standing of the Union, but at time of application he was not an employee in the unit of employees for which the Union was the bargaining agent as per Section 132.4(1) of ***The Labour Relations Act*** - Request for disclosure denied - 233/97/LRA - September 8, 1997 - Kearsley Electric Ltd.

Interference - Employer filed application alleging Union and District Managers interfered in selection of union as newspaper carriers knew decision to join Union was being observed - Cornerstone of collective bargaining relationship was that employer has no status in certification applications - Board noted any breach of employment not an issue for it to decide - Board could not find evidence of fraud, coercion, intimidation by Union - Application dismissed - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

STATUS

Health Care - Majority of employees chose to become members of bargaining agent who did not have a presence in personal care home - Board determined that the bargaining agents who already represented other classifications within the unit had no status to appear on the ballot being utilized in representation vote to determine wishes of the affected employees - 272/99/LRA - February 13, 2000 - Deer Lodge Centre Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Employee raised issue as to employee status - Board allowed Union objection to make no determination on issue as the application did not place issue before Board – 61/98/LRA – June 18, 2001 – Dairyworld Foods.

STATUTORY DECLARATIONS

Board outlines the extent of the inquiries, in lieu of personal knowledge, required of a person who signs a statutory declaration in support of an application for certification - 1374/88/LRA - April 21, 1989 - Granny's Poultry Co-Operative (Manitoba) Ltd.

Board does not accept Employer's submission of Statutory Declaration with respect to previously submitted particulars as Counsel aware it is to be filed at time of initial application - Cases dismissed as disclosed particulars do not satisfy Board that prima facie case established - Substantive Order - Reasons not issued - 453/96/LRA - July 25, 1996 - Westin Hotel Company.

Board does not accept Employer's submission of Statutory Declaration with respect to previously submitted particulars as Counsel aware it is to be filed at time of initial application - Cases dismissed as disclosed particulars do not satisfy Board that prima facie case established - Substantive Order - Reasons not issued - 470/96/LRA - July 25, 1996 - Westin Hotel Company.

STRIKE

Employer releases non-productive employees during a strike - Statutory return to work protocol, Subsection 11(1)(f) of ***The Labour Relations Act*** discussed - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

Management communicates with striking employees directly during the collective bargaining process - Union contends correspondence is in violation of Subsection 6(1) and Section 36 of ***The Labour Relations Act*** - 745/88/LRA - October 3, 1988 - Fisons Western Corporation.

Voting Constituency to include all persons employed within original bargaining unit on date immediately preceding date strike commenced and all persons employed within Applicant's applied-for-unit as at date of the filing of its application - Vote conducted during course of hearings and ballots sealed pending final determination of all matters - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd..

Interference - Three years into lengthy strike, Employer collected dues for employee group as per members' authorization forms - Collecting of dues other than for certified bargaining agent not necessarily offending principles of ***The Labour Relations Act*** - However, Employer knew Employee Association was in competition with Union which was vulnerable to challenge because of the strike - General provisions in **The Law of Property Act** cannot override specific provisions in ***The Labour Relations Act*** - Employer committed unfair labour practice - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Objecting Employees file Application for cancellation of certificate of Union involved in lengthy strike with Employer - As per Section 35(6) of ***The Labour Relations Act***, individuals who were laid off, employed on seasonal basis, or hired as replacement workers after strike began were not employees for purposes of application - Employees who retired after strike began and owner/operators represented by another bargaining agent did not have continuing interest in outcome of the proceedings - However, individuals terminated during strike and individual terminated prior to strike but reinstated through arbitration had continuing interest in proceedings - 56/96/LRA - Oct. 18, 1996 - Building Products & Concrete Supply.

Objecting Employees file Application for cancellation of certificate of Union involved in lengthy strike with Employer - Applicant claims that individuals classified as redi-mix drivers prior to strike did not have continuing interest in strike because during strike classification became redundant and was replaced by owner/operators - Board held continued existence of classification valid bargaining issue during strike so redi-mix employees on strike have continuing interest in outcome of application - 56/96/LRA - October 18, 1996 - Building Products & Concrete Supply.

The Labour Relations Act does not guarantee continuing accrual of pension rights or benefits during period of a strike - Employer did not commit unfair labour practice by refusing to accept pension benefit contributions from employees who were on legal strike - Application dismissed - 935/01/LRA - October 8, 2002 - University of Manitoba.

STRIKE

Illegal strike - Voting Constituency - Held Union failed to comply with provisions of section 93 of *The Labour Relations Act* when it permitted members who were not in bargaining unit or employed by Employer to participate in strike vote - However, ballots cast in error did not automatically invalidate entire vote - Of ballots cast by all who voted, only one was not in favour of strike - Despite secret ballot, employees in the unit clearly either supported strike action unanimously or by a massive majority - It would not make labour relations sense to declare strike to be illegal - 89/05/LRA - October 24, 2005 - National Elevator and Escalator Association, Kone Inc. and Otis Canada.

Layoff - Union contended Employer refused to reinstate Employee following end of strike based on his seniority - Held parties reached an agreement that Employer retained discretion to determine whether work was available and, if so, which employees would be required to perform that work without regard to seniority - Board accepted that Employee not recalled on account of lack of work and decision based on valid business reasons - Substantive Order - 376/07/LRA - Nov. 2, 2007 - Able Movers.

SUB-CONTRACTING

Company hires security firm to operate loading ramp - Board determines certificate and collective agreement did not cover employees of security firm - 911/76/LRA - March 18, 1977 - Shell Canada Limited.

Control and Direction - Union claims the City and operators providing wheelchair passenger service under a detailed contract were carrying on associated businesses and constituted one employer - City exercising quality control over the contractor's activities or retaining right to remove unsuitable employees not evidence of common control or functional interdependence - 403-405/96/LRA - June 3, 1997 - City of Winnipeg, Gull Wing Transit, Duffy's Taxi and A.E. Crundwell.

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 - 339/09/LRA - March 24, 2010 - Tembec Industries Inc.; Tembec Paper Group Pine Falls Operations.

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 - 339/09/LRA - March 24, 2010 - Tembec Industries Inc.; Tembec Paper Group Pine Falls Operations.

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 - 339/09/LRA - March 24, 2010 - Tembec Industries Inc.; Tembec Paper Group Pine Falls Operations.

Breach of duty - Hard bargaining - Lockout - Board determined Union paying locked-out employees 100 percent of lost wages was matter of internal union policy and not evidence that Union bargaining in bad faith - Also Employer entitled to table best and final wage offer and take position that collective agreement would only be concluded if Union moved off its last wage proposal, but Union not accepting Employer's position not evidence of bad faith bargaining but only reflected hard bargaining by both parties - Parties having reached impasse on wages not sufficient basis to rule Union was not bargaining in good faith for the purposes of either subsection 87.1(3) or subsection 87.3(1) of The Labour Relations Act - Substantive Order - 389/11/LRA - December 21, 2011 - Granny's Poultry Co-Operative (Manitoba) Ltd., Hatchery Operations.

SUCCESSORSHIP

Board declares that the collective agreement in place is binding upon the new owners of a plant and its employees - Sections 64 and 65 of ***The Labour Relations Act*** considered - 315/83/LRA - October 21, 1983 - FIAT Products Ltd.

Whether collective agreements entered into pursuant to federal legislation are collective agreements within the meaning of ***The Labour Relations Act*** - 283, 292, 392/83/LRA - October 24, 1983 - Deer Lodge Centre Incorporated.

Board determines whether a purchase/sale of an "undertaking or business" had occurred - Section 64 and 65 of ***The Labour Relations Act*** considered - 127/84/LRA - June 4, 1984 - Superior Coach Manufacturing Ltd.

Board determines sale of business takes place when contract won by union shop owned by father transferred to non-union shop owned by son - Subsections 59(1) and 142(5) of ***The Labour Relations Act*** considered - 1019/88/LRA - October 30, 1989 - Peter's Mechanical & Installation, Daplex Plumbing and Heating Ltd., Peter's Plumbing and Heating Ltd.

Work transferred from provincial government department to crown corporation under control of same minister deemed to be associated activities under common control and direction - Subsections 56(1), 59(1) and 142(5)(a), (e) and (g) considered - 282/89/LRA - February 28, 1990 - Province of Manitoba, Venture Manitoba Tours Ltd.

Subcontracting - Contracting out operation of food services at community college not sale of business for purposes of Subsection 56(1) of ***The Labour Relations Act*** - 995/91/LRA - July 30, 1992 - Province of Manitoba, Red River Community College, and VS Services Ltd. t/a Versa Food Services.

Intermingling - Substantive Order - Transfer of schools between school divisions resulted in intermingling of employees represented by the Union and those who were not unionized - Pursuant to Section 56(d) of ***The Labour Relations Act***, Board determined affected employees constituted two separate and appropriate bargaining units which would include unionized and non-unionized employees - Reasons not issued - 1023/92/LRA - May 10, 1993 - Pembina Valley School Division, Turtle Mountain School Division.

Court-appointed receivers, as distinguished from privately-appointed receivers, are agents of the court, not agents of the company - Held Receiver was successor employer - Board found corporate dissolution of owner because of failure to file annual returns not significant to the determination of the issue - 193/92/LRA - May 17, 1993 - Flin Flon Hotel, Dunwoody Limited.

Board ruled sale of business and intermingling occurred - As at date of hearing, the ultimate operating name of the successor employer had yet to be finalized - Unit determined by the Board to be appropriate for collective bargaining deemed to include the name finally chosen - Substantive Order - Reasons not issued - 802/95/LRA - March 8, 1996 - Cottrell Transport Inc. & Cottrell Freight Systems.

SUCCESSORSHIP

Intermingling - Preliminary Objection - Union filed application 1½ months prior to the proposed date of purchase of the company - Current Bargaining Agent contended application was premature as merger or intermingling had not occurred - Parties agree to treat hearing as if it commenced two weeks later - Substantive Order - Reasons not issued - 802/95/LRA - March 8, 1996 - Cottrell Transport Inc. & Cotrell Freight Systems Inc.

Doctors previously employed by Clinic entered into an independent fee-for-service contract with Clinic - Board found contracts were contracts of employment and did not constitute a successorship situation or a sale of a business - Clinic continued to be bound by terms and conditions of the collective agreement - 391 & 417/96/LRA - Aug 29, 1997 - Shoal Lake Strathclair Health Centre/Drs. Muller, Venter, Krawczyk.

School division dissolved - Land and assets transferred to and liabilities assumed by another school division - Intermingling occurred between the predecessor's teacher/resource aides and successor's paraprofessionals - Board held representation vote not necessary due to overwhelming number of paraprofessionals as compared to teacher/resource aides - Letter Decision; full Reasons not issued - 512/99/LRA - September 30, 1999 - St. Boniface School Division No. 4.

Sale of Part of Business - Respondent argued it only acquired "collection of assets" from bankrupt company - Held successorship provisions do not require transferred business be economically viable and transfer of only part of the former business was not fatal to determination that sale within section 56(1) of *The Labour Relations Act* occurred - Board found business continued to galvanize products for former customers of predecessor; employed some former employees; and while galvanizing methods differed, the purpose was the same - Sale of business occurred - 444/99/LRA - February 16, 2000 - CanWest Galvanizing Inc. and/or La Corporation Corbec - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Employer's willingness to engage individuals previously supplied by service provider after expiration of service agreement does not in itself constitute a sale of a business pursuant to section 56(1) of *The Labour Relations Act* - 360/99/LRA - February 17, 2000 - Regional Health Authority - Central Manitoba Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH**

Employer seeking review and reconsideration of finding of successorship - New evidence would not lead Board to any different disposition – 99/00/LRA – May 3, 2001 – CanWest Galvanizing - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

SUCCESSORSHIP

Employer seeking review of finding of successorship arguing Board adopted a 'functional approach" as opposed to an "instrumental approach - Board could not find anything in the Reasons for Decision that would indicate that it took a functional approach - Employer's submission lacked particularity regarding the Board's alleged misapplication of the test of functional economic vehicle – 99/00/LRA – May 3, 2001 – CanWest Galvanizing - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Sale of Part of Business - Union claimed Owner sold part of Alpine to QSI - Owner's sale of his shares and resignation of his directorship of QSI marked a decrease in his involvement in QSI - Two employee going to work for QSI and sale of some equipment to QSI not determinative of sale of a business - Contractor releasing Alpine from its obligation as subcontractor and then awarding contract to QSI was solely within the contractor's discretion - Movement of that contract did not amount to the sale of a business - Application dismissed – 389/01/LRA – February 15, 2002 - Alpine Interiors Ltd., Alpine Drywall and Plastering (Manitoba) Ltd. & QSI Interiors.

Amalgamation - Intermingling - *Res Judicata* - Amalgamation of two health authorities resulted in Home Care Case Co-ordinator classification falling into two bargaining units - Employer requested Board Determination to which bargaining unit classification should be assigned - MGEU raised preliminary objection under principles of *res judicata*/issue estoppel - Held even where elements of res judicata and issue estoppel exist, Board retains discretion whether doctrines ought to be applied - In current application, elements had not been met given emergence of new employer and changes to Home Care Case Co-ordinators classification - Matter to proceed to hearing - Substantive Order - 474/06/LRA - Nov. 22, 2006 - Assiniboine Regional Health Authority.

Appropriate Bargaining Unit - Amalgamation - Board determined classification of Home Care Case Co-ordinators were practicing profession of nursing as essential part of their job functions and properly fell with the Manitoba Nurses Union bargaining unit - Board ordered Home Care Case Co-ordinators who were still within Technical/Professional Paramedical bargaining unit be removed from the Manitoba Government and General Employees' Union bargaining units and be placed within the MNU bargaining unit - Substantive Order - 474/06/LRA - September 6, 2007 - Assiniboine Regional Health Authority.

Intermingling - MGEU filed Application for declaration that five paramedics formerly employed by Swan Valley and represented by IUOE were within scope of unit for which MGEU was bargaining agent - Employer requested "yes/no" vote be held to determine if five paramedics wanted to be represented by a union - Board held vote not necessary as overwhelming majority of employees fell within existing MGEU unit - Board declared technical/professional paramedical employees formerly employed by Swan Valley fell within the scope of MGEU bargaining unit - Substantive Order - 310/07/LRA - November 16, 2007 - Parkland Regional Health Authority.

SUCCESSORSHIP

Issues before Board did not constitute a continuation of Review of Bargaining Unit Appropriateness in Manitoba's Rural Health Care Sector - Transfer of Swan Valley facilities to the Parkland Regional Health Authority resulted in a sale, merger or amalgamation within the meaning of Section 56(2)(a) of *The Labour Relations Act* - Determined Parkland RHA was successor employer - Substantive Order - 337/07/LRA - November 16, 2007 - Parkland Regional Health Authority.

Amalgamation of health facilities into Health Authority resulted in intermingling of three unions - Employer submitted that MGEU should not be included on representation vote as it did not represent 20% or more of affected employees - MGEU questioned existence of Board rule for threshold of support in order to be placed on ballot - Board order MGEU to be on ballot - Substantive Order - 337/07/LRA - November 16, 2007 - Parkland Regional Health Authority.

Union succession - Noting that Employer had no objection to issuance of declaration sought, Board declared, through succession of mergers, amalgamations and transfers of jurisdiction, Workers United Canada Council ("Union") became and was successor union to predecessor unions identified in Application - Union acquired rights, privileges and obligations of predecessor unions under *The Labour Relations Act* or under any collective agreement to which predecessor unions were parties - Union acquired rights, privileges and obligations of predecessor unions regarding any existing bargaining units of the Employer's - Substantive Order - 299/11/LRA – Oct. 14, 2011 - Gordon Hotels and Motor Inns.

Union filed successorship application as successor to UNITE Manitoba Joint Council - Board, having noted Employers had no objection to successorship declaration and being satisfied Union was a union within meaning of *The Labour Relations Act*, issued declarations Union sought under sections 55(1) and 55(2) of the *Act* - Successorship declaration effective as of date when Union was issued its Charter - Substantive Order - 49/12/LRA - August 28, 2012 - Freed & Freed International Ltd. and The Down Room Inc.

