

TABLE OF CONTENTS

	Page
Letters of Transmittal	3
A Message from the Chairperson	7
Organization Chart	10
Objective & Introduction	11
Operational Overview	13
Library	14
Publications and Website Site address	14
Labour Board Members	15
Summary of Performance	20
Achievements and Priorities for 2001-2002	21
Financial - Expenditure Summary	22
Summaries of Significant Board Decisions Pursuant to <i>The Labour Relations Act</i>	23
Summaries of Significant Court Decisions	32
Statistical Tables	35
Information Bulletins	
#1 Review and Reconsideration	41
#2 Rule 28 – <i>Manitoba Labour Board Rules of Procedure</i>	43
#3 Adjournments Affecting Continuation of Proceeding	44
#4 The Certification Process	45
#5 Streamlining of Manitoba Labour Board Orders	46
#6 Financial Disclosure	47
#7 Fee Schedule	48
#8 Arbitrators' List (Interim)	49
#9 Filing of Collective Agreements	50
#10 Steps to follow in applying for an Hours of Work Exemption Order	52
#11 Steps to follow in applying for a Meal Break Reduction	53
#12 Steps to follow in applying for a Permit to be exempted from the Weekly Day of Rest	54
#13 Process for the settlement of a First Collective Agreement	55
#14 Objections on Applications for Certification	56
#15 Manitoba Labour Board's decision respecting Bargaining Unit Restructuring in the Urban Health Care Sector	57

*A MESSAGE FROM THE CHAIRPERSON
OF THE
MANITOBA LABOUR BOARD*

It is with great pleasure that I submit the 2001-2002 annual report of the Manitoba Labour Board outlining its activities over the past year.

The addition of the full time Vice-Chairperson position referred to in the last annual report proved to be of immense benefit to the Board. The Board has been able to complete hearings in a more timely fashion which in turn assists in promoting harmony in the labour relations community. As well, the creation of the full time position has enabled us to pursue a number of initiatives which we feel will further assist the community in expediting outstanding disputes.

We are also in the midst of finalizing the representation votes in the Winnipeg urban health care sector and should be completing this task early in the next reporting year. I thank all the stakeholders for their patience and co-operation throughout this process.

As always, I would also extend my heartfelt appreciation to the Vice-Chairpersons, Board Members and staff in the performance of their responsibilities during this reporting period.

I look forward to the challenges the next year has to bring and trust we can continue to assist the labour relations community in a timely fashion.

John M.P. Korpesho
Chairperson

THE MANITOBA LABOUR BOARD

The Manitoba Labour Board is an independent and autonomous specialist tribunal responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under various labour relations statutes, namely:

The Labour Relations Act,
The Workplace Safety and Health Act,
The Essential Services Act,
The Pay Equity Act,
The Employment Standards Code,
The Construction Industry Wages Act,
The Remembrance Day Act,
The Elections Act,
The Public Schools Act, and
The Victims' Bill of Rights.

OBJECTIVES

- ◆ **To resolve labour issues** in a fair and reasonable manner that is acceptable to both the labour and management community including the expeditious issuance of appropriate orders which respect the majority wishes of employees;
- ◆ **To assist parties** in resolving disputes without the need of the formal adjudicative process; and
- ◆ **To provide information** to parties and/or the general public pertaining to their dealings with the Board or about the Board's operations.

INTRODUCTION

As stated above, the Board is responsible for the administration and/or adjudication of certain sections of the following Acts:

The Labour Relations Act

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

The Workplace Safety and Health Act

Any person affected by a stop work order or decision of the director of Workplace Safety & Health may appeal to the Board to have the order set aside or varied.

The Essential Services Act

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

The Pay Equity Act

If parties fail to reach an agreement on the issue of pay equity, within the time frames, any of them may refer the matter to the Manitoba Labour Board for adjudication.