(Next Section: Sec. 20.1)

TIMELINESS

Application to revoke certification determined to be untimely - Collective agreement provided for the continuation of agreement while negotiations continued - #S-67-19 - Undated - The Winnipeg School Division No. 1.

Amendment of proceedings - An amendment of an application to the Board is procedural only and does not affect the date of application - 529/76/LRA - Undated - Teledyne Canada Bell Foundry.

Notice to commence bargaining terminates collective agreement - Application to revoke certification found to be timely - Subsections 54(2) of ***The Labour Relations Act*** considered - 29, 90/77/LRA - April 7, 1977 - White Truck Sales Manitoba Ltd.

Notice of Intention - Board allows documentation filed after the expiry date for replies - 439/84/LRA - October 1, 1984 - The T. Eaton Company Limited.

Based on Applicant's own letter, application for vote filed three days prior to date dispute assumed to exist - Application dismissed as being untimely - Subsection 94.1(1) and 94.1(4) of ***The Labour Relations Act*** considered - 1192/90/LRA - March 21, 1991 - Victoria General Hospital.

Undue Delay - Applicant made intentions known to Union a year earlier that grievance would not proceed, and had access to legal representation during time period in question - Held undue delay in filing of application of unfair labour practice under Section 20 of ***The Labour Relations Act*** - Application dismissed pursuant to Section 30(2) of the ***Act*** - Reasons not issued - 217/92/LRA - May 4, 1992 - E.H. Price Ltd.

Undue delay - Application alleging unfair labour practice filed 5 months after allegations occurred - Board dismisses application pursuant to Section 30(2) of ***The Labour Relations Act*** - Reasons not issued - 438/92/LRA - June 2, 1992 - Province of Manitoba, Government Services.

Application filed under Section 49(1) of ***The Labour Relations Act*** - Reference made to Section 49(3), but no evidence adduced with respect to that section - Board finds application untimely - Application dismissed - 410 & 741/93/LRA - August 26, 1993 - Linda Tyndall t/a 2890675 Manitoba – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Board satisfied Applicant was aware of Respondent's intention not to proceed with grievance at least 7 months prior to filing application - Application dismissed for undue delay - Substantive Order - Reasons not issued - 186/94/LRA - September 29, 1994 - University of Manitoba.

Failure to Refer Arbitration Award for Judicial Review - Application filed 8 months after Applicant aware of Union's intention not to proceed with Motion to quash arbitration award - Applicant failed to present evidence regarding reasons for delay - Application dismissed as Applicant unduly delayed filing of application - Substantive Order - Reasons not issued - 580/94/LRA - Dec. 19, 1994 - Abitibi-Price - **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

TIMELINESS

Undue delay - Filing of application 28 months after termination extreme undue delay - Obtaining poor advice and ignorance of law no excuse - Application dismissed for extreme undue delay - 497/94/LRA - February 6, 1995 - Domtar Inc.

Particulars - Employee alleged Union unfairly decided not to refer grievance to arbitration - Board aware of 7½ month delay in filing application, but dismissed application on basis *prima facie* case not made out for failure to provide particulars to support application - Rule 3(1) and 3(2) of ***Manitoba Labour Board Rules of Procedure*** - 207/95/LRA - July 25, 1995 - Gemini Fashions of Canada, Dudnath Sumar.

Six years after Revocation Order issued, Union filed application for review alleging Employer committed unfair labour practices during decertification process - Employer submitted application untimely as issue regarding allegations settled at first hearing - Board found matter not settled as applications seeking remedy for alleged unfair labour practice not filed at first hearing - Board not precluded from dealing with the allegations of an unfair labour practice - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Undue delay - Application filed 17 months after alleged unfair labour practice - Board dismisses application for undue delay - Substantive Order - Reasons not issued - 726/95/LRA - November 9, 1995 - Westfair Foods Ltd.

Three-year old application joined onto new application - Old application adjourned sine die, but time limit to revitalize not indefinite - Employer entitled to assume matter put to rest - Delay unreasonable - Section 30(2) of ***The Labour Relations Act*** considered - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Applicant files claim for unfair labour practice twelve months after Union informed him of decision not to proceed with his grievance - Claim dismissed for absence of *prima facie* case and delay in filing application - 40/97/LRA - March 24/97 - Andrzej Bal.

Applicant filed claim almost a year after he signed "Last Chance Agreement" negotiated by Union - Board's normal practice not to entertain complaints filed more than six months beyond facts complained of - Applicant's concerns appear to focus on perception his discharge was unjust - Failed to submit facts that would establish prima facie case in his favour - Application dismissed without need for hearing - 549/97/LRA - February 10, 1998 - Motor Coach Industries.

Arbitrary Conduct - Employee alleged Association failed to properly represent him when he was denied tenure - Board refused to accept application as it was filed three years after critical event, denial of tenure not a dismissal under Section 20(a) of *The Labour Relations Act* and for failure to establish *prima facie* case that Association's conduct was arbitrary under Section 20(b) of *Act* - 468/03/LRA - March 17, 2004 - Brandon University.

Application filed in 2007 - Core events relied upon occurred in 2005 and were known to Employee at that time - Undue delay in filing complaint - Substantive Order - 102/07/LRA - April 4, 2007 - Riverview Health Centre.

Employee filed vote complaint application 4 months after ratification vote - Held Employee unduly delayed filing application as she was aware of date of vote and as per Section 70(1) of The Labour Relations Act complaint must be filed within 15 days of a vote - Substantive Order - 501/07/LRA - November 27, 2007 - Addictions Foundation of Manitoba.

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 - 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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- 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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 - 23/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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 thirteen months from date Union advised it was not willing to proceed with grievances and three 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 - 405/08/LRA - May 19, 2009 - City of Winnipeg.

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 - 131/09/LRA - July 22, 2009 - City of Winnipeg.

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 - 91/09/LRA - October 26, 2009 - TC Industries of Canada Company West.

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 - 251/09/LRA - October 30, 2009 - Weston Bakeries Limited.

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 - 251/09/LRA - October 30, 2009 - Weston Bakeries Limited.

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 - 112/09/LRA - November 27, 2009 - Brandon University.

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 - 12/10/LRA - February 26, 2010 - Westeel Limited.

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 - 13/10/LRA - February 26, 2010 - Westeel, Division of Vicwest.

TIMELINESS

Failure to Refer Grievance to Arbitration - Employee filed duty of fair representation application alleging that to her knowledge Union did not file grievance - Held Employee's statements did not reconcile with statements made in Application or with objective facts disclosed by Union - Application contained written submission filed before Board of Referees (Employment Insurance) which recorded dismissal was grieved but was not successful - Therefore, Board found grievance filed to Employee's knowledge - Board found Employee participated in Union's internal appeal procedures and was advised by letter Union would not be advancing grievance to arbitration decision which was reaffirmed at meeting with Union representative - Application filed twenty months after Employee had knowledge of Union's decision not to proceed to arbitration - Delay of twenty months in filing Application constituted undue delay for which Employee did not provide satisfactory explanation - Application dismissed - Substantive Order – 22/10/LRA – April 7, 2010 – The Sharon Home.

Undue Delay - Employee unduly delayed filing Application as he knew of allegations giving rise to Application 28 months prior to date of filing –Board has interpreted undue delay to mean periods of as little as six months – Application dismissed - Substantive Order – 113/10/LRA – July 12, 2010 – Tolko.

Union asserted that Employer's review application and request for reasons both untimely as application for review cannot be filed after more than ten days have elapsed following date of decision - Review application was filed on tenth day following receipt of original decision - Board granted leave pursuant to Sections 4(4) which allowed enlargement of time for filing of review application – Substantive Order - 257/10/LRA – Nov. 1, 2010 - Rural Municipality of Springfield.

Undue delay – Employee filed complaint more than eight months following date he alleged Employer contravened *The Labour Relations Act* – Employee's reason for delay in filing was that he needed to check with various government and other entities prior to filing with Board - Attempts to file claims with other entities not acceptable explanation for delay - Board previously held "undue delay" means delays of six months - Application dismissed for undue delay - Substantive Order - 232/10/LRA - November 30, 2010 - Quality Glass & Aluminum Ltd.

Undue delay – Employee filed complaint more than eight months following his termination and more than a year after he became aware of alleged contraventions of *The Labour Relations Act* by Union – Employee's reason for delay in filing was that he needed to check with various government and other entities prior to filing with Board – Attempts to file claims with other entities not acceptable explanation for delay – Board previously held "undue delay" means delays of six months – Application dismissed for undue delay – Substantive Order – 233/10/LRA – November 30, 2010 – Quality Glass & Aluminum Ltd.

TIMELINESS

Undue delay – Employee filed Application eleven months after Union informed him grievance would not be pursued - Employee explained he was waiting for decision regarding complaint filed with Employment Standards Division – Filing complaint under *The Employment Standards Code* unrelated to application pursuant to Section 20 of *The Labour Relations Act* – Also, bare allegation Employee suffered depression within period of delay did not constitute adequate explanation for overall delay - Eleven-month delay in filing Application constituted undue delay within Section 30(2) of the *Act* – Application dismissed for undue delay - Substantive Order - 266/10/LRA - December 13, 2010 - O'Connell Nielsen EBC.

Employees – One month after effective date of collective agreement, Employee filed application seeking cancellation of certificate – Employee relied on Section 49(3) of The Labour Relations Act submitting he would incur losses over next six months by having to continue to remit union dues pursuant to Collective Agreement - Board satisfied Application untimely pursuant to Section 35(2) and 49(2) of the Act and reasons advanced in respect of Section 49(3) of the Act did not constitute "substantial and irremediable damage or loss" within the meaning of Section 49(3) - Application dismissed - Substantive Order – Reasons not issued – 28/11/LRA – February 25, 2011 – R.M. of East St. Paul.

Employee alleged union official pressured him to accept offer to settle grievances in May 2009 - Employee filed duty of fair representation application in March 2011 - Held Employee delayed filing Application more than 22 months following date when he became aware Union acted in violation of The Labour Relations Act - Employee explained delay by asserting he was seriously injured in automobile accident in March 2010 - Board found explanation inadequate - First, when accident occurred, Employee already unduly delayed filing complaint - Second, Employee did not established he was medically incapable of filing application in timely manner - Application dismissed for undue delay - Substantive Order - 96/11/LRA - June 3, 2011 - Y.W.C.A. Residence Inc.

On February 8, 2011, Employee filed unfair labour practice application under subsection 7(h) of The Labour Relations Act - Alleged violations occurred from May 2008 to June 2009 and again in June 2010 – Subsection 30(2) of the Act provides Board may refuse to accept complaint where Employee unduly delayed in filing complaint which Board has interpreted to mean periods of six months or greater - Application dismissed for undue delay - Substantive Order - 35/11/LRA – June 14, 2011 - B.M.D., All Seasons Roofing.

TIMELINESS

Union submitted Employee unduly delayed filing duty of fair representation application - Board's practice not to entertain duty of fair representation complaint filed six to eight months beyond events referred to in complaint unless satisfactory explanation provided - Board found Employee became aware of alleged violation at union meeting held September 21, 2010 and application was filed March 14, 2011 - Board satisfied key event was communication from Employer to Employee on November 16, 2010 that she was being removed from casual list - Both events clearly fell within six month guideline - Substantive Order - 71/11/LRA - June 14, 2011 - Golden Links Lodge.

Union submitted Employee's duty of fair representation application should be dismissed for undue delay - Board held that, although Employee filed application almost six months after Union's Grievance and Appeals Committee decided grievance would not proceed to arbitration, that was not delay of sufficient length to dismiss Application on that basis - Substantive Order - 130/11/LRA - December 14, 2011 - Government of Manitoba, (Manitoba Infrastructure and Transportation).

In prior decisions, Board concluded "undue delay" means delays of as little as six months - Employee delayed filing unfair labour practice complaint by more than 18 months after last occurrence of alleged unfair labour practices - Held Employee unduly delayed in filing Application pursuant to subsection 30(2) of The Labour Relations Act - Furthermore, Application did not reveal specific alleged violations of the Act by Employer following date of Employee's dismissal - Application failed to present facts sufficient to establish prima facie violation of the Act - Application dismissed - Substantive Order - 349/11/LRA - December 16, 2011 - L'Avenir Cooperative Inc.

Undue Delay - Union contended Employee unduly delayed filing application as he was aware of facts pertaining to application for two years - Board declined to dismiss for undue delay as Union final communication to Employee that grievances were dismissed was six months before application filed - Substantive Order - 1/12/LRA - March 23, 2012 - University of Manitoba.

Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for failing to pursue his complaint that Employer discontinued his company vehicle benefit and did not proceed with his job reclassification - Union contended portion of Application relating to vehicle benefit was untimely because Employee raised issue, but did not pursue it further until application was filed two years later - Employee submitted loss of benefit was inter-related with reclassification dispute and that issue was live issue until he received decision of Union executive not to proceed to arbitration - Board determined to treat vehicle benefit issue as part of Application from a timeliness perspective - Substantive Order - 45/12/LRA - April 13, 2012 - City Of Winnipeg.

TIMELINESS

Prima facie - In 2005, Board dismissed Employee's application alleging Union breached section 20 of The Labour Relations Act and dismissed application for Review and Reconsideration - Employee filed present application on May 7, 2013 indicating that, following her 2004 termination, she was offered severance package but would have been required to retire and she expected to go back to work - She claimed Union ought to have known Employer would not have taken her back and should have told her to take severance package - She also claimed she met with bargaining agent in October 2012 and alleged it had not kept her up to date with company programs and offered no further assistance - Board noted it had previously dismissed Employee's complaints regarding Union's representation regarding her 2004 termination - Even accepting Applicant's complaint regarding severance package was different aspect of Union's representation, it was unduly delayed and portion of complaint referring to advice regarding severance package dismissed - Regarding Employee's complaint of Union's representation in October 2012, Board satisfied application failed to disclose prima facie violation of section 20 - Application dismissed - Substantive Order - 116/13/LRA - July 24, 2013 - Boeing Canada.

Union asserted Employee unduly delayed filing duty of fair representation complaint - Union wrote to Employee by registered letter advising of decision not to proceed to arbitration - Letter was never picked up as it was incorrectly addressed - First date Employee become aware Union had decided not to proceed with grievance was when Union Representative, responding to voicemail message from Employee's brother, sent e-mail advising of its decision, made several months earlier, not to proceed with grievance - Board held six month period should commence on or about date of email - Application filed within 6 months - Application filed without undue delay - 157/12/LRA - August 16, 2013 - Phillips & Temro.

In April 2012, Employee filed duty of fair representation application alleging Union failed to ensure he was being paid in accordance with April 2005 Letter of Agreement - Union argued Employee unduly delayed filing Application because he had been aware of his salary ranges when he was hired in February 2006 - Board declined to dismiss Application on this account alone because Employee asserted he became aware of letter when he reviewed Union's Reply to application he had filed in January 2012 which means current Application filed within three months of Employee becoming aware of letter of agreement - Time frame fell within range of time Board found to be acceptable for filing of unfair labour practice applications - Substantive Order - 123/12/LRA - August 21, 2013 - University of Manitoba.

TIMELINESS

Employee filed unfair labour practice application alleging Employer terminated his employment, contrary to section 7 of The Labour Relations Act – Employee filed application 18 months after termination - He asserted reason due to ongoing union grievances - Board did not accept Employee's explanation because Union had advised him decision made by Employer under provisions of the collective agreement was neither grievable nor arbitrable – Also, Employee and Union did not file grievance regarding his termination - Accordingly, Board found Employee's filing of Application some 18 months following his termination constituted undue delay within section 30(2) of the Act - Application dismissed - Order - 314/12/LRA - September 18, 2013 - Government of Manitoba; Manitoba Family Services and Labour (Selkirk Office).

Employee filed Duty of Fair Representation application submitting Union failed to pursue her grievance and disrespectful workplace complaint regarding her failure to be selected for staff pharmacist position - Board noted Application filed 20 months after Employee was aware that she was unsuccessful candidate - Even if meeting, which was to discuss her concerns with Employer and Union Representative, accepted as relevant benchmark, Application still not filed for approximately one year after that meeting - By either benchmark, Board satisfied Applicant unduly delayed filing Application and failed to provide satisfactory explanation for delay - Application dismissed for undue delay - Substantive Order - 262/12/LRA - October 4, 2013 - Winnipeg Regional Health Authority (Riverview Health Centre).

Employee filed duty of fair representation application alleging Union acted contrary to section 20 of The Labour Relations Act in almost all his dealings with them over "past three years" - Portions of application, which related to conduct alleged to have occurred more than six months prior to date Employee filed application, dismissed for undue delay which Board has interpreted to mean periods of as little as six months - Substantive Order - 259/13/LRA - February 4, 2014 - Summit Pipeline Services.

Employee filed duty of fair representation application 32 months after he claimed to have first become aware Union allegedly breached section 20 of *The Labour Relations Act* and 21 months after Union explained it could not grieve or arbitrate his issues and it could do nothing further on his behalf - Employee stated delay in filing Application due to his pursuit of remedies in other venues - Board stated that pursuit of claims with other entities not acceptable explanation for delay - Application dismissed - Substantive Order - 346/13/LRA - February 14, 2014 - Government of Manitoba, Selkirk Family Services.

(Next Section: Sec. 21.0)

UNFAIR LABOUR PRACTICE

Employer interference - Superintendent of plant circulates with petition of objection following the union's application for certification - No Number - February 24, 1959 - Dent's English Bacon Co. Ltd.

Employer interference - Company causes the formation of an Association for the purpose of defeating a union organization campaign - Subsection 34(1) and Sections 31 and 7 of ***The Labour Relations Act*** considered - No Number - February 4, 1977 - Macleods Division of Macleods Stedman Limited.

Employer allows an employee to prepare and circulate petition for decertification on his premises - Sections 6 and 14 of ***The Labour Relations Act*** considered - 57/77/LRA - March 3, 1977 - West Hotel.

Employer fails to establish employee was not terminated for union involvement - Board orders reinstatement of employee - Section 7 of ***The Labour Relations Act*** considered - 37/77/LRA - March 17, 1977 - The Rural Municipality of Ste. Anne.

Employees laid-off during a union organizational campaign - Allegations of unfair labour practice examined - Section 7 of ***The Labour Relations Act*** considered - 163-166/77/LRA - June 3, 1977 - G. A. Junkin (1976) Co. Ltd.

Employee claims termination was motivated by anti-union animus - Sections 5, 6 and 7 of ***The Labour Relations Act*** considered - 327/77/LRA - July 4, 1977 - Province of Manitoba.

Interference - Board orders a new vote to be taken to determine revocation application upon determining conduct of management amounted to interference - 495/77/LRA - October 3, 1977 - Crawley & McCracken Company Limited.

Discriminatory action - Board determines that Employer discriminated against employees based on a very bitter anti-union animus - 876, 886/77/LRA - December 13, 1977 - Wasylyshen Enterprises Ltd.

Definition - Board considers whether the Brandon University Faculty Association is a union within Section 1(x) of ***The Labour Relations Act*** - 326/77/LRA - June 16, 1977 - Brandon University.

Employer argues that the applicant was not a "union" within the meaning of ***The Labour Relations Act*** and therefore lacked status to apply for certification - No Number - April 28, 1978 - Tudor House Limited.

Board examines an employer's direct communications with his employees during negotiations and a strike - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

UNFAIR LABOUR PRACTICE

Employer releases non-productive employees during a strike - Statutory return to work protocol, Subsection 11(1)(f) of ***The Labour Relations Act*** discussed - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

Representation vote ordered where employer found guilty of unfair labour practice during organizational campaign - 220, 279, 414/83/LRA - June 21, 1983 - Valdi Inc.

Employer alters terms of employment and terminates a number of employees during organizational campaign - Sections 5, 6, 7 and 9 of ***The Labour Relations Act*** considered - 220, 279, 414/83/LRA - June 21, 1983 - Valdi Inc.

Employer during the statutory freeze period altered the terms of employment contained in the collective agreement - Subsection 10(4) of ***The Labour Relations Act*** considered - 347, 342/84/LRA - January 11, 1985 - Tan Jay Co.

Employer lays-off employees without considering seniority or competence in violation of the collective agreement - Jurisprudence on the onus on the employee and employee discussed - 347, 342/84/LRA - January 11, 1985 - Tan Jay Co.

Board concludes that the doctrine of estoppel could not be used to defeat a statutory obligation imposed on the employer - Subsection 10(4) of ***The Labour Relations Act*** applied - 347, 342/84/LRA - January 11, 1985 - Tan Jay Co.

Applicant alleges that the Association failed to take reasonable care to represent his interests - Subsection 16(a)(ii) of ***The Labour Relations Act*** considered - 178/85/LRA - May 24, 1985 - Versatile Mfg. Co.

Whether the performance of work will "directly" facilitate the business or operation of a struck employer - Identifying the offending product - Indirect routing - Section 12 of ***The Labour Relations Act*** considered - 564/85/LRA - July 4, 1985 - Canada Packers Inc.

Identifiable and separate product - Advertisement placed by struck employer only an offending product until it becomes part of the newspaper - Hardship or injury to innocent third party discussed - Section 12 of ***The Labour Relations Act*** considered - 739/85/LRA - October 18, 1985 - Winnipeg Free Press, Canadian Newspaper Limited.

Employer indicated to Union that it would send any employees in Advertising Department home who refused to handle advertisement of an airline whose employees were on a legal strike - Application under section 12(2) of ***The Labour Relations Act*** fails as no employee had actually refused to handle an ad - 1063/85/LRA - March 10, 1986 - Winnipeg Free Press, Canadian Newspaper Company Limited.

UNFAIR LABOUR PRACTICE

Union refuses to refer dismissal grievance to arbitration - Subsection 16(a)(ii) of ***The Labour Relations Act*** considered - 20/86/LRA - March 13, 1986 - The Health Sciences Centre.

Dismissal Grievance - Standard of care when representing the rights of employees discussed - Section 16 of ***The Labour Relations Act*** considered - 1034/85/LRA - April 28, 1986 - People's Co-Operative Ltd.

Union's duty of fair representation with respect to individuals on matters which arise when they are employed and are a member of the bargaining unit do not cease upon termination of employment - Section 16 of ***The Labour Relations Act*** considered - 1033/85/LRA - June 30, 1986 - People's Co-Operative Ltd.

Employer denies experienced seasonal worker employment - Board concludes that employer did not give proper consideration to the applicants application for employment - Section 7 of ***The Labour Relations Act*** considered - 394/86/LRA - November 28, 1986 - Northern Goose Processors Ltd.

Board orders representation vote upon reviewing its decision with respect to unfair labour practice allegations - Subsection 39(1) of ***The Labour Relations Act*** applied - 132/86/LRA - December 17, 1986- Ross Foods and 41185 Manitoba Ltd.

Reasonable care - Union's duty to fairly represent an employee examined - Section 16 of ***The Labour Relations Act*** considered - 1091/86/LRA - February 13, 1987 - Department of Highways, Manitoba Government.

Employee refuses to handle products of another employer whose employees were on a legal strike - Subsections 12(1) and 12(2) of ***The Labour Relations Act*** considered - 924/86/LRA - March 17, 1987 - Westfair Foods Ltd.

Membership in union considered evidence of support for certification application - Date of application determined to be critical date when determining support for certification application - Effect of unfair labour practice on certification application discussed - 110/87/LRA - April 16, 1987 - Springhill Farms Limited.

Management communicates with striking employees directly during the collective bargaining process - Union contends correspondence is in violation of Subsection 6(1) and Section 36 of ***The Labour Relations Act*** - 745/88/LRA - October 3, 1988 - Fisons Western Corporation.

Union refuses to pursue Employee's grievance to arbitration - Duty of fair representation discussed - Section 20 of ***The Labour Relations Act*** considered - 588/88/LRA - October 13, 1989 - Supercrete.

UNFAIR LABOUR PRACTICE

Union refuses to represent both grievor and successful applicant in same dispute - Conflict of interest - Section 20(b) of ***The Labour Relations Act*** considered - 642/89/LRA - February 28, 1990 - Manitoba Department of Family Services, Civil Service Commission.

Elimination of bargaining unit positions with non-unionized positions essentially rid the Employer of the collective agreement - Actions were anti-union - Board orders reinstatement and compensation of Teaching Assistants - Sections 5, 6, 7, 26, 62, & 82 of ***The Labour Relations Act*** considered - 644/87/LRA - November 30, 1990 - University of Manitoba.

Fraud discussed - Employee misinterprets statements made by Union representative who did not intentionally mislead him - Applicant did not improperly obtain list of employees - Application to set aside certification disallowed - Subsections 19(b), 45(4), 47(1)&(2) and 52(c)&(d) of ***The Labour Relations Act*** considered - 626 & 738/90/LRA - May 10, 1991 - Intelicom Ltd. t/a Trojan Security Services.

Almost all employees discharged or suspended soon after certification - Board need not consider merits of discipline, but was entitled to draw inferences from circumstantial evidence - Too much coincidence existed as employees bad disciplinary record occurred after application for certification, and warning notices sent three months after fact- Held the Employer motivated by anti-union bias - 384, 404, 420/91/LRA - January 13, 1992 - Juniper Centre Inc.

Employer motivated by anti-union animus when indefinitely laying off three employees who participated in union organizational meeting - Rationale suspect because no prior written record of disciplinary problems, anti-union comments made by owner, junior employees keep on staff and new employees hired - Section 7 of ***The Labour Relations Act*** considered - 60/91/LRA - January 14, 1992 - Northern Meats – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Undue Delay - Applicant made intentions known to Union a year earlier that grievance would not proceed, and had access to legal representation during time period in question - Held undue delay in filing of application of unfair labour practice under Section 20 of ***The Labour Relations Act*** - Application dismissed pursuant to Section 30(2) of the **Act** - Reasons not issued - 217/92/LRA - May 4, 1992 - E.H. Price Ltd.

Interest - Anti-union Animus - Compensation - Employees laid off for participating in union organizational campaign - Board awarding interest as part of compensation package - Calculation of interest determined on net amount using Bank of Canada interest rate as of date complaint filed - Reasons not issued - 60/91/LRA - July 13, 1992 - Northern Meats - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Union's refusal to compensate affected employee for independent legal fees incurred in arbitration not unfair labour practice - 37/92/LRA - August 19, 1992 - Salvation Army Grace Hospital, N. Embuldeniya.

UNFAIR LABOUR PRACTICE

Employer interference - Evidence showed Employer was not aware that excluded office staff had typed petition or that Applicant employee delivered petition during working hours - Ruled Employer did not influence or encourage application - 960/92/LRA - Feb. 18/93 - Western Egg Co. Ltd.

Discharge - Board satisfied that termination of Employee resulted from confronting Employer with information regarding her entitlement to overtime rates of pay - Board ruled Employer committed unfair labour practice contrary to Section 7 of ***The Labour Relations Act*** - Ordered to pay wages in lieu of notice - Reasons not issued - 512/93/LRA - July 29, 1993 - Mrs. Vanelli's Pizza & Italian Foods.

Anti-union animus - Allegations that Employer discharged Handi-transit Co-ordinator because of involvement in organizing operators offset by rehiring him as taxi driver - Application under Section 7 and 9 of ***The Labour Relations Act*** denied - 158/93/LRA - February 7, 1994 - Unicity Taxi Ltd.

Conflict of Interest - Person who played role in organizing employees on behalf of the Union also held positions as member on Employer's board of directors and on executive committee - Board found employees could have perceived his role was approved by management and his presence at meeting tainted free expression of employees' wishes - Board held his role as staff organizer was contrary to Section 5 and 6 of ***The Labour Relations Act*** - Application for certification dismissed - Ordered Union not to make further application for certification until three months from date of Decision - 390 & 449/93/LRA - February 10, 1994 - Rossmere Golf and Country Club.

Onus of Proof - Applicant claimed Employer guilty of discrimination in hiring practices contrary to Section 7 of ***The Labour Relations Act*** - Employer failed to discharge onus - Held Employer committed an unfair labour practice contrary to Section 7 of **The Act** - Substantive Order - No reasons issued - 306/94/LRA - June 2, 1994 - C.C. Biggs Neighbourhood Restaurant & Bar.

Anti-union animus - Discipline - Shortly after certification, Employees disciplined for improper use of abuse crisis line - Union alleged Employer enforcing rule that did not exist before certification and was motivated by Employees involvement on negotiating team - Held rule restricting use of crisis line unwritten, but obvious - Employees improperly used crisis line although calls not related to Union activity - Both parties to blame for situation due to strained working relationship during certification process - Applications alleging unfair labour practice dismissed - 753/93/LRA - Oct. 14, 1994 - Selkirk Cooperative on Abuse Against Women Inc.

UNFAIR LABOUR PRACTICE

Discipline - Anti-union animus - Employee receives warning and notional suspension for breach of confidentiality for informing outside parties about changes made to her position - Union claims changes resulted from certification - Held by discussing the changes employee may jeopardize Employer's position with principle funder and duty of confidentiality did not only apply to privacy of clients - Changes to job made for legitimate reasons and not motivated by an anti-union animus - Claim dismissed - 753/93/LRA - Oct. 14, 1994 - Selkirk Cooperative on Abuse Against Women Inc.

Days after Application for Certification, General Labourer refused to sign note agreeing to comply with Workplace Safety & Health regulations - Union claimed requirement to sign change in working condition contrary to Section 10 of ***The Labour Relations Act*** - When Employee lost job because of refusal, Union claimed discharge motivated by anti-union animus - Board held Employee quit not discharged and requirement to sign note not change in working condition - Claim dismissed - 555/94/LRA - February 3, 1995 - Logan Iron and Metal Co. Ltd.

Crane Operator claimed he was terminated days after Application for Certification due to his involvement during organizational campaign - Employer claimed his services were no longer required when it rehired long-time experienced employee he was hired to replace - Employer explanation reasonable - Application for unfair dismissed - 555/94/LRA - February 3, 1995 - Logan Iron and Metal Co. Ltd.

Onus - Union claimed timing of terminations suspiciously close to Application for Certification presumes motivated by anti-union animus - Board stated reverse onus does not put absolute liability on Employer, but must present reasonable and plausible explanation to satisfy onus - Fairness of decision not a consideration in Board's determination of claim - 555/94/LRA - February 3, 1995 - Logan Iron and Metal Co. Ltd.

Reinstatement - Employer dismissed long-term Employees convicted of criminal mischief on picket line - Section 12(2) of ***The Labour Relations Act*** requires reason for dismissal to be unrelated to lockout - Board ordered reinstatement without monetary relief - 723/94/LRA - April 6, 1995 - Trailmobile Canada, A Div. of Gemala Industries.

Compensation - Discrimination - Burden of Proof - Employer failed to discharge the reverse onus to satisfy the Board that it did not commit an unfair labour practice in contravention of Section 7(h) of The Labour Relations Act - Board awarded Applicant $1000 compensation - Substantive Order, Reasons not issued - 703 & 713/94/LRA - May 15, 1995 - W.A Hutchinson Ltd., Canadian Tire Associate Store 270, Joe Casiano, Elliott Clarke.

Particulars - Employee alleged Union unfairly decided not to refer grievance to arbitration - Board aware of 7½ month delay in filing application, but dismissed application on basis *prima facie* case not made out for failure to provide particulars to support application - Rule 3(1) and 3(2) of **Manitoba Labour Board Rules of Procedure** - 207/95/LRA - July 25, 1995 - Gemini Fashions of Canada, Dudnath Sumar.

UNFAIR LABOUR PRACTICE

Union's decision not to refer reclassification grievance to arbitration not breach of Section 20 of ***The Labour Relations Act*** unless actions arbitrary, discriminatory or in bad faith - Material filed by Employees did not disclose that Union acted in such a manner - Application dismissed without formal hearing on basis *prima facie* case not made out - 168/95/LRA - September 28, 1995 - City of Winnipeg, Marlene Guyda, Larry Wilson.

Refusal to work - Held Employee was terminated for refusing to work Sundays in contravention of Section 7 of ***The Labour Relations Act*** - Employer ordered to reinstate Employee, to compensate him for loss of income and other employment benefits, including profit sharing entitlement, and to cease and desist from any activity which interfere with the Employee's statutory right pursuant to ***The Employment Standards Act*** to refuse work on Sundays - Substantive Order - Reasons not issued - 664/94/LRA - March 28, 1995 - W.A Hutchison Ltd., Canadian Tire Associate Store 270.