The Employment Standards Code

As the Wages Board appointed pursuant to the *Code*, it deals with complaints referred to the Board by the Employment Standards Division for issues pertaining to wages, statutory holiday pay, vacation wages and wages in lieu of notice, including provisions pursuant to ***The Construction Industry***

Wages Act and **The Remembrance Day Act**. In addition, the Board receives and processes hours of work exemption requests received from employers seeking variation from the standard hours of work, and applications for exemption from the weekly day of rest.

In 2000, the Manitoba Labour Board's mandate was expanded to include adjudicative responsibilities for certain sections of the following statutes.

The Public Schools Act

In August 2000, amendments to the *Act* provided access to certain provisions of *The Labour Relations Act* to teachers, principals, bargaining agents for units of teachers, and school boards.

The Victims' Bill of Rights

Victims of crimes who wish time off work, without pay, to attend the trial of the person accused of committing the offence, may file applications to the Board relating to issues regarding such time off work.

The Elections Act

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

OPERATIONAL OVERVIEW

ADJUDICATION

The adjudicative framework of the Board consisted of a full-time Chairperson, 1 full-time Vice-Chairperson position (currently filled by 2 individuals on a job share basis) and 1 part-time Vice-Chair. There are 26 Board Members; information about individual members is contained later in this report. Vice-Chairpersons and Board Members are appointed to the Board by Order-In-Council and the part-time Chair and Board Members are paid fees in accordance with the number of meetings/hearings held throughout the year. The Board's office is located in Winnipeg where it conducts hearings on a variety of matters and, as required, also travelled to rural centres such as Brandon, Thompson, The Pas and Flin Flon. The Board does not retain legal counsel on staff, however, legal services are provided through Civil Legal Services of the Department of Justice.

FIELD SERVICES

The Registrar is responsible for the supervision of the day-to-day field services of the Board. Reporting directly to the Registrar are 4 Board Officers and 1 Board Clerk. The Registrar and Board Officers provide information to various parties to assist them in commencing applications filed with the Board under the various statutory provisions. All applications filed with the Board pursuant to *The Labour Relations Act*, *The Workplace Safety & Health Act*, *The Essential Services Act* and *The Pay Equity Act* are initially processed through the Registrar's office. The Registrar determines the hearing dates and ensures the efficient processing of each application.

The Board Officers continue to process various cases and conduct investigations respecting the specific applications filed with the Board. The Officers are frequently appointed to act as Board Representatives in allegations of unfair labour practice and to endeavor to effect a settlement of the complaint. The successful resolution of applications and complaints through this dispute resolution mechanism remains consistent with previous years, and eliminates the need for costly hearings and tends to reduce the potential for disharmony in the workplace. These Board Officers also perform a variety of other functions including acting as Returning Officer in Board-conducted votes, attending hearings as well as assisting the Registrar in the processing of applications. The Officers are responsible for communicating with all parties as well as the public respecting information on Board policies, procedures and jurisprudence as relates to a specific case. Recent amendments to *The Labour Relations Act* have enhanced the role of the Board Officer to include a conciliatory role to assist parties in the conclusion of collective agreements, both first collective agreements and subsequent ones. The assistance of the Board Officer's role in this endeavor has been favorably accepted by the labour relations community.

The Board Clerk is responsible for the processing of all Employment Standards Code referrals, hours of work and weekly day of rest exemption requests and expedited arbitration referrals filed through the provisions of *The Labour Relations Act*. The Board Clerk attends hearings, records appearances, case law, exhibits and assists the Board and parties in any issues that should arise. In March 2002, the Board received approval for a new position, namely an additional Board Clerk, which will be reported in next year's staffing allocation.

ADMINISTRATIVE SUPPORT SERVICES

The Administrative Officer is responsible for the administrative support of the Board office including fiscal control and accountability of operational expenditures, office systems and procedures development to ensure departmental and government policies are implemented.

Reporting to the Administrative Officer are 5 administrative secretaries and 1 clerk. Administrative Support Services worked closely with Field Services to ensure that applications were processed expeditiously and continued to work extensively on upgrading and maintaining the Board's automated databases.

In addition, the Board has 1 part-time Researcher reporting to the Chairperson. The Researcher provided reports, statistical data and jurisprudence from other provincial jurisdictions and was assigned other research projects as required by the Board.

MANITOBA LABOUR BOARD LIBRARY

The Board maintained a collection of texts and journals dealing with industrial relations and labour law. Since 1985, all arbitration awards and collective agreements must be filed with the Manitoba Labour Board. Copies can be viewed in the Board's office, or made available in accordance with the fee schedule (reference Information Bulletin No. 7).

PUBLICATIONS

Copies of the various statutes and regulations are available for purchase from the Statutory Publications Office, Department of Culture, Heritage & Citizenship, 200 Vaughan Street, Winnipeg, Manitoba. The Board presently produces:

Compendium of Grievance Arbitration Decisions - an annual summary of all arbitration awards rendered in the province of Manitoba and filed with the Board during the calendar year. This publication can be purchased through the Statutory Publications Office.

Manitoba Labour Board Annual Report - a publication disclosing the Manitoba Labour Board's staffing and membership, as well as highlights of significant Board and court decisions, and statistics of the various matters dealt with during the reporting period.

Activities of The Manitoba Labour Board - a quarterly publication providing information and statistics on all proceedings before the Board. This publication is available on a subscription basis, from the Statutory Publications Office.

Index of Written Reasons For Decision - contains an index of written reasons categorized by topic, employer and section of the Act. This quarterly publication is available on a subscription basis, also from the Statutory Publications office.

The Board plans to revise the *Guide to The Labour Relations Act* which was a booklet explaining in laypersons' terms the various provisions of *The Labour Relations Act* and the role of the Manitoba Labour Board and Conciliation & Mediation Services, and to make this available through its website.

The Board also distributed copies of *Written Reasons for Decision* following certain Board Decisions and has produced *Information Bulletins* dealing with the Board's past practice and procedure. Copies of the full text of these Information Bulletins can be found later in this report.

In December 1998, the Manitoba Labour Board issued its *Review of Bargaining Unit Appropriateness in Manitoba's Urban Health Care Sector*. The *Review of Bargaining Unit Appropriateness in Manitoba's Rural Health Care Sector* was issued in January, 1998. Both publications are available through the Board's office.

Copies of the Board's written reasons for decision and arbitration awards can be sourced through **QL Systems Limited** (Quicklaw) and copies of arbitration awards are also sent to Lancaster House Publishing Inc. and Canada Law Book Inc., for selection and reprinting in their publications.

More information about the Board, together with links to other departmental divisions, Quicklaw and Statutory Publications, can be found on the Board's website www.gov.mb.ca/labour/labbrd, or the Board can be contacted through its e-mail address at mlb@gov.mb.ca

MANITOBA LABOUR BOARD MEMBERS

The Manitoba Labour Board is comprised of a full time Chairperson, a full time Vice-Chairperson position (filled by 2 individuals on a job share basis), a part time Vice-Chairperson and twenty-six Board Members. There is equal representation of employer and employee views. In the year under review, the Board consisted of the following members.

Chairperson

John M.P. Korpesho

First appointed Chairperson of the Manitoba Labour Board in 1983 and since re-appointed, he has been with the Board since 1973, during which time he has held the positions of Board Officer, Registrar and Vice-Chairperson/Registrar. Mr. Korpesho is a graduate of the University of Manitoba's Certificate Program in Public Administration. He is actively involved in numerous labour management committees and is a guest lecturer at both the Faculty of Law and the Faculty of Administrative Studies at the University of Manitoba.

Vice-Chairpersons

Jack M. Chapman, Q.C.

Appointed on a part time basis since 1989, Mr. Chapman carries on a legal practice restricted to the role of a neutral in labour relations matters. He is active in such matters in several jurisdictions across Canada. Mr. Chapman is a Life Bencher and Past President of the Law Society of Manitoba. He is a charter member of the Society of Professionals in Dispute Resolution and a panel member of the American Arbitration Association. Mr. Chapman resigned as a part time Vice-Chair in July, 2001.