Six years after Revocation Order issued, Union filed application for review alleging Employer committed unfair labour practices during decertification process - Employer submitted application untimely as issue regarding allegations settled at first hearing - Board found matter not settled as applications seeking remedy for alleged unfair labour practice not filed at first hearing - Board not precluded from dealing with the allegations of an unfair labour practice - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Six years after Revocation Order issued, Board finds Employer interfered during decertification process - Certificate reinstated and old collective agreement deemed in full force and effect, except where current conditions more generous - Employer ordered to commence good faith bargaining, to pay the Union $2,000, to allow the Union to meet with employees during work time on Employer's premises, to compensate the Union for expenses incurred in conducting the meetings; and to post one copy of Order at workplace and to send copy of Order by certified mail within 10 days of receipt to each employee - Reasons not issued - Substantive Order - 252/95/LRA - November 2, 1995 - Victoria Inn – **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Undue delay - Application filed 17 months after alleged unfair labour practice - Board dismisses application for undue delay - Substantive Order - Reasons not issued - 726/95/LRA - November 9, 1995 - Westfair Foods Ltd.

Employer plans to change its operations from having employed drivers to owner/operators was in the process of being put in place well before Union filed application for certification - Board held Employer did not violate statutory freeze provisions under Section 10 of ***The Labour Relations Act*** - 169/95/LRA - January 19/96 - First Class Transportation/ Messenger Service Inc., Triumph Transportation Inc., & George M. Chapman.

UNFAIR LABOUR PRACTICE

Anti-union animus - Employer's lack of enthusiasm towards certification of Union did not constitute anti-union bias - Board found Employer's plans to lay-off drivers and establish owner/operator franchise based on bona fide business and economic reasons - 169/95/LRA - January 19/96 - First Class Transportation/ Messenger Service Inc., Triumph Transportation Inc., & George M. Chapman.

Employer Dominance - Union alleged Employer met with Union members week before strike to encourage formation of Employees' Association - Also alleged Employer unfairly deducted dues on behalf of rival Association -Held allegations not sufficient to indicate arm's length relationship did not exist between Association and Employer - Ruled formation of Association not influenced or dominated by Employer - Section 43 of ***The Labour Relations Act*** considered - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Interference - Three years into lengthy strike, Employer collected dues for employee group as per members' authorization forms - Collecting of dues other than for certified bargaining agent not necessarily offending principles of ***The Labour Relations Act*** - However, Employer knew Employee Association was in competition with Union which was vulnerable to challenge because of the strike - General provisions in **The Law of Property Act** cannot override specific provisions in ***The Labour Relations Act*** - Employer committed unfair labour practice - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat/Building Products & Concrete Supply.

Interference - Collecting of dues for Employee Association in competition with Union involved in very long strike is unfair labour practice as per Section 6 of ***The Labour Relations Act*** - Employer ordered to cease and desist deducting dues and to reimburse dues to employees within scope of Union's unit - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Three-year old application joined onto new application - Old application adjourned sine die, but time limit to revitalize not indefinite - Employer entitled to assume matter put to rest - Delay unreasonable - Section 30(2) of ***The Labour Relations Act*** considered - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Anti-union animus - Interference - Union decals appear sporadically on fire department vehicles and apparatus without Employer's permission - Employer did not contravene ***The Labour Relations Act*** by requesting the decals be removed - 579/95/LRA - April 4, 1996 - City of Winnipeg/Fire Chief B.J. Lough.

Anti-union animus - Employee Lay-offs - Employer using one evaluation method for lay-offs and another for recall suspicious - Employee with second lowest evaluation for lay-off was first to be recall so he would send letter objecting to Union certification to Labour Board - Employer achieves "chilling effect" and does not come to Board with "squeaky clean hands" - 7/96/LRA - May 1, 1996 - KT Industries Ltd.

Interference - Although Board had serious concerns regarding correspondence Employer sent to employees, it was not satisfied that Employer's actions constituted interference with Union during organizational campaign - Substantive Order - Reasons not issued - 883/95/LRA - June 13, 1996 - The Westin Hotel.

UNFAIR LABOUR PRACTICE

Interference - Employee attempting to convince other employees not to support certification of Union, found to be acting on own volition and not on behalf of Employer - Employee's actions do not contravene Section 5(3), 6(1) or 17 of ***The Labour Relations Act*** - Substantive Order - Reasons not issued - 883/95/LRA - June 13, 1996 - The Westin Hotel.

Discrimination - Held Employee not discharged for filing claim for Workers Compensation Benefits but rather for failing to submit medical certificate as requested - Employer discharges onus under Section 7 of ***The Labour Relations Act*** - 99/96/LRA - June 18, 1996 - Gerri Sylvia/Sylvia Personnel Services Ltd.

Employer claimed employees represented by UFCW, but Board ruled that Retail Wholesale Canada (Union) was bargaining agent - Prior to Board Order, Employer remitted dues to UFCW, but thereafter, remitted dues to Union - Union claimed it was entitled to retroactive dues from period before Board Order - Board ruled that although Union was bargaining agent, the other union provided services during that time while the Union did not - Ordering Employer to remit an equal amount of dues would be improper - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

Exclusive Bargaining Authority - Employer negotiates agreement with another union - Board held Employer's actions not illegal and done under apparent "colour of right" - Employer did not prevent its employees from being represented by a proper bargaining agent - 5 & 72/96/LRA - September 27, 1996 - Westfair Foods Ltd.

Applicant has no new evidence, but felt he did not present all evidence at first hearing - Board held the additional evidence did not constitute reasonable basis for review - Board noted Employer should be penalized under **The Workplace Safety and Health Act** , but that **Act** was not under its jurisdiction - Original findings upheld that claim for unfair labour practice for safety violations be dismissed - 348/96/LRA - February 21, 1997 - Pointe River Holdings Ltd. (Geoplast).

Discharge - Exercising Legislative Rights - Employee claims he was discharged for exercising rights to not work more than the legislated maximum of eight hours per day - Employee asking for lay-off amounts to voluntarily resignation - Application dismissed - 835/96/LRA - June 4, 1997 - Country Club Food Processors Inc.

While Union acknowledged Employer not unwilling to reach an agreement, it argued unilateral improvements to benefits interfered in achieving collective agreement - Held improvements not made with anti-union animus, nor did Union object to them at time they were given - Application dismissed - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Interference - Board held that Employer knowing about outcome of ratification meeting did not indicate interference - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Reverse Onus of Proof - Discriminatory Action - Section 7 of ***The Labour Relations Act*** reverses normal onus on Applicant - Application dismissed as Union does not make a *prima facie* case that anyone in workplace was discriminated against - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

UNFAIR LABOUR PRACTICE

Interference - Witness told Union he was afraid if he voted he would lose his overtime - Based on conversation, Union alleged Employer interfered with ratification process by creating a climate of fear - At hearing, witness denied comment - Board concluded witness made comment to mislead Union - Although other witnesses were apprehensive, and seemed to be coached, evidence did not establish Employer interfered in achieving collective agreement - 806/96/LRA - August 26, 1997 - Anixter Canada Inc.

Anti-union animus - Compensation - Employer's decision to delete all Licensed Practical Nurse positions and replace them with Registered Nurses' made in good faith and for the purpose of enhancing resident care - However, implementation date accelerated due to Employer's anger over previous unfair labour application - Ordered to pay each affected employee $500 compensation even though they suffered no direct monetary loss - 582/96/LRA - Dec. 15, 1997 - Vista Park Lodge.

Held Employer committed unfair labour practice contrary to Section 7(h) of *The Labour Relations Act* - Ordered to pay Employee two weeks' wages in lieu of notice and to pay an amount equal to two weeks' pay as compensation for diminution of income resulting from the unfair labour practice in accordance with Section 31(4)(d) of the *Act* - Substantive Order - Reasons not issued - 392/98/LRA - October 15,1998 - Willten Manufacturing.

Employer committed an unfair labour practice contrary to Section 7 of *The Labour Relations Act* by terminating employment of Employee - Employer ordered to reinstate Employee; compensate for diminution of income and other employment benefits from date of termination to the date of reinstatement; and, post copies of the order on the premises for 30 days - Substantive Order - Reasons not issued - 532/98/LRA - October 30, 1998 - Louisiana-Pacific Canada.

Employer violates Section 7(h) of *The Labour Relations Act* by terminating Employee who was exercising rights pursuant to Section 34(4) of *The Employment Standards Act* - Employer ordered to compensate for loss of income less wages paid in lieu of notice and statutory deductions; to cease and desist from interfering with employee's statutory rights; and, to post copy of Order for 30 days - Substantive Order - Reasons not issued - 472/98/LRA - Dec. 9, 1998 - Dominion Tanners.

Anti-union Animus - Employer's aggressive verbal reaction to Board Officer posting certification notices does not of itself constitute a violation of *The Labour Relations Act* - 528, 595, & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Change in Working Conditions - Employer increases wages and makes changes to hours of work and shifts - Changes contrary to section 10(1) of *The Labour Relations Act* - Employer ordered to pay $1,000 to the Union - 528, 595, & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

UNFAIR LABOUR PRACTICE

Captive Audience - Anti-union Animus - Union alleges staff was captive audience at business planning meeting Employer called days after application for certification - Union also alleges meeting created "chilling effect"; meeting held after organizing campaign completed and application filed with membership cards - Held decision to implement business plan precipitated by application for certification but does not constitute a violation of *The Labour Relations Act* - 528, 595, & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Freedom of Expression - Board dismissed unfair labour practice application filed by the Employer against Union - However, Board found the Union did not come before it with "squeaky clean hands" because of remarks made by its representative cautioning employees of possible physical violence by the owners and possible association of owners with criminal elements - Request for discretionary certification declined as conduct of both parties questionable, therefore, in the circumstances, a representation vote should be held - 528, 595, & 599/97/LRA - December 31, 1998 - Pony Corral Restaurant.

Closure of Business - Financial Statements - Union claims Employer closed lab rather than bargain in good faith - Held business closed for *bona fide* business reasons - Conduct of parties within context of normal bargaining - Employer not required to disclose intentions of lab closure, only final decision - Application dismissed 38/98/LRA - January 8, 1999 - Regent Park Management.

Internal Union Affairs - Union's failure to provide bargaining unit member with full particulars of charges against her constituted an unfair labour practice contrary to Section 19(c) of *The Labour Relations Act* - Union ordered to constitute an Appeal Tribunal to deal with Applicant's suspension; provide her with full particulars of charges prior to the hearing of Appeal Tribunal; and, hold the hearing within 90 days from date of Labour Board order - Substantive order - Reasons not issued - 519/97/LRA - February 15, 1999 - Brenda Shaw.

Discharge - Union Activity - Employee alleged her termination was due to her involvement with the union - Board held termination resulted from her inability to adapt to and accept the administrative changes made by the newly appointed business agent - Application dismissed - 384/97/LRA - March 26, 1999 - International Association of Bridge Structural & Ornamental Iron Workers, Local 728.

Interference - Employer filed application alleging Union and District Managers interfered in selection of union as newspaper carriers knew decision to join Union was being observed - Cornerstone of collective bargaining relationship was that employer has no status in certification applications - Board noted any breach of employment not an issue for it to decide - Board could not find evidence of fraud, coercion, intimidation by Union - Application dismissed - 417 & 443/97/LRA - April 6, 1999 - Winnipeg Free Press - **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

UNFAIR LABOUR PRACTICE

Discharge - Employee claimed his termination resulted from his application to Employment Standards - He conceded application filed after he was asked for resignation and he made no complaints to the Employer until after letter requesting his resignation was sent - Employee failed to establish Employer had knowledge or awareness of his claim - *Prima Facie* case not established - Application under Section 7 of *The Labour Relations Act* dismissed. 81/99/LRA - May 19, 1999 - DGH Engineering Ltd.

Employer Interference - Duty of Disclosure - Union Steward reprimanded for not volunteering his knowledge that an employee he was representing at a disciplinary meeting was lying about the alleged misconduct - Held a union official, while acting in the capacity of a union officer, does not have a duty to volunteer information to the Employer about another employee - However, Board could not find Employer committed unfair labour practice as the Employee knew of the other employee's illicit activities from personal observation and participation in the questionable activities - 621/98/LRA - October 22, 1999 - MacMillan Bathurst.

Arbitration - Duty of Disclosure - Union Steward reprimanded for not voluntarily disclosing at a disciplinary meeting that the employee was lying - Board questioned whether it should accept jurisdiction - Parties submitted matter properly before Board as conduct of shop steward and ability of officers to properly represent employees were matters of general importance to labour relations, and Union seeking declaration Employer committed unfair labour practice not available through arbitration - Board found arguments persuasive and accepted jurisdiction - 621/98/LRA - October 22, 1999 - MacMillan Bathurst.

Union Election Campaign - Union alleged documents circulated by other union during a representation vote campaign contained false statements to sway vote - Board satisfied other union attempted to get clarification and, in its mind, circulated accurate information - 619/98/LRA - November 17, 1999 - Interlake Regional Health Authority.

Discrimination for exercising rights under legislation - Employee who complained to Workplace Safety and Health about improper exhaust system was terminated days after Stop Work Order issued - Employer claims Employee resigned - Employer does not meet onus to prove termination did not result from complaint filed under *The Workplace Safety and Health Act* - Compensation of $250 ordered - 555/99/LRA & 556/99/WSH - January 19, 2000 - Watertown Inc.

Anti-union animus - Employer Interference - Employer does not come before Board with "squeaky clean hands" - Employer's speech given at captive meeting was threat to job security and thwarted true wishes of employees - As well, lay-offs and terminations imposed two days after organizational campaign tainted by anti-union animus - Ordered employees be reinstated with back pay, Employer pay Union $2,000 for interfering with its rights - Discretionary certificate issued - 813 & 814/98/LRA - February 29, 2000 - Canadian Anglo Machine and Ironwork Inc.

UNFAIR LABOUR PRACTICE

Interference - Property of Employer - Union Representative denied access to plant floor as he refused to sign Employer's Security or Confidentiality Agreement - Issue of confidentiality dealt with in Board imposed Access Agreement - Imposing of same condition by Employer redundant - Employer ordered to cease and desist from requiring a duly authorized union representative to execute its own security agreement - 692/99/LRA - July 4, 2000 - Faroex Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH GRANTED; BOARD ORDER QUASHED.**

Anti-Union Animus - Supervisor on lay-off terminated for entering unauthorized float representing the Employer in a parade - Other employee laid off for shortage of work - Board noted reasons for lay-offs contradictory - Employer created atmosphere of anti-union animus that continued beyond certification process - Ordered compensation to employees for loss of income and other benefits and $2000 to Union for the interference with its rights - 527/99/LRA - July 11, 2000 - Faroex Ltd. - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Discharged employee was not doing his job properly and had received numerous written warnings about his work performance and that his position was in jeopardy - Other employee fired for incompetence - No evidence of unfair labour practice - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc.

Board noted a number of employees, including Union activists, were recalled - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc.

Anti-Union Animus - Interference - Employer does not act improperly if it expresses to employees that it did not want a union or makes unflattering comments - Section 6(3)(f) of *The Labour Relations Act* not to be interpreted as a bar to all other communications except statements about the business - 414 & 482/99/LRA - August 30, 2000 - Marusa Marketing Inc.

Refusal to Work - Exercising Legislated Rights - Termination of employee who refused to work overtime suspicious - Employer did not satisfy onus to rebut *prima facie case* - Employee compensated for loss of income – 379/00/LRA – March 7, 2001 – Dynavest Corp.

Anti-Union Animus - Interference - Union alleged Employer laid off 6 employees for their involvement in organizing a union - Employer did not produce evidence to substantiate its claim the lay-offs were for economic reasons - Manner in which lay-offs conducted intended to warn other employees not to support the Union - Board ordered laid off employees be reinstated with compensation and Employer pay Union $500 for interference - 632/00/LRA – April 23, 2001 - J.C. Foods.