Joy M. Cooper

Appointed on a part time basis since 1985, she holds a Bachelor of Arts degree (Honours), a Master of Arts degree in Political Science, and a Bachelor of Law degree from the University of Manitoba. Ms. Cooper was in private practice until 1992 when she joined the Department of Justice as a Crown Counsel on a part time basis. Ms. Cooper was seconded from the Department of Justice in 2001 to the Board as a full time Vice-Chairperson on a time share basis. Ms. Cooper also acts as an arbitrator under collective agreements and as an adjudicator under the *Canada Labour Code*.

Diane E. Jones, Q.C.

Appointed on a part time basis since 1985, she holds a Bachelor of Arts degree (Honours) from the University of Winnipeg and a Bachelor of Law degree from the University of Manitoba. Ms. Jones is currently active as a chairperson in arbitration matters. She was appointed in 2001 to the Board as a full time Vice-Chairperson on a time share basis.

Employer Representatives

Jim Baker, C.A.

Appointed in 2000, Mr. Baker is President and CEO of the Manitoba Hotel Association. Prior to his employment with the MHA he was a partner in a chartered accountancy firm for 20 years. Mr. Baker is an executive member of the Hotel Association of Canada and of the Manitoba Tourism Education Council. He was co-chair of the athletes' villages during the 1999 Pan Am Games and has been active as a community volunteer.

Elizabeth M. (Betty) Black

Appointed in 1985, Ms. Black is a Fellow, Certified Human Resource Professional (F.C.H.R.P.) and holds a Certificate from the University of Manitoba in Human Resource Management. She has been employed in senior human resource management positions in a variety of organizations since 1972. Ms. Black has been very active in the Human Resources Management Association of Manitoba for many years, and has served as Membership Director and President. She has also instructed in the Human Resource Management Certificate Program at the University of Manitoba.

Genevieve A. Brazzell

Appointed in 1999, Mrs. Brazzell is Past President of the Manitoba Chamber of Commerce. She is a graduate of the University of Manitoba and holds a Masters of Business Administration as well as an undergraduate degree in Agriculture. Mrs. Brazzell is currently employed as an Account Manager with Canadian National Railway and provides leadership across all departments at CN to ensure the delivery of logistics solutions to some of Western Canada's largest grain shippers. Mrs. Brazzell's term expired April 2002.

Edward J. Huebert

Appointed in 1994, he is currently Executive Vice President of the Mining Association of Manitoba Inc., and the Mines Accident Prevention Association of Manitoba. He holds a Master of Natural Resources Management and undertook post-graduate training in Regional and Community Planning at the University of British Columbia as an Emergency Planning Canada Research Fellow. He serves as the Co-Chairperson on the Workers Compensation Board and Workplace Safety and Health, as well as serving on the Manitoba Roundtable on Sustainable Development.

Colleen Johnston

Appointed in 1993, she is the Manager, Human Resources for the Manitoba Liquor Control Commission and the President of Integre Human Resource Consulting. Mrs. Johnston is a graduate of the University of Manitoba, with a Bachelor of Education and is a Certified Human Resource Professional. She is a Past Director of the Human Resource Association of Manitoba, a Past Director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the Canada Labour Code in Ottawa. She is currently a member of the Professional Designation Committee of the Human Resource Management Association of Manitoba.

Michael Kaufmann

Appointed in 1990, he has been involved in the electrical contracting industry since 1952. Mr. Kaufmann was Vice-President of State Contractors Inc. He has held several elected positions in the construction industry and is a Past President of the Winnipeg Construction Association and a Past Chairman of the Construction Labour Relations Association. He was the Facility Director at the Asper Jewish Community Campus, presently retired.

Paul J. LaBossiere

Appointed in 1999, he is currently President of P.M.L. Maintenance Ltd. Mr. LaBossiere is Past Co-Chair of the Employers Task Force on Workers Compensation; Member of the Winnipeg Chamber of Commerce Civic Affairs Advisory Panel, Labour Legislation Committee, Chair Civic Finance & Taxation Committee; Parliamentarian and Past President of the Building Owners and Managers Association; and Member of the Manitoba Employers Council (MEC) and is a frequent international speaker on issues pertaining to the maintenance and service industries. He is President, Board of Directors of the Prairie Theatre Exchange. His past affiliations include Vice-Chair and Treasurer of the Winnipeg Chamber of Commerce and on the Advisory Committee for the Continuing Education Department at the University of Manitoba.

Yvette Milner

Appointed in 1996, she was the owner of Milner Consulting which merged with Deloitte & Touche LLP in October 1999. Ms. Milner has a Bachelor of Social Work degree from Dalhousie University and a Certificate of Human Resource Management from the University of Manitoba. She has expertise and experience in human resources, safety and disability management with past work experience in the public and private sectors. As Director, Safety & Disability Management with Deloitte & Touche she is involved in assisting organizations to address their safety and disability management issues. Ms. Milner is an active member of the Employers Task Force on Workers Compensation and Winnipeg Chamber of Commerce. She also holds memberships in the Accident Prevention Association of Manitoba, Human Resource Management Association of Manitoba and Manitoba Safety Council.

A. Edward Stanton

Appointed in 1985, he had been employed by PPG Canada until his retirement in 1982. Mr. Stanton had served in many capacities, including General Manager of Branches, and has participated extensively in labour relations, having served on a number of joint labour/management study groups and government appointed labour relations committees. He is a Past President and an Honourary Life Member of the Winnipeg Construction Association.

Maurice D. Steele

Appointed in 1999, he was President of M.D. Steele Construction Ltd. until his retirement in May 1999. Mr. Steele is also President of the AVL Limited Partnership representing lands north and west of Winnipeg International Airport. He has been involved for a number of years in the construction industry in a managerial capacity.

Gordon H. Stewart

Appointed in 1991, he has a background in the electrical trade and attained journeyman status in 1950. In 1959, Mr. Stewart joined Griffin Canada Inc. Upon his retirement in 1991, he had held the position of Plant Manager for ten years. He is a former Board Member of the Industrial Management Club of Canada (Manitoba), former member of the Board of Directors of the Canadian Manufacturers Association (Manitoba), and a former member of the Instrumentation Advisory Committee, Red River Community College.

Denis E. Sutton

Appointed in 1983, he has had extensive training in business administration and human resource management and has extensive experience in labour relations in both the private and public sector. He has served as Chairperson of the Industrial Relations Committee, Manitoba Branch, of the Canadian Manufacturers Association, and Chairperson of the Western Grain Elevator Association Human Resource Committee, and as Chairperson of the Conference Board of Canada, Council of Human Resource Executives (West), and is an active member of many labour relations committees and associations.

Raymond N. Winston

Appointed in 1987, he has a degree in Electrical Engineering and a Master in Business Administration from the University of Manitoba. Mr. Winston had been the Executive Director of the Manitoba Fashion Institute Inc. for 25 years and has extensive labour relations experience in the fashion industry. He is currently retired and is consulting on a part-time basis.

New Member:**Christiane Devlin**

Appointed in 2002, she has practiced human resource management, working in various industries including communication and printing, agriculture, manufacturing, and health care. Ms. Devlin is currently the Human Resources Manager with Arctic Co-operatives Limited and member co-operatives in Manitoba, Nunavut and Northwest Territories.

Employee Representatives**Bernie Atamanchuk**

Appointed in 1985, he had worked with the United Food and Commercial Workers Union from 1964 until his retirement in 2001. During his 36 years of service with the UFCW Local No. 832, he held various positions including Trustee of the Manitoba Food and Commercial Workers Dental Plan, Director of Organizing, Director of Servicing, and Executive Assistant to the President. Prior to joining UFCW, he was employed by Canada Safeway for six years. Mr. Atamanchuk graduated from the Canadian Labour College in Montreal in 1967.