UNFAIR LABOUR PRACTICE

Employer Interference - Employer sent letter to employees, which went beyond providing information pertaining to conduct of vote - Employer claimed letter sent because of staff's inability to access the posting on their day off - Board questioned Employer's intent given letter sent to all 70 employees rather than the 10 who would be off and no evidence produced that employees were confused about voting procedure - Employer's credibility further questioned because Union member overheard him commenting negatively about the Union and the certification process - Held sole purpose of sending letter was to interfere with the formation and selection of the Union - Employer's conduct affected the results of the representation vote - Discretionary certification issued - 479/00/LRA & 561/00/LRA - July 5, 2001 - Emerald Foods Ltd. t/a Bird's Hill Garden Market IGA - **APPEAL TO COURT OF QUEEN BENCH GRANTED; BOARD'S ORDER AND CERTIFICATE QUASHED;MOTION FOR STAYED DENIED; APPEAL TO COURT OF APPEAL GRANTED, BOARD ORDER RESTORED.**

Bargaining Directly with Employees - Employer wanted to offer salary and other incentives for nurses to work at remote northern health facility - Union not willing to re-negotiate solely with Employer as Union only willing to participate in central table bargaining - While Employer did not consciously attempt to undermine the Union, it did enter into separate written contracts with some staff and did recruit and retrain nurses - Despite good motives, Employer in breach of Section 6(1) of *The Labour Relations Act* – 760/00/LRA – Sept. 5, 2001 – Churchill Regional Health Authority & Prov. of Manitoba - **APPEAL TO COURT OF QUEEN'S BENCH WITHDRAWN**.

Bargaining Directly with Employees - Union included Province as respondent in application arguing Province, as the primary funder of health care, had involved itself in the matter - Assuming the role of "quasi-mediator" did not constitute Province as being guilty of an unfair labour practice - No *prima facie* case - 760/00/LRA – September 5, 2001 – Churchill Regional Health Authority & Province of Manitoba - **APPEAL TO COURT OF QUEEN'S BENCH WITHDRAWN.**

Applicant terminated for refusing to continue working after working 13 hour shift - Employer violated Section 7(h) of *The Labour Relations Act* for terminating an employee for exercising statutory right to refuse to work overtime as per Section 16 of *The Employment Standards Code* - 559/01/LRA – October 23, 2001 – Elite Holdings Inc. aka Academy Towing, Kildonan Towing, Eddie's Towing.

Intimidation - Employees who returned to work as remedy for unfair labour practices required to take breaks with supervisor on the day before and the day of representation vote - They also were assigned work different from what they had performed prior to their lay-off and in isolation from other employees - Purpose of keeping Employees isolated was to limit opportunity to talk to other employees and to influence how other employees voted - True wishes of the employees could not be ascertained by representation vote and Union had evidence of adequate membership support - Discretionary certificate issued - 631/00/LRA & 183/01/LRA - November 20, 2001 - J.C. Foods Ltd.

UNFAIR LABOUR PRACTICE

Bargaining Directly with Employees - Board ordered Employer to cease and desist from offering tuition reimbursement allowances and rental subsidies to nurses in remote northern communities - Board is aware of difficulty with recruitment and retention of nurses, but continuing to allow any monies or benefits to be paid under the individual contracts negotiated with bargaining unit members would undermine the Union's exclusive authority to represent the nurses in the unit – 762/00/LRA – December 7, 2001 – Burntwood Regional Health Authority.

Employer Interference - Union claimed demotion of floor managers and their speedy return to bargaining unit as senior supervisors 11 days after decertification application filed was for them to promote decertification - Demotions suspicious, but no evidence that Employer instigated, encouraged or improperly influenced the return to bargaining unit - 100/00/LRA & 136/00/LRA - December 12, 2001 - Integrated Messaging Inc.

Burden of Proof - Employee filed application under Section 7 of *The Labour Relations Act* and Section 133(1)(a) of *The Employment Standards Code* - Employer failed to discharge the onus placed upon it by the legislation as it did not attend the hearing - Application allowed and compensation ordered - Substantive Order - Reasons not issued - 105/02/LRA - June 12, 2002 - Roland’s Auto Service/Roland Hufgard.

Discharge - Negligence - Union Representative erred in advising Applicant that he only had to work one shift within six-month period to maintain his employment status - Applicant discharged as collective agreement provided that the period was four months - Held Union refusal to proceed with grievance not breach of duty of fair representation as Applicant failed to provide critical information to Union, failed to check collective agreement himself as suggested and failed to avail himself of internal Union appeal procedures - 411/00/LRA - July 26, 2002 - Canada Safeway.

Discriminatory Action - Exercising Legislative Rights - Employee alleged termination due to requests he made to have access to WHMIS documents - Employer countered that termination was result of insubordination; one of the days Employee alleged to have requested materials was a non-working day; and amended Workplace Safety and Health Order removed item dealing with availability to all employees of certain material - Held Employee failed to establish a *prima facie* case - Application dismissed - 292/02/LRA & 293/02/WSH - September 17, 2002 - Crosstown Dental Laboratory Ltd.

The Labour Relations Act does not guarantee continuing accrual of pension rights or benefits during period of a strike - Employer did not commit unfair labour practice by refusing to accept pension benefit contributions from employees who were on legal strike - Application dismissed - 935/01/LRA - October 8, 2002 - University of Manitoba.

UNFAIR LABOUR PRACTICE

Employee filed claim for three days wages in lieu of notice - Payroll evidence showed she was paid in full - She also claimed termination contrary to Section 133(1)(b) of *The Employment Standards Code* as it resulted from job complaints she made - Held Employee terminated at end of probationary period for unsuitability - Employee complained about "labour issues" but did not advise Employer about complaint filed with Labour Board - She did raise filing a complaint post-termination, but that was not relevant time period for purposes of section 133(1)(b) - Complaint under Code not established and unfair labour practice application dismissed - 421/02/ESC and 586/02/LRA - April 22, 2003 - (C.A.H.R.D.) Centre for Aboriginal Human Resource Development.

Parental Leave - *Prima facie* - Employee did not meet pre-conditions of section 58(1)(b) of *The Employment Standards Code* as he did not give written notice as per that section - Application under section 7 of *The Labour Relations Act* failed as it could not be said that he was exercising a right under clause (h) - 303/03/LRA - August 22, 2003 - Tri-Clad Designs Inc.

Remedy - Certification Second Vote - Board ordered ballots of first representation vote not be counted as Employer committed unfair labour practice - New vote ordered to be conducted to determine true wishes of employees - Order outlines eligibility and procedures to follow for second vote - Substantive Order - Reasons not issued - 678/02/LRA & 599/03/LRA - September 3 & 24, 2003 - Branigan's at the Forks.

Maternity Leave - Employer reinstated Employee upon her return from Maternity Leave and subsequently terminated her with proper notice - Employer not in breach of Section 7 of Labour Relations Act or Section 60 of Employment Standards Code - Application dismissed - Substantive Order - Reasons not issued - 260/03/LRA - September 24, 2003 - Palliser Furniture.

Discharge - Exercising Legislative Rights - Employee discharged contrary to Section 133(1) of *The Employment Standards Code* - Employer ordered to reinstate Employee to her former position on the same terms and conditions that existed prior to her termination and to compensate her for lost wages and gratuities - Substantive Order - Reasons not issued - 651/03/LRA - December 9, 2003 - Perkins Restaurant and Bakery.

Lab Technologist alleged Union collaborated with Employer to force her to return to laboratory despite her allergic reactions experienced at work - Letter from Union indicating certain remedies not available to her not proof it lied to her - Union not following wishes of some union members that Employee return to work did not constitute unfair labour practice - Employee acted on her own when she resigned and could not fault Union for her decision - Also not reasonable to say Union failed to assist her when she failed to request a grievance be filed - Employee failed to establish *prima facie* case - Application dismissed - 458/03/LRA - March 24, 2004 - Burntwood Regional Health Authority - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

UNFAIR LABOUR PRACTICE

Alleged violation of Rule 3(1) of the Manitoba Labour Board Rules of Procedure not an unfair labour practice as provision is procedural - - 458/03/LRA - March 24, 2004 - Burntwood Regional Health Authority - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Discharge - Anti-union Animus - Employee discharged for threatening violence against truck driver who allegedly harassed Employee's wife - At three investigatory meetings, Employee failed to apologize, to express remorse and to clearly confirm he did not intend to solve problem with physical violence - Penalty imposed on the basis of *bona fide* considerations and factors and was not influenced by Employee's union membership or activities - 121/04/LRA - July 7, 2004 - Ag World Support Systems Corp. - and - Simplot Canada Limited.

Employee terminated for refusing light duties and failing to report to work for three consecutive days - Unfair labour practice application alleged termination violated Section 7 of *The Labour Relations Act* - Board had some difficulty with Employer's conduct, but decision to terminate not due to, or influenced by, any factors established under section 7 of the *Act* - While Board has jurisdiction to remedy unlawful conduct that it finds to be contrary to the *Act*, it may not interfere with lawful, yet seemingly unfair decisions or actions - Application dismissed - 390/04/LRA - March 30, 2005 - Kitchen Craft Cabinetry.

Employer Interference - Employer's letter to employees; attachment, and Power Point presentation was clearly directed at employees in an attempt to interfere with formation and selection of a union - Employer's actions intended to and had a "chilling effect" on organizing drive - Discretionary certificate issued – 171 & 172/05/LRA – October 27, 2005 – Praxair Canada.

Res judicata - Jurisdiction - Deferral To - Employee's complaints addressed in prior, binding and final disciplinary proceedings through grievance and arbitration provisions - Based on doctrine of *res judicata* or alternatively issue estoppel, Board lacked jurisdiction to consider application - Application dismissed pursuant to Sections 140(7) and 140(8) of *The Labour Relations Act* - Substantive Order - 91/06/LRA - April 7, 2006 - Manitoba Lotteries Corporation- **APPEAL TO COURT OF QUEEN'S BENCH DENIED**.

Delay - Employer refused Employee's request to re-hire him two months after he voluntarily resigned - Held Employee's request for a Board order directing Employer to re-hire him was without merit due to seven week delay which elapsed after Employee quit his employment and prior to his asking to be re-hired - Application dismissed - Substantive Order - 194/06/LRA - Aug. 1, 2006 - Melet Plastics.

UNFAIR LABOUR PRACTICE

Discrimination - Prima Facie - Employer refused Employee's request to re-hire him two months after he voluntarily resigned - Subsequently, Employee filed a complaint with Manitoba Human Rights Commission and an unfair labour practice application based on Human Rights complaint - Employee failed to establish *prima facie* case that Employer violated Section 7 of the *Act* because Employer's refusal to hire Employee occurred two weeks prior to filing complaint with the Commission - Substantive Order - 194/06/LRA - Aug. 1, 2006 - Melet Plastics.

Deferral to - Union filed an unfair labour practice application alleging Employer interfered with Union's right and ability to represent bargaining unit members due to Employer's plan to make French language proficiency a required job qualification for many nursing positions - Board declined to hear application because matters raised in the Application could be raised in grievance and arbitration procedure - Application dismissed and matter deferred to arbitration process pursuant to Section 140(7) of *The Labour Relations Act* - Substantive Order - 536/06/LRA - Oct. 23, 2006 - St. Boniface General Hospital- **APPEAL TO COURT OF QUEEN'S BENCH DENIED.**

Petition - Employer Interference - Union claimed supervisor whose name did not appear on Voter List and who was not eligible to be a union member circulated anti-union petition - Board found she was not a manager or supervisor and she was included on the Voter List under a new surname - Held petition was product of employees and it was not initiated by Employer - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

Captive Audience - Freedom of Expression - Reservations Clerk reminded employees to vote and bring identification - Held comments made by Clerk did not amount to an interrogation as per section 25(1) of *The Labour Relations Act* and her comments fell within realm of protected freedom of expression as per section 32(1) - At a second alleged captive meeting, General Manager only made statements of fact which did not an constitute unfair labour practice - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

Interference - Employees perception that Housekeeper was their supervisor not sufficient for her to be considered as Employer or a person acting on behalf of Employer as she only had minor supervisory authority - Also, Board found that individual whom Union alleged was Front Desk Manager was a Reservation Clerk - Both individuals found to be "employees" under *The Labour Relations Act* and not management in consideration of unfair labour practice - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

UNFAIR LABOUR PRACTICE

Discharge - Union Activity - Employer satisfied onus that terminations were not tainted by anti-union animus - Three housekeepers were discharged because of concerns with quality and speed of their work - Bellman and Housekeeper were discharged due to their involvement in altercations and heated arguments with co-workers - Applications dismissed - 444/05/LRA - November 30, 2006 - Clarion Hotel & Suites.

Interference - Employer refuses to release names, home addresses, postal codes and telephone numbers of all employees in the bargaining unit to Union citing privacy concerns - Union as exclusive bargaining agent for all of the employees in the bargaining unit occupied a unique role in relation to the employees which creates a "claim of right" to the information - Board orders Employer to provide information to the Union and to provide updates every six months - 107/06/LRA - February 2, 2007 - Buhler Manufacturing.

Discharge - Exercising Legislative Rights under *Workers Compensation Act* - Employee on layoff for medical reasons was discharged for overstaying a leave of absence - Employee's evidence of his communications with his supervisor effectively rebutted allegation by Employer that he had failed to report to work as expected and had neglected to contact the Employer - Employer ordered to reinstate Employee - 448/06/LRA - March 13, 2007 - Integra Castings - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Prima facie - Employee alleged Employer committed unfair labour practice contrary to Section 30(1) of *The Labour Relations Act* when it disciplined her in a manner contrary to the collective agreement - Section 30(1) is permissive and procedural and does not prescribe what constitutes unfair labour practice - Employee cannot seek to enforce a breach of the collective agreement by filing an undefined unfair labour practice complaint under Section 30(1) - Application dismissed - Substantive Order - 191/07/LRA - June 6, 2007 - Assiniboine Regional Health Authority.

Deferral to - Employee filed application for unfair labour practice asserting Employer had imposed discipline upon her in a manner contrary to the Collective Agreement - Grievance and arbitration process is proper forum for the resolution of a dispute involving improper/unjust discipline - Substantive Order - 191/07/LRA - June 6, 2007 - Assiniboine Regional Health Authority.

Regulations/Rules - *Prima facie* - Employee filed unfair labour practice application for wrongful termination due to a medical disability - Application did not disclose any facts which arguably constituted prima facie case under any substantive unfair labour practice provisions of Part I of *The Labour Relations Act* as required under Section 3(2)(b) of Board's Rules of Procedure - Application dismissed - Substantive Order - 324/07/LRA - June 20, 2007 - University of Manitoba.

UNFAIR LABOUR PRACTICE

Prima Facie - Employee filed unfair labour practice application against Employer - Allegation of dismissal without just cause does not, standing alone, constitute an unfair labour practice - Application did not disclose *prima facie* breach of any substantive provisions in Part I of the *Act* in respect of the Employer's conduct - Sections 8 and 20 address unfair labour practices that relate to unions and they do not apply to employers - Application dismissed - Substantive Order - 281/07/LRA - July 5, 2007 - Province of Manitoba, Winnipeg Child and Family Services.

Interference - Bargaining Directly with Employees - Employer interfered with rights of Union and members by introducing employment model under which athletic team coaches would no longer hold academic rank and therefore fell outside bargaining unit - Employer did not consult Union during the process and met directly with coaches without Union being present - October 4, 2007 - 109/06/LRA & 111/06/LRA - University of Manitoba - **APPEAL TO COURT OF QUEEN'S BENCH ABANDONED**.

Compensation - Employer introduced employment model under which athletic team coaches would no longer hold academic rank and therefore fell outside bargaining unit - Employer unlawfully removed coaches from bargaining unit and deprived the Union of dues to which it was entitled - Employer ordered to pay union dues itself and not by deducting amounts from coaches' salaries - October 4, 2007 - 109/06/LRA & 111/06/LRA - University of Manitoba - **APPEAL TO COURT OF QUEEN'S BENCH DISCONTINUED**.