Cecile Cassista

Appointed in 2000, she has been a National Representative since 1981 and has recently retired from the Canadian Auto Workers Union. Ms. Cassista has participated in the areas of collective bargaining, arbitration, organizing and other labour relations in Manitoba and Saskatchewan. She is a member of the Manitoba Federation of Labour Women's Committee and also a member of the Child Care Coalition of Manitoba. In 2001, she was appointed to the Premier's Economic Advisory Council and in 2002 she was elected to the United Way's Board.

Clive Derham

Appointed in 1990, he was formerly employed with the City of Winnipeg. Until his retirement, Mr. Derham was employed as a Staff Representative with the Canadian Union of Public Employees, with primary emphasis being in the health care sector.

Jan Malanowich

Appointed in 1991, she has been employed since 1981 as a Staff Representative for the Manitoba Government and General Employees' Union. Ms. Malanowich is actively involved in collective bargaining, grievance handling and a multitude of associated activities related to the needs of the membership.

Charles W. McCormick

Appointed in 1999, he had worked with the United Food and Commercial Workers Union from 1969 until his retirement in 1998. During his 29 years of service with the UFCW, he was employed in various capacities including President and CEO of the UFCW Local 206; his activities included organizing, servicing, collective bargaining, and the preparation and presentation of interest dispute arbitrations and grievance arbitrations. Mr. McCormick was Administrative Assistant to the Canadian Directors and a member of the Union's International and Foreign Affairs Advisory Committee. He also served as a Trustee on the Southern Ontario Retail Clerks Dental Plan. He is a graduate from the Canadian Labour College in Montreal and currently operates the Grievance Industrial Relations Consulting Company in Winnipeg.

Doug McFarland

Appointed in 2000, he has been actively involved in labour relations and is currently employed as a Staff Representative with the Manitoba Government and General Employees' Union.

John R. Moore

Appointed in 1994, he is presently employed as the Business Manager and Training Coordinator for the United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 254. In this capacity, Mr. Moore is also a Representative of the Trade Advisory Committees: Plumbers, Steamfitters/Pipefitters, Sprinklerfitters, and Refrigeration Mechanics. He also is President of the Manitoba Building and Construction Trades Council and Vice-President for the Construction Industry for the Manitoba Federation of Labour.

Maureen Morrison

Appointed in 1983, she has a Bachelor of Arts degree from McGill University and has also completed several courses in labour relations studies. In 1980, Ms. Morrison was hired as a Staff Representative with the Canadian Union of Public Employees and, since 1987, has been employed as an Equality Representative with the Canadian Union of Public Employees. Her work is primarily in the areas of pay equity, employment equity, and other human rights issues.

James Murphy

Appointed in 1999, Mr. Murphy is the Business Manager of the Operating Engineers of Manitoba Local 987, being elected to this position in 1995. He held the positions of Business Representative of the Operating Engineers from 1987 through to 1995 and Training Co-ordinator from 1985 to 1987. Mr. Murphy sits on the Executive Board of the Canadian Conference of Operating Engineers, the Executive Board of the Manitoba Building and Construction Trades Council and is Vice-President of the Allied Hydro Council of Manitoba. Prior to 1985, he was a certified crane operator and has been an active member of the Operating Engineers since the late 1960s.

Dale Paterson

Appointed in 1999, Mr. Paterson has been a National Representative with the Canadian Auto Workers Union since 1984 and is currently the Area Director for Manitoba, Saskatchewan and the Northwest Territories. Mr. Paterson co-ordinates the activities of the CAW in this region and participates primarily in the areas of collective bargaining, arbitration, organizing and other labour relations matters. He is also Vice-President of the Manitoba Federation of Labour and Vice-President of the Community Unemployed Help Centre.

Grant Rodgers

Appointed in 1999, he is currently a Staff Representative with the Manitoba Government and General Employees' Union, and has specialized for a number of years in grievance arbitration matters as well as collective bargaining. He holds a B. Comm. (Honours) from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board, Big Brothers of Winnipeg, and a Director of the Winnipeg South Blues Junior "A" Hockey Club.

Doreen Rosaasen

Appointed in 1990, she is a Registered Nurse by profession and has been actively involved in various nurses' associations. Ms. Rosaasen recently retired as a Staff Representative with the Manitoba Nurses' Union. Her term expired December 2001.

Lorraine Sigurdson

Appointed in 1990, she is currently employed as a Healthcare Co-ordinator with the Canadian Union of Public Employees. Ms. Sigurdson is actively involved in collective bargaining and providing assistance to health care locals with handling grievances and Local Union administration. She is also a Vice-President of the Manitoba Federation of Labour.

New Member:**Irene Giesbrecht**

Appointed in 2002, she has been employed by the Manitoba Nurses' Union since 1978 and is currently Director of Negotiations and Chief Negotiator. Previous to joining the Manitoba Nurses' Union, Ms. Giesbrecht was employed in the health care sector as a registered nurse. She is Chairperson of the Manitoba Council of Health Care Unions and is a member of various organizations including the Manitoba Nursing Advisory Council, Union Centre Board of Directors, Crocus Fund Advisory Committee, and Blue Cross Board of Directors.

SUMMARY OF PERFORMANCE

The Manitoba Labour Board adjudicated employer-employee disputes referred under various provincial statutes, namely: *The Labour Relations Act*, *The Employment Standards Code*, *The Payment of Wages Act*, *The Workplace Safety and Health Act*, *The Pay Equity Act*, *The Essential Services Act*, and other various employment standards statutes. Legislative amendments enacted in 2001/2002 gave additional adjudicative/administrative responsibility to the Board under *The Victims Bill of Rights*, *The Elections Act* and *The Public Schools Act*.

The Labour Relations Act now applies to teachers, bargaining agents for units of teachers, and school boards, with limited exception. In keeping with the legislated amendments, the Board is currently re-issuing all school division bargaining certificates, which involve Board hearings to deal with the determination of specific classifications and bargaining unit descriptions.

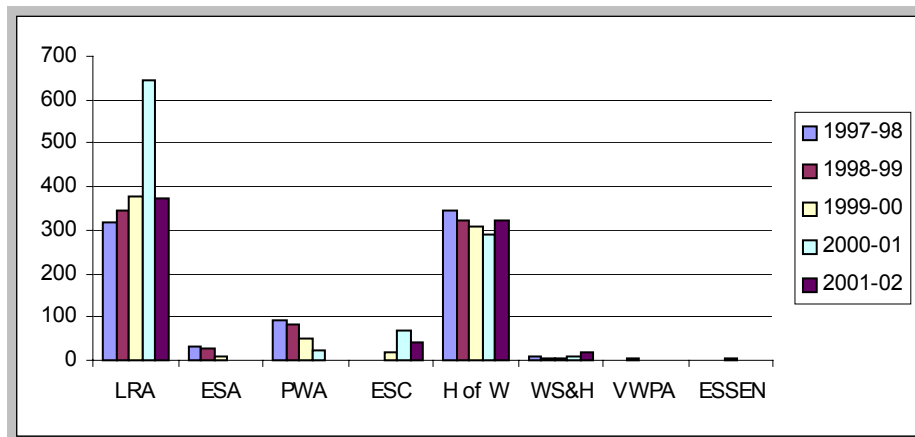
Also during the past year, significant progress has been made in the Board's administrative process as relates to its "Review of Bargaining Unit Restructuring in the Urban HealthCare Sector". Stakeholders have been consulted in relation to various issues and the process of conducting representation votes was underway during this reporting period.

The Board continues to monitor its internal processes to operate more efficiently and expeditiously. There has been a noticeable improvement in the scheduling of Board hearings through "block" scheduling and an emphasis on holding pre-hearing sessions to deal with preliminary issues. The Board conducts numerous formal hearings annually, however, a significant portion of the Board's workload is mediative and administrative in nature. Where possible, the Board encourages the settlement of disputes in an informal manner by appointing one of its Board Officers to mediate outstanding issues and complaints.

In an effort to strengthen communications with the parties who deal with the Board, the Board has held and will continue to hold consultation and information sessions on specific issues under various statutes, as it deems advisable. It is important to recognize that the Board's role is significant and that its decisions establish policy, procedures and precedent and provide for a more sound harmonious labour relations environment.