Layoff - Union contended Employer refused to reinstate Employee following end of strike based on his seniority - Held parties reached an agreement that Employer retained discretion to determine whether work was available and, if so, which employees would be required to perform that work without regard to seniority - Board accepted that Employee not recalled on account of lack of work and decision based on valid business reasons - Substantive Order - 376/07/LRA - Nov. 2, 2007 - Able Movers.

Employee asserted collective agreement was contrary to Human Rights Code and asserted Employer and Union violated agreement - Board declined to adjudicate matter arising from an interpretation of the agreement as such assertions were properly subject of formal grievance and arbitration procedure - Substantive Order - 472/077/LRA - November 20, 2007 - Seven Oaks School Division.

Prima facie - Employee asserted Employer and Union violated Sections 80(2), 130(3.1) and 133 of The Labour Relations Act by failing to proceed with his grievance - No part of those sections standing alone, constitute valid basis for an unfair labour practice application - Application did not, on its face, disclose prima facie breach of any substantive provision in Part I of the Act - Application dismissed - Substantive Order - 472/077/LRA - November 20, 2007 - Seven Oaks School Division.

UNFAIR LABOUR PRACTICE

Deferral to - At labour/management meeting, Employees as members of Union executive raised concerns pertaining to a Staff Sergeant who then filed formal harassment complaint against Union and Employees - Employer investigated complaint and issued a report - Held Association has the right to challenge the propriety of report, particularly as may affect any future investigation or imposition of discipline, however, such concerns could be addressed under grievance procedure - Substantive Order - 200/08/LRA - June 11, 2008 - City of Brandon.

Interference - At labour/management meeting, Employees as members of Union executive raised concerns pertaining to a Staff Sergeant - Employer wrote to Union that it would not tolerate future unsubstantiated claims and such action would be considered subject to disciplinary action - Union filed unfair labour practice application - Board held Employer's actions did not constitute an interference with rights of Employees to be members of Union; nor with Union administration or representation of Union members - Application dismissed - Substantive Order - 200/08/LRA - June 11, 2008 - City of Brandon.

Employer committed unfair labour practice contrary to Section 6(1) of *The Labour* Relations *Act* for posting on its premises memorandum addressed to all staff in the bargaining unit - Board ordered Employer to post Order in same location memorandum was posted - Substantive Order - Reasons Not Issued - 120/08/LRA - September 29, 2008 - Assiniboine Regional Health Authority.

Anti-Union Animus - Union alleged that Employee's relocation was due to his recent appointment as Interim Chair of Union Local - Held Employer's actions were not motivated by anti-union animus but by legitimate concerns - Substantive Order - 30/08/LRA - February 23, 2009 - Province Of Manitoba.

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 - 66/08/LRA - April 3, 2009 - City Of Winnipeg.

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 - 391/08/LRA - June 11, 2009 - Trailblazers Life Choices.

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 - 327/08/LRA - June 17, 2009 - Government of Manitoba, Manitoba Civil Service Commission / Organization & Staff Development.

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 - 396/08/LRA - June 17, 2009 - Government of Manitoba, Manitoba Civil Service Commission / Organization & Staff Development.

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 - 120/08/LRA - July 24, 2009 - Assiniboine Regional Health Authority.

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 - 120/08/LRA - July 24, 2009 - Assiniboine Regional Health Authority.

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 - 362/08/LRA - October 2, 2009 - Triple Seal Ltd.

UNFAIR LABOUR PRACTICE

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 - 379/08/LRA - October 2, 2009 - Triple Seal Ltd., t/a Northwest Glass Products.

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 - 34/09/LRA - October 2, 2009 - Triple Seal t/a Northwest Glass Products.

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 - 34/09/LRA - October 2, 2009 - Triple Seal t/a Northwest Glass Products.

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- 34/09/LRA - October 2, 2009 - Triple Seal t/a Northwest Glass Products.

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 - 112/09/LRA - November 27, 2009 - Brandon University.

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 - 112/09/LRA - November 27, 2009 - Brandon University.

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 - 266/09/LRA - December 2, 2009 - Canad Inns Club Regent & Hotel.

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 - 202/09/LRA - December 22, 2009 - W.P. Hite General President of the United Association.

Discharge – Exercising Legislative Rights - Employee dismissed during probationary period alleged dismissal on basis he made complaint or filed application under Act of Legislature or Parliament – Board noted Application must contain more than mere allegation or assertion - No facts pleaded that Employee filed complaint or application under any act which could be reason or motive for his discharge - Application itself did not constitute complaint or application within Section 7(d) of *The Labour Relations Act* – Employee feeling dismissal unfair, management behaved improperly or falsely accused him, or dismissal simply unjust did not fall within remedial jurisdiction of Board under Section 7 - Application dismissed as Employee failed to establish *prima facie* case – Substantive Order – 93/10/LRA – June 15, 2010 – Victoria Inn/Hotel and Convention Centre.

UNFAIR LABOUR PRACTICE

Discharge – Exercising Legislative Rights - Union alleged Employee terminated for exercising right to file Statement of Claim for outstanding benefits in Court of Queen's Bench, naming Employer as Defendant in civil action – Held commencement of civil action in Court of Queen's Bench seeking to enforce an alleged private contract did not fall within Section 7 or 17 of *The Labour Relations Act* as *The Queen's Bench Act* did not create any statutory right, duty or obligation in employment context - Filing of claim under *The Queen's Bench Act* did not constitute proceeding or exercising of rights under any Act of Legislature because Employee was not seeking to enforce, against Employer, a right, duty, or obligation established by statute – Application dismissed - Substantive Order – 81/10/LRA – July 21, 2010 – Manitoba Teacher's Society.

Employer breached Section 6(1) of *The Labour Relations Act* – Ordered to provide bargaining agent with names, home addresses and telephone numbers of all employees in the bargaining unit - Substantive Order – Reasons not issued - 253/10/LRA - October 29, 2010 - University of Manitoba.

Undue delay – Employee filed complaint more than eight months following date he alleged Employer contravened *The Labour Relations Act* – Employee's reason for delay in filing was that he needed to check with various government and other entities prior to filing with Board - Attempts to file claims with other entities not acceptable explanation for delay - Board previously held "undue delay" means delays of six months - Application dismissed for undue delay - Substantive Order - 232/10/LRA - November 30, 2010 - Quality Glass & Aluminum Ltd.

Discrimination - Employee alleged Employer discriminated against him for filing human rights complaint by subjecting him to demeaning and discriminatory change in supervision arrangements and by requiring him to undergo psychiatric evaluation – Held Employee considered workplace to be toxic prior to filing complaint and no credible evidence he was treated better or worse following filing of complaint - Executive Director reasonably and appropriately determined Supervisor should not have to supervise employee who filed complaint against her except to limited extent required - While mandatory medical examination may not necessarily be discriminatory, restriction from Employee attending work constituted prima facie discrimination in context of Section 7 of *The Labour Relations Act* – However, Employer's decision based solely upon concerns about Employee's mental stability, his worsening conduct and evidence supported those concerns pre-dated filing of complaint – Individual who gave ultimate approval for evaluation, lacked knowledge of complaint at material time and not motivated by improper considerations - Application dismissed - 26/09/LRA & 27/09/LRA - December 20, 2010 - Manitoba Human Rights Commission.

Discharge – Exercising legislated rights - Employee alleged Employer acted contrary to various subsections of Section 7 of The Labour Relations Act by wrongfully terminating her employment as consequence of her filing harassment complaint – Held essence of Employee's complaint was Employer failed to properly apply internal harassment policy - Such contentions do not fall within Section 7 - Employee failed to establish prima facie case - Application dismissed - Substantive Order - 12/11/LRA - March 17, 2011 - Winpak Ltd.

UNFAIR LABOUR PRACTICE

Deferral to - Exercising legislated rights - Union contended Employer's statement that Employee would be subject to disciplinary action if he did not provide medical certificate constituted threat to deny his right under The Health Services Insurance Act to select medical practitioner whom he wished and was contrary to subsection 17(a)(iii) of The Labour Relations Act - No facts were pleaded that Employer denied or threatened to deny Employee any pension rights or benefits to which he was entitled because he exercised right conferred upon him under any act of Legislature - Board satisfied application did not disclose any facts which arguably constituted a prima facie case under subsection 17(a)(iii) of the Act - Collective agreement provided doctor's certificate must be presented upon request - Any dispute of request that Employee provide medical certificate should be resolved pursuant to grievance procedure contained in collective agreement - Application dismissed - Substantive Order - 56/11/LRA - April 7, 2011 - City of Brandon (Brandon Fire and Emergency Services).

Deferral to - Interference - Union asserted Employer interfered with representation of its members by introducing, without Union's input, data entry policy which included disciplinary consequences for failing to meet accuracy expectations - Employer promulgating new policy did not, standing alone, constitute breach of subsection 6(1) of The Labour Relations Act - Union's concerns regarding manner Employer may have promulgated policy and how enforcement of policy may adversely affect Union members from disciplinary perspective could be raised in grievance and arbitration procedure - Board does not function as surrogate arbitration board - Matter ought to be deferred to grievance and arbitration process - Application dismissed - Substantive Order - 86/11/LRA - April 7, 2011 - City of Brandon (Brandon Fire and Emergency Services).

Coercion - Discharge - Exercising legislated rights - Employer suspended Employee for three months, then increased suspension to six months and after meeting with grievance mediator decided to dismiss Employee - Union asserted Employer's acceleration of discipline constituted intimidation, coercion and threat of dismissal and were designed to prevent Employee from exercising his rights under collective agreement - Such actions were in response to requests for union representation and services of grievance mediator - Held Union's contention that Employer improperly accelerated or increased level of discipline was matter to be addressed by arbitrator - As per subsection 140(7) of The Labour Relations Act, Board may refuse to hear any matter it considered could be adequately determined under arbitration provisions of collective agreement - Application dismissed - Substantive Order - 220/11/LRA - September 1, 2011 - St. Laurent Co-op Recreation Centre Inc.

In prior decisions, Board concluded "undue delay" means delays of as little as six months - Employee delayed filing unfair labour practice complaint by more than 18 months after last occurrence of alleged unfair labour practices - Held Employee unduly delayed in filing Application pursuant to subsection 30(2) of The Labour Relations Act - Furthermore, Application did not reveal specific alleged violations of the Act by Employer following date of Employee's dismissal - Application failed to present facts sufficient to establish prima facie violation of the Act - Application dismissed - Substantive Order - 349/11/LRA - December 16, 2011 - L'Avenir Cooperative Inc.

UNFAIR LABOUR PRACTICE

Closure of business – Union requested Board pierce corporate veil and declare Respondent to be actual employer and find Respondent, as an individual, committed unfair labour practices –Board satisfied Respondent, as directing mind of employer, regardless of corporate forms used from time to time, had failed to recognize Union as bargaining agent and had failed to recognize legitimacy of collective bargaining and arbitration process and had committed unfair labour practices - Accordingly, Board satisfied Respondent was responsible to comply with Order originally decided against corporate entity because section 63(1) of *The Labour Relations Act* required that either parties must commence collective bargaining or parties must "cause authorized representatives on their behalf" to commence collective bargaining - Board declined Union's request to order Respondent pay $2,000 to each union member under subsection 31(4)(e) of the *Act* as that claim for relief was speculative in nature – Substantive Order - 90/10/LRA - January 12, 2012 - D.G.f22.3-l6

General Manager suspended Employee's Driver Permit as a result of incident where Employee swore at another taxi driver over dispatch radio and then was verbally abusive to dispatcher –- Employee filed unfair labour practice application submitting that Company had revoked his Driver's Permit due to his involvement in a union organizing drive - Company denied it was employer - In alternative it submitted that decision to terminate Driver's permit was based on Employee's misconduct – Board found Employee was rude and belligerent on day in question and General Manager (GM) revoked driving permit based upon his history of disruptive and disrespectful behaviour and behaviour he exhibited on day in question - GM was prepared to reflect upon decision to revoke driver's permit if Employee successfully completed anger management course - Such an offer, which Employee refused, did not suggest Company was seeking to adversely affect Employee's employment by reason of his union activities - Application dismissed – Substantive Order - 269/10/LRA - Jan. 13, 2012 - Duffy's Taxi 1996.

Prima facie - Employee had not established *prima facie* case that Union violated sections 8 and 19 of *The Labour Relations Act* as those sections had no relevance to assertions made against Union - Employee fell well short of establishing *prima facie* violation by Union of section 20(b) - Union addressed issues with respect to transportation, discipline and payroll irregularities - While Employee dissatisfied with timeliness and results, no facts were presented which constituted arbitrary, discriminatory or bad faith conduct by the Union - 263/10/LRA & 264/10/LRA - Feb. 8, 2012 - Garda Canada Security Corporation.

UNFAIR LABOUR PRACTICE

Prima facie - Employee maintained Employer violated sections 7 and 17 of *The Labour Relations Act* - Allegations that those disputes were anything more than disagreements under collective agreement were without foundation and did not amount to unfair labour practices - Pursuant to section 140(7) of the *Act*, exercised its discretion to refuse to hear matter which could be determined under arbitration - Fact that Employee disciplined or conduct was investigated did not, standing alone, constitute unfair labour practice - Section 32(2) of the *Act* provided that nothing in *the Act* affected right of employer to suspend, transfer, lay-off, or discharge an employee for proper and sufficient cause - Employee did not establish *prima facie* violation of the *Act* - 263/10/LRA & 264/10/LRA - Feb. 8, 2012 - Garda Canada Security Corporation.

Interference - Board determined Employer violated subsection 7(h) of *The Labour Relations Act* by not continuing to employ Employee after he raised concerns about his rights regarding wages payable under *The Employment Standards Code* - As remedial relief, Board satisfied order for wages or benefits not appropriate, but Employee entitled to award of $2000 pursuant to subsection 31(4)(e) of the *Act* for Employer's interfering with Employee's exercise of his rights under *The Employment Standards Code*- Substantive Order - 411/11/LRA - May 3, 2012 - Bri's Stucco Service.

Prima facie - Employee filed unfair labour practice and duty of fair representation applications - Allegations in Applications connected to Employer imposing one-day suspension on Employee - Union filed grievance, met with Employee, attended at grievance meeting on his behalf and referred matter to arbitration - Board determined Applications did not disclose any reasonable likelihood that complaints against Union would succeed - Complaints Employee advanced with respect to Employer were simply disagreements regarding application and interpretation of collective agreement which were to be resolved through grievance and arbitration processes - Employee who is subjected to discipline, or whose conduct is investigated or otherwise questioned by his employer did not, standing alone, constitute unfair labour practice - Applications were frivolous, vexatious, constituted abuse of processes of Board and were without merit - Applications dismissed - Substantive Order - 281/11/LRA & 282/11/LRA, June 1, 2012, Garda Canada Security Corporation.

Coercion - Employee advanced complaints with respect to Employer citing section 17(b) of *The Labour Relations Act* - Board satisfied Employee had not established necessary elements of coercion, intimidation, or threats by Employer in attempt to have Employee refrain from exercising rights set in section 17(b)(i) through (v) - Issues raised simply disagreements between Employee and Employer regarding application and interpretation of collective agreement which are to be resolved through grievance and arbitration processes - Applications did not establish *prima facie* violation of the Act and, further, Applicant's complaints against Employer may be adequately determined under grievance and arbitration provisions of collective agreement - Substantive Order - 197/11/LRA & 198/11/LRA, June 1, 2012, Garda Canada Security Corporation.

UNFAIR LABOUR PRACTICE

Arbitration - Union filed unfair labour practice application alleging Employer refused to provide it with information regarding "minimum staffing level", a term used in collective agreement, which placed Union in position where it was unable to take reasonable care to protect interests of its members and potentially placing it in violation of its duty of fair representation - Union also argued Employer's failure to provide the information interfered with administration of Union and representation of its members - Board did not accept this perspective as reason to hear Application on its merits - Position being advanced by Union speculative in nature because it is asking Board to rule in advance on hypothetical situation which may arise - Also to determine Application on its merits, Board would have to interpret meaning of phrase "minimum staffing level" and then assess Employer's obligation to provide information to Union under that clause - Board satisfied interpretative determinations more properly fell within jurisdiction and expertise of arbitration board - Application dismissed - Substantive Order - 210/12/LRA - January 24, 2013 - City of Winnipeg and Winnipeg Police Service.