The past reporting year has been a challenging one for the Manitoba Labour Board. The Board has continued to receive a high volume of applications and complaints. Cases have increased in complexity and in the number of hearing days assigned. The number of applications filed with the Manitoba Labour Board during the past 5 years (for the period April 1 to March 31) is indicated in the chart below, with hours of work applications shown separately from *The Employment Standards Act* and *The Employment Standards Code*.

**Manitoba Labour Board
Number of Applications Filed**



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

Program Performance Measurements of the Manitoba Labour Board April 1, 2001 - March 31, 2002

Indicator	Actual 2000-2001	Actual 2001-2002
Percentage of Cases disposed of	76%	87%
Number of cases Board Officers appointed	37	31
Percentage settled	68%	45%
Number of votes conducted	63	22
Median processing time (calendar days):		
Certifications	18	15
Decertifications	50	33
Unfair labour practice	79	110
Duty of fair representation	71	53
Expedited arbitration	16	53
Board rulings	167	201
Amended Certificates	167	127
First contracts	63	63
Workplace Safety & Health	45	62
Employment Standards Division referrals	84	106
Hours of work exemptions	5	6

In addition to applications filed and pursuant to *The Labour Relations Act*, the Board also received and filed copies of collective agreements and arbitration awards. The collection at the end of the reporting period consisted of 2,016 collective agreements and 1,765 arbitration awards, an increase of 21% and 5% respectively from the previous reporting period. The Board also issued Written Reasons for Decision; the collection consists of 563 written reasons reflecting an 11% increase from the previous reporting period. Copies of collective agreements, arbitration awards and written reasons are available upon request (many of which are now available electronically) and in accordance with the Board's fee schedule. Detailed statistical tables and summaries of significant Board decisions can be found later in this report.

Achievements

- ◆ Improved and expanded internet homepage including application forms, information bulletins and annual report in bilingual format
- ◆ Issued a variety of publications to improve communication and disseminate information including the quarterly "Report of Activities of the Manitoba Labour Board" and updates to the "Index of Written Reasons for Decision"
- ◆ Expanded in-house database to improved research capabilities and generate statistical data
- ◆ Recruitment of a new Board Clerk position to facilitate expeditious processing of expedited arbitration and Employment Standards Code referrals/applications

Continuous Improvement - Priorities for 2002/2003

- ◆ Increase mediative settlements
- ◆ Reduce median processing times for processing applications
- ◆ Continue restructuring of bargaining units in the urban health care sector
- ◆ Review/issue certificates in the public school sector
- ◆ Implement and testing of an automated information system (case management)
- ◆ Relocate the Board's office to more appropriate space
- ◆ Improve communication services by improving client service and access to information through the production of publications on a more timely basis and expanding the board's website
- ◆ Participate in staff development and training initiatives and succession planning

Financial

(e) Manitoba Labour Board

Expenditures by Sub-appropriation	Actuals	Estimate		Variance Over/(Under)	Explanation No.
	2001/02 \$	2001/02 FTE	\$		
Total Salaries	959.0	15.50	950.5	8.5	
Total Other Expenditures	318.5		282.3	36.2	1
Total Expenditures	1,277.5		1,232.8	44.7	

Explanation:

1. The over expenditure largely reflects increased transportation expenses, the cost of acquiring furniture and furnishings for 2 new half time Vice Chairpersons and costs associated with the development of a computerized information system.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO THE LABOUR RELATIONS ACT

J.C. Foods Ltd. - and - United Food and Commercial Workers Union, Local No. 832
Case No. 632/00/LRA
April 23, 2001

UNFAIR LABOUR PRACTICE – 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.

The Union argued that the Employer laid off 6 employees because of their involvement in its organizing drive. It submitted that the manner in which the lay-offs were conducted was designed to warn other employees that they were at risk if they supported the Union. It stated that the employees were pulled from the production line, in full view of their coworkers, taken to an office, laid off and escorted out of the premises