Discharge - Exercising Legislated Rights - Employee filed application alleging Employer acted contrary to section 7(h) of The Labour Relations Act for suspending and dismissing her for exercising her right to speak with Employment Standards Division and Board concerning procedure to file wage complaint – Board noted letter of termination was dated before, but was given to her after, Employee contacted Board – Letter recited reason Employer was terminating Employee was for statements she made which Employer found to be disrespectful, unprofessional and insubordinate – Fact that Employee feels dismissal unfair or unjust does not fall into remedial jurisdiction of Board under section 7 of the Act - Application dismissed for failure to disclose prima facie case – Substantive Order - 247/12/LRA - September 18, 2013 - Simaril Inc.

Costs - Employee filed application under section 7 of *The Labour Relations Act* - Employer requested Board dismiss application with costs given unfounded and baseless allegations made by Applicant - Board denied claim for costs - Based on reasoning in Supreme Court of Canada decision, Board does not possess authority under *The Labour Relations Act* to award costs- Substantive Order - 314/12/LRA - September 18, 2013 - Government of Manitoba; Manitoba Family Services and Labour

Discharge - Exercising Legislated Rights - Employee filed unfair labour practice application alleging Employer terminated his employment, contrary to section 7 of *The Labour Relations Act,* because of rumors and gossip - Employee did not allege that he was terminated for exercising any rights referred to in sub-clauses of section 7, meaning there was no entry point for seeking remedial relief under section 7 - Employee relied on section 7 in general, but there must be more than general assertion or allegation to establish *prima facie* case - Application dismissed - 314/12/LRA - September 18, 2013 - Government of Manitoba; Manitoba Family Services & Labour.

UNFAIR LABOUR PRACTICE

Applicant filed unfair labour practice application asserting Union suspended his membership in discriminatory manner contrary to section 19(c) and 19(d) of The Labour Relations Act - He alleged suspension was retribution for him having filed unfair labour practice application against Union two years before - Board concluded Union's decision and conduct not influenced, in whole or in part, by Applicant's previous complaints - Uncontested evidence was Applicant's dues were in arrears for many months and Union sent him computer generated form letters advising him of issue - Union's policies and provisions of its Constitution spelling out consequences to a member in the circumstances applied to Applicant in non-discriminatory manner and consistent with how other similarly situated members were treated - Also, individual who decided to uphold suspension had no prior knowledge of Applicant or his past complaints regarding Union - Refusal to reinstate Applicant's membership based upon non-discriminatory evaluation of relevant considerations including high level of unemployment amongst Union's membership and related economic circumstances then prevailing - Application dismissed - Substantive Order - 208/12/LRA - October 11, 2013 - Carpenters Union, Local 343.

Exercising Legislated Rights - Employee, who was manager at one of Employer's stores, filed unfair labour practice application under section 7 of The Labour Relations Act - Board noted that Employee was not member of any bargaining unit and accordingly, Section 7(a), (b) and (c) of the Act had no application to Employee's position - Sections 7(d) to (h) of the Act had no application to facts as Employee alleged issue initiating his termination was his disclosure to various parties about hazards of in-pharmacy blood testing - Employee alleged he was acting pursuant to provisions of The Public Interest Disclosure (Whistleblower Protection) Act (PIDA), in particular, sections 14(1) and 14(2) - Employee not entitled to rely on that section as he was not an employee within meaning of PIDA which does not apply to private sector - Applicant failed to establish prima facie case - Application dismissed - Substantive Order - 138/13/LRA - October 15, 2013 - Rexall Pharmaplus Drugmarts.

Exercise Legislative Rights - Applicant filed unfair labour practice application claiming Employer acted contrary to section 7(d) and (h) of The Labour Relations Act by harassing her so that she became ill and was forced from workplace for medical reasons - Board determined Applicant forwarded complaints that she had been subjected to workplace harassment to Employer and Workplace Safety and Health - Having sent complaint to Workplace Safety and Health, Applicant met onus of establishing she engaged in activities or forms of conduct described in subsections 7(d) and (h) of the Act - However, Applicant had not established Employer refused her employment or continued employment, discharged, or discriminated against her in regard to her employment following the complaint filed with Workplace Safety and Health or otherwise exercising her rights under any Act of the Legislature or of Parliament - Rather, Employer recognized Applicant was on sick leave and disability and had indicated it would cooperate

with return to work program, including mediation, once Applicant was medically certified to return to work - Employee was clearly aggrieved; however application did not provide factual foundation to suggest Employer engaged in any conduct set forth in section 7 following the Applicant's decision to file complaint - Applicant failed to establish prima facie violation of section 7 - Pursuant to section 140(7) of the Act, alleged conduct complained of in application could have been raised pursuant to provisions of collective agreement - Application dismissed - Substantive Order - 203/13/LRA - October 28, 2013 - Actionmarguerite (St.-Boniface).

Exercising Legislative Right - Employee, who was employed in heavy construction sector, alleged employment terminated because he exercised his statutory rights by advising Employer he finished his shift with an hour of overtime and he had right to refuse work - Board found, at time of refusal to work, Employee had not reached threshold of overtime as defined in subsection (a) of the definition of overtime in The Employment Standards Code or as contemplated by section 11(b) of The Construction Industry Wages Act - Board accepted Employee terminated for unwillingness to work required shift and disrespectful comments he made to superiors and not for any reason prohibited by section 7 of The Labour Relations Act - Therefore, he was not exercising right under an Act of Legislature as claimed - Prima facie case not established - Application dismissed - Substantive Order - 205/13/LRA- December 31, 2013 - Hy Way Construction.

Exercising Legislative Right - Employee filed unfair labour practice application contrary to subsection 7(f) of *The Labour Relations Act* - Nothing to suggest Employee, who was employed as landfill attendant, was member of any bargaining unit - Subsections 7(a), (b) and (c) had no application - Subsection 7(f) relates to Employee having "made, or may make, a disclosure that may be required of him in a proceeding under any Act of the Legislature or of Parliament" - No facts alleged in application or supporting appendices which support breach of subsection 7(f) or any other section of the *Act* - Employee not terminated for such conduct, nor did he allege having made such a disclosure - Employee failed to establish *prima facie* case - Application dismissed - Substantive Order - 166/13/LRA - January 14, 2014 - R.M. of North Norfolk and Town of MacGregor.

UNION

Employer argues that the Applicant was not a "union" within the meaning of ***The Labour Relations Act*** and, therefore, lacked status to apply for certification - No Number - April 28, 1978 - Tudor House Limited.

Definition - Criteria necessary in order to establish status as a "union" discussed - Intervenor not properly constituted union and agreement between Employer and Intervenor not collective agreement as defined in ***The Labour Relations Act*** - Intervenor has no status in application for certification proceedings - Subsection 1(x) the *Act* considered - 110/87/LRA - April 16, 1987 - Springhill Farms Limited.

Employer Dominance - Union alleged Employer met with Union members week before strike to encourage formation of Employees' Association - Also alleged Employer unfairly deducted dues on behalf of rival Association -Held allegations not sufficient to indicate arm's length relationship did not exist between Association and Employer - Ruled formation of Association not influenced or dominated by Employer - Section 43 of ***The Labour Relations Act*** considered - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Interference - Three years into lengthy strike, Employer collected dues for employee group as per members' authorization forms - Collecting of dues other than for certified bargaining agent not necessarily offending principles of ***The Labour Relations Act*** - However, Employer knew Employee Association was in competition with Union which was vulnerable to challenge because of the strike - General provisions in **The Law of Property Act** cannot override specific provisions in ***The Labour Relations Act*** - Employer committed unfair labour practice - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Interference - Collecting of dues for Employee Association in competition with Union involved in very long strike is unfair labour practice as per Section 6 of ***The Labour Relations Act*** - Employer ordered to cease and desist deducting dues and to reimburse dues to employees within scope of Union's unit - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat & Building Products and Concrete Supply Ltd.

Status - Applicant did not meet definition of “union” as set forth in Section 1 of *The Labour Relations Act* and *Regulations* and did not satisfy the criteria for establishment of unions - Substantive Order - Reasons not issued - 596/98/LRA - October 13, 1998 - City of Winnipeg (Winnipeg Ambulance Service).

Internal Union Affairs - Union’s failure to provide bargaining unit member with full particulars of charges against her constituted an unfair labour practice contrary to Section 19(c) of *The Labour Relations Act* - Union ordered to constitute an Appeal Tribunal to deal with Applicant’s suspension; provide her with full particulars of charges prior to the hearing of Appeal Tribunal; and, hold the hearing within 90 days from date of Labour Board order - Substantive order - Reasons not issued - 519/97/LRA - February 15, 1999 - Brenda Shaw.

UNION

Employer Interference - Duty of Disclosure - Union Steward reprimanded for not volunteering his knowledge that an employee he was representing at a disciplinary meeting was lying about the alleged misconduct - Held a union official, while acting in the capacity of a union officer, does not have a duty to volunteer information to the Employer about another employee - However, Board could not find Employer committed unfair labour practice as the Employee knew of the other employee's illicit activities from personal observation and participation in the questionable activities - 621/98/LRA - October 22, 1999 - MacMillan Bathurst.

Interference - Employer refuses to release names, home addresses, postal codes and telephone numbers of all employees in the bargaining unit to Union citing privacy concerns - Union as exclusive bargaining agent for all of the employees in the bargaining unit occupied a unique role in relation to the employees which creates a "claim of right" to the information - Board orders Employer to provide information to the Union and to provide updates every six months - 107/06/LRA - February 2, 2007 - Buhler Manufacturing.

Interference - At labour/management meeting, Employees as members of Union executive raised concerns pertaining to a Staff Sergeant - Employer wrote to Union that it would not tolerate future unsubstantiated claims and such action would be considered subject to disciplinary action - Union filed unfair labour practice application - Board held Employer's actions did not constitute an interference with rights of Employees to be members of Union; nor with Union administration or representation of Union members - Application dismissed - Substantive Order - 200/08/LRA - June 11, 2008 - City of Brandon.

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 - 195/09/LRA - July 24, 2009 - International Union of Operating Engineers, Local 987.

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 - 195/09/LRA - July 24, 2009 - International Union of Operating Engineers, Local 987.

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 - 195/09/LRA - July 24, 2009 - International Union of Operating Engineers, L. 987.

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 - 202/09/LRA - December 22, 2009 - W.P. Hite General President of the United Association.

Internal Union Affairs – Failure to Refer Grievance to Arbitration - Employee complained Union Director and not Screening Committee made ultimate determination not to proceed to arbitration – Held Director's decision based on legal advice from experienced counsel and reliance upon advice not superficial, capricious, cursory, grossly negligent, implausible or flagrant and did not constitute breach of duty of fair representation – Fact that Director made determination not breach of statute and not violation of Union's internal policy – Board does not dictate sort of meetings or appeal processes unions must adopt 26/09/LRA & 27/09/LRA, December 20, 2010, Manitoba Human Rights Commission.

Deferral to - Interference - Union asserted Employer interfered with representation of its members by introducing, without Union's input, data entry policy which included disciplinary consequences for failing to meet accuracy expectations - Employer promulgating new policy did not, standing alone, constitute breach of subsection 6(1) of The Labour Relations Act - Union's concerns regarding manner Employer may have promulgated policy and how enforcement of policy may adversely affect Union members from disciplinary perspective could be raised in grievance and arbitration procedure - Board does not function as surrogate arbitration board - Matter ought to be deferred to grievance and arbitration process - Application dismissed - Substantive Order - 86/11/LRA - April 7, 2011 - City of Brandon (Brandon Fire and Emergency Services).

Deferral - Interference - Union filed unfair labour practice application asserting Employer acted contrary to subsections 6(1) and 17(b)(ii) of *The Labour Relations Act* by issuing verbal warning to union president for circulating e-mail to union membership regarding what was said and what took place during safety committee meeting attended by representatives of Union and Employer - Employee was given non-disciplinary warning for what Employer asserted were false statements - Held, regardless of whether or not Employee held office with bargaining agent, his alleged actions provided proper and sufficient cause for Employer's action and were consistent with collective agreement - Board determined matters raised in Application could be adequately determined under provisions of collective agreement - Application dismissed - Substantive Order - 92/11/LRA - April 7, 2011 - City of Brandon (Brandon Fire and Emergency Services).

UNION

Union filed successorship application as successor to UNITE Manitoba Joint Council - Board, having noted Employers had no objection to successorship declaration and being satisfied Union was a union within meaning of *The Labour Relations Act*, issued declarations Union sought under sections 55(1) and 55(2) of the *Act* - Successorship declaration effective as of date when Union was issued its Charter - Substantive Order - 49/12/LRA - August 28, 2012 - Freed & Freed International Ltd. and The Down Room Inc.

UNION DUES

Employees of dissolved districts not covered by the collective agreement of the Union representing the Division's employees - Thus, Division not bound to collect union dues from those employees on behalf of the Union - S-267-1 - July 13, 1967 - Assiniboine North School Division, No. 2.

Union increases union dues in order to augment strike fund - Non-union member employee objects to increases, alleges violation of Subsection 68(1)(a) of ***The Labour Relations Act***, and seeks to prosecute - 736/84/LRA - March 5, 1985 - Michael Valentine Ward.

(Next Section: Sec. 22.1)

VARIANCE

Board denies application to "carve out" a smaller bargaining unit from an existing larger unit - Policy governing the revision of the scope of existing bargaining units discussed - 308/85/LRA - 892/84/LRA - April 29, 1986 - St. Boniface General Hospital.

VOLUNTARY RECOGNITION

Substitute teachers - Existence of pay rates and other incidental benefits for substitute teachers in the collective agreement did not in itself determine they had been given voluntary recognition - 223/02/LRA - 246/02/LRA - Nov. 13, 2003 - Winnipeg School Division No 1 et al - **APPEAL TO COURT OF QUEEN'S BENCH WITHDRAWN**.

Termination - Decision - Board ordered bargaining rights terminated but declined Applicant's request for Board to exercise its discretion to depart from its usual practice to deem that the bargaining rights of the Union has ceased to a date other than date of Board Order - Substantive Order - 11/07/LRA - April 12, 2007 - AAA Electric (1988).

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 - 130/09/LRA - November 6, 2009 - Lockerbie & Hole Eastern.

VOTE

Board asked to determine if members of Association were members in good standing if admitted before constitution adopted - No formal method for admittance provided in constitution - N-199-3 (LRA) - May 13, 1975 - Nelson River Construction Ltd.

Laid-off employees not eligible to vote on certification - 195/76/LRA - June 28, 1976 - Alpine Roofing & Building Contractors Ltd.

Validity of a pre-hearing vote questioned due to an error on the face of the ballot - 529/76/LRA - Undated - Teledyne Canada Bell Foundry.

Build up - Board orders a new vote to determine union support due to influx of employees between the date of application for certification and the date of the hearing into the application - Rules 31 and 32 of Manitoba Regulation 223/76 and Section 50 of ***The Labour Relations Act*** considered - 250/77/LRA - May 20, 1977 - Metrico Enterprises Co. Ltd.

Board orders vote to determine application for certification though union had 60 percent membership at the time of application for certification - 502/77/LRA - September 22, 1977 - Dominion Stores Limited.

Interference - Board orders a new vote to be taken to determine revocation application upon determining conduct of management amounted to interference - 495/77/LRA - October 3, 1977 - Crawley & McCracken Company Limited.

Revocation decision determined to be in Board's prerogative despite outcome of vote - Section 38 and Subsection 47(2) of ***The Labour Relations Act*** considered - 251, 428, 524, 566, 594/82/LRA - November 26, 1982 - Greensteel Industries Limited.

Representation vote ordered where employer found guilty of unfair labour practice during organizational campaign - 220, 279, 414/83/LRA - June 21, 1983 - Valdi Inc.

Board alters its criteria of voter eligibility for a certification application to those employees within the bargaining unit and on the payroll up to and within two weeks of a vote ordered subsequent to the application - 190/85/LRA - February 28, 1986 - University of Manitoba.

Board orders representation vote upon reviewing its decision with respect to unfair labour practice allegations - Subsection 39(1) of ***The Labour Relations Act*** applied - 132/86/LRA - December 17, 1986- Ross Foods and 41185 Manitoba Ltd.

Board considers its discretion to order a vote pursuant to Subsection 39(1) of ***The Labour Relations Act*** - 846/86/LRA - December 31, 1986 - University of Manitoba.

VOTE

Voting constituency - Parameters of "the employees in the unit affected by dispute" when determining employees eligible to vote for final offer selection discussed - Sections 94.1(4), 94.1(9) and 94.1(10) of ***The Labour Relations Act*** considered - 537, 538/88/LRA - June 20, 1988 - Molsons Manitoba Brewery Ltd., and Associated Beer Distributors Ltd.

Board does not possess the discretionary power to permit parties, whose bargaining unit is multi provincial, to hold ratification vote - Subsection 69(1) of ***The Labour Relations Act*** considered - 672/90/LRA - August 7, 1990 - The Boilermaker Contractors Association

"Transitional" period for amended **Labour Relations Act** - Section 40 of the **Act**, as it existed at date application filed, governs the determination of support level for an application for certification - 1103/92/LRA - February 5, 1993 - Gourmet Baker Inc.

Wishes of the employees - After transfer of schools from unionized school division to non-unionized school division, representation vote ordered - 1023/92/LRA - May 10, 1993 - Pembina Valley School Division, Turtle Mountain School Division.

Employees terminated during lockout eligible to vote in displacement application because they were on the payroll the day immediately before the lockout commenced - Employees who had resigned out of economic necessity could be eligible to vote - However, replacement workers not eligible as not on the payroll before lockout and did not share community of interest with locked-out employees - Subsection 35(6) discussed - 492/94/LRA - March 30/95 - Trialmobile Canada, A Division of Gemala Industries Ltd.

Status -Incumbent Union has clear interest in determination of voting constituency - Has status to present argument for determination of unit for purpose of calculating support for Association - However, Employer had no part in proceedings with respect to consent issue under Section 35(5) of ***The Labour Relations Act*** - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Voting Constituency to include all persons employed within original bargaining unit on date immediately preceding date strike commenced and all persons employed within Applicant's applied-for-unit as at date of the filing of its application - Vote conducted during course of hearings and ballots sealed pending final determination of all matters - 507 & 718/94/LRA - March 7, 1996 - R.D. Rosenblat, Building Products and Concrete Supply Ltd.

Electioneering on voting day - Particulars filed fail to establish that Union engaged in electioneering on day of certification vote - Substantive Order - Reasons not issued - 453/96/LRA - July 25, 1996 - Westin Hotel Company.

Ratification vote not conducted by secret ballot - Board does not recognize vote as being valid - Ordered new vote conducted pursuant to Section 70(2) of *The Labour Relations Act* - Substantive Order - Reasons not issued - 342/98/LRA - June 11, 1998 - Winnipeg Enterprises Corporation.

VOTE

School division dissolved - Land and assets transferred to and liabilities assumed by another school division - Intermingling occurred between the predecessor's teacher/resource aides and successor's paraprofessionals - Board held representation vote not necessary due to overwhelming number of paraprofessionals as compared to teacher/resource aides - Letter Decision; full Reasons not issued - 512/99/LRA - September 30, 1999 - St. Boniface School Division No. 4.

Union Election Campaign - Union alleged documents circulated by other union during a representation vote campaign contained false statements to sway vote - Board satisfied other union attempted to get clarification and, in its mind, circulated accurate information - 619/98/LRA - November 17, 1999 - Interlake Regional Health Authority.

Health Care - Majority of employees chose to become members of bargaining agent who did not have a presence in personal care home - Board determined that the bargaining agents who already represented other classifications within the unit had no status to appear on the ballot being utilized in representation vote to determine wishes of the affected employees - 272/99/LRA - February 13, 2000 - Deer Lodge Centre Inc. - **PENDING BEFORE COURT OF QUEEN'S BENCH**.

Board concurs with ruling made by the Returning Officer pursuant to Rule 26(6) of the *Manitoba Labour Board Rules of Procedure,* to include a ballot marked with a check mark as a valid ballot, as it clearly indicated the intention of the voter - Ballot which was blank and devoid of any markings deemed not to be a ballot to be included in the determination of the majority of the employees' wishes - Substantive Order - Reasons not issued - 579/00/LRA - Sept. 26, 2000 - Intercontinental Truck Body

Intimidation - Employees who returned to work as remedy for unfair labour practices required to take breaks with supervisor on the day before and the day of representation vote - They also were assigned work different from what they had performed prior to their lay-off and in isolation from other employees - Purpose of keeping Employees isolated was to limit opportunity to talk to other employees and to influence how other employees voted - True wishes of the employees could not be ascertained by representation vote and Union had evidence of adequate membership support - Discretionary certificate issued – 631/00/LRA & 183/01/LRA – November 20, 2001 – J.C. Foods.

Remedy - Certification Second Vote - Board ordered ballots of first representation vote not be counted as Employer committed unfair labour practice - New vote ordered to be conducted to determine true wishes of employees - Order outlines eligibility and procedures to follow for second vote - Substantive Order - Reasons not issued - 678/02/LRA & 599/03/LRA - September 3 & 24, 2003 - Branigan's at the Forks.

Voting Constituency - Applicants alleged that, pursuant to internal Union documents, they were entitled to separate ratification privileges in collective bargaining process - Intent of *The Labour Relations Act* clearly defined voting constituency as "those employees in the unit or craft unit" as described in Certificate issued by Board and not separate group of employees which are included in the larger certified unit - 269/04/LRA - June 9, 2004 - Griffin Canada.

VOTE

Illegal strike - Voting Constituency - Held Union failed to comply with provisions of section 93 of *The Labour Relations Act* when it permitted members who were not in bargaining unit or employed by Employer to participate in strike vote - However, ballots cast in error did not automatically invalidate entire vote - Of ballots cast by all who voted, only one was not in favour of strike - Despite secret ballot, employees in the unit clearly either supported strike action unanimously or by a massive majority - It would not make labour relations sense to declare strike to be illegal - 89/05/LRA - October 24, 2005 - National Elevator and Escalator Association, Kone Inc. and Otis Canada.

Vote Complaint - Group of employees filed complaint under Section 70 of *The Labour Relations Act* - Held Union complied with the requirements of Section 69 and 93 of the *Act* as it gave reasonable notice to the employees of ratification/strike vote and its dual purpose; and employees had reasonable opportunity to cast votes by secret ballots on voting day - Application dismissed - Substantive Order - 65/07/LRA - March 14, 2007 - Red River College.

Employee raised concerns regarding ratification vote for "Surveillance/Administration" bargaining unit - Complaint dismissed as vote was held within 30 days of concluding tentative agreement; reasonable notice of vote was given to affected employees; reasonable opportunity was given to employees to cast a ballot; and vote was conducted by secret ballot - Substantive Order - 193/07/LRA - May 10, 2007 - Manitoba Lotteries Corporation.

Intermingling - MGEU filed Application for declaration that five paramedics formerly employed by Swan Valley and represented by IUOE were within scope of unit for which MGEU was bargaining agent - Employer requested “yes/no” vote be held to determine if five paramedics wanted to be represented by a union - Board held vote not necessary as overwhelming majority of employees fell within existing MGEU unit - Board declared technical/professional paramedical employees formerly employed by Swan Valley fell within the scope of MGEU bargaining unit - Substantive Order - 310/07/LRA - November 16, 2007 - Parkland Regional Health Authority.

Amalgamation of health facilities into Health Authority resulted in intermingling of three unions - Employer submitted that MGEU should not be included on representation vote as it did not represent 20% or more of affected employees - MGEU questioned existence of Board rule for threshold of support in order to be placed on ballot - Board order MGEU to be on ballot - Substantive Order - 337/07/LRA - November 16, 2007 - Parkland Regional Health Authority.

Employee filed vote complaint application 4 months after ratification vote - Held Employee unduly delayed filing application as she was aware of date of vote and as per Section 70(1) of The Labour Relations Act complaint must be filed within 15 days of a vote - Substantive Order - 501/07/LRA - November 27, 2007 - Addictions Foundation of Manitoba.

VOTE

On May 30th, Union posted notice of ratification vote or information meetings to take place on June 4th and 5th - Tentative collective agreement reached on June 2nd - On June 3rd, Union posted special notice meetings would be for vote - Employee, who attended meeting, filed complaint alleging Union failed to provide reasonable notice of vote - Held notice not indicating length of meetings was not deficiency; providing start time sufficient - Notice stating purpose of meeting may be either to ratify tentative agreement or information meeting was not misleading - Reasonable employee would be aware of significance of alternative purposes of meeting - Complaint dismissed - Substantive Order - 186/11/LRA, 187/11/LRA and 188/11/LRA - July 19, 2011 - Manitoba Lotteries Corporation.

Ratification – Employee filed vote complaint alleging Union gave insufficient notice of information meetings and of vote; vote did not adhere to normal procedures; some polls were at information meetings which allowed no reasonable time for assessment of offer; and, attendance at, and information about, polls was difficult for bus drivers as opposed to inside workers leading to vote results being skewed and not reliable polling of membership intent – Board noted Employee admitted he was aware of vote and attempted to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 383/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging Union deviated from past voting practices; posted limited information about vote; offered small opportunity to attend information meetings; had reduced polling venues and hours; gave no time to reflect on deal offered as voting done immediately after information session; and, made no attempt to contact or inform employees on holidays - Employee noted collective agreement passed by slim majority and believed result skewed by vote irregularities - Board noted Employee did not allege he was unaware of vote and did not allege he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times

VOTE

changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 384/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging Union failed to provide drivers with appropriate notification of ratification vote and failed to provide members with reasonable opportunity to vote - Board noted Employee did not allege he was unaware of vote and did not assert he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 387/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging violations of a various sections of *The Labour Relations Act* including section 20 – Held Section 20 did not apply to collective bargaining process itself because bargaining process, of which ratification is integral part, did not involve representing rights of employees under collective agreement – Substantive Order - 387, 391, 392, 395, 396/11/LRA - Feb. 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint submitting he was on holidays at time of vote and was not aware of vote - He also submitted voting and meeting schedules were posted in improper and unfair manner because procedure for voting was changed from past practice - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 388/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

VOTE

Ratification – Employee filed vote complaint alleging vote was unduly fast-tracked as it was announced and concluded within one-week; opportunities to vote differed from past procedures; close vote cast doubt on result; and certain drivers, including those on vacation, had no access to voting - Board noted Employee did not allege he was unaware of ratification vote nor did he claim he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 391/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging Union failed to provide members with sufficient notice of ratification vote and raised issues regarding content of settlement agreement - Board noted Employee did not allege he was unaware of vote or he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Assertion other employees were denied right to be informed and to vote was speculative - Employee objecting to and disagreeing with terms of settlement not basis for complaint under section 70 - Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order- 392/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging Union failed to provide members with reasonable notice of vote and reasonable opportunity to vote - Board noted Employee attended a meeting and exercised right to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act*

VOTE

prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Assertion other employees were denied right to be informed and to vote was speculative - Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 395/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging Union failed to provide drivers with appropriate notification of ratification vote and failed to provide members with reasonable opportunity to vote - Board noted Employee did not allege he was unaware of vote and did not assert he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 396/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Employee filed vote complaint and attached list of 31 bus operators whom he asserted did not have opportunity to vote and had asked that he represent them – Held claim to represent employees not sustainable under the *Act* - 396/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging Union failed to provide members with reasonable notice of vote and that Union changed voting time and procedures from past practice which led to lower voter turnout and acceptance of contract which had been rejected on two prior occasions - Board noted Employee did not allege he was unaware of vote and did not claim he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting

VOTE

venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 397/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaint alleging Union did not follow past practice on how votes were conducted; many drivers did not know about vote; and Union did take proper time to get out vote information - Board noted Employee did not allege he was unaware of vote and did not claim he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Assertion other employees were denied right to be informed and to vote was speculative - Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 398/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

Ratification – Employee filed vote complaining that due to the late start of his shifts he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order - 399/11/LRA - February 14, 2012 - City of Winnipeg, Transit Department.

VOTE

As result of mail-in representation vote, MGEU was selected as certified bargaining agent for intermingled employees of technical/professional paramedical classifications of amalgamated Regional Health Authority - MAHCP filed application seeking Review and Reconsideration of certificate - Board addressed MAHCP's grounds for seeking review - Board acted within its jurisdiction and applied relevant provisions of *Freedom of Information and Protection of Privacy Act (FIPPA)* in refusing to provide residential addresses of employees, a position supported by Manitoba Ombudsman - Board was within its jurisdiction when it ordered representation vote be conducted by mail-in ballot - Pursuant to section 48(2) of *The Labour Relations Act*, Board has authority to make arrangements and give directions it considered necessary for proper conduct of vote - Board found MAHCP's position that telephone, post or possibly email was only effective means of communication overlooked additional means of communicating with employees - Crux of MAHCP's position is Board ought to facilitatecommunication by providing addresses - Board concluded section 2(b) *Charter* arguments Union advanced that Board abridged its rights to freedom of expression, did not meet "low threshold" of constituting serious issue to be tried - Further, submission that employees who voted for MAHCP without democratically held election were deprived of section 2(d) *Charter* rights to freedom of association founded upon unsupported assertion representation vote did not afford fair opportunity to employees to express their wish as to their choice of bargaining agent - Board satisfied vote conducted in fair and proper manner and submission with respect to section 2(d) of *Charter* was expression of dissatisfaction with vote result which did not constitute breach of freedom of association - Union's submission Board failed to follow its own procedure, as set by section 26(1) of the *Manitoba Labour Board Rules of Procedure*, by not affording Unions opportunity to examine the lists of employees' names and addresses was fundamental misreading of the *Rules* - Section 26(1) did not refer to provision of employees' addresses to unions involved in representation vote - Board acknowledged that it did not conduct oral hearings to determine issues regarding provision of addresses; decision to conduct mail-in vote; and MAHCP's refusal to sign fair vote certificate, but Board not required to conduct an oral hearing and Courts have repeatedly acknowledged that it was within Board's jurisdiction to make determinations under the *Act* without conducting oral hearing - Therefore, Board dismissed application seeking Review and Reconsideration - Substantive Order - 113/13/LRA - August 16, 2013 - Prairie Mountain Health; 114/13/LRA - August 16, 2013 - Southern Health - Santé Sud - **PENDING BEFORE COURT OF QUEEN'S BENCH.**

VOTE

Wishes of Employees - Employee filed application for Termination of Bargaining Rights but Board noted it had issued a Certificate, existence of which meant application ought to be filed as application seeking cancellation of Certificate - Notwithstanding that Union submitted vote should be conducted regardless of irregularities it referred to in its Reply, Board must *first* satisfy *itself* that material filed in support of application revealed that majority of employees no longer wished to have Union represent them - Board noted petition or statement filed in support of application did not explicitly state its purpose which would allow Board to satisfy itself employees who signed petition did so with basic understanding of its purpose and they were signing petition in support of that purpose and reasons stated - Also, document filed in support of application only listed names of certain individuals - Board was unable to ascertain if individuals actually signed document - Further, each signature obtained should be witnessed by individual who circulated petition and date of signing by each individual ought to be inserted - Irregularities led Board to conclude that it cannot satisfy itself majority of employees no longer wished to have Union represent them - Application dismissed - Substantive Order - 274/13/LRA - November 22, 2013 - Bayview Construction.

WAGES

Part-time tour guides whose wages were funded by an external source to the Employer are still employees and are included in the bargaining unit - Section 1 and 142(5) of ***The Labour Relations Act*** considered - 352/90/LRA - September 18, 1990 - The Winnipeg Art Gallery.

Retroactive Pay - Employee voluntarily terminated full-time employment and converted to casual status prior to settlement being reached on new collective agreement - Applicant not an employee pursuant to newly signed collective agreement so as to be eligible for retroactive pay - Prima facie case not established - Application dismissed - 455/03/LRA - September 18, 2003 - Salvation Army Haven.

WHISTLEBLOWER PROTECTION

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 - 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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- 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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- 24/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.

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- 23/09/LRA - April 1, 2009 - Manitoba Public Insurance Corporation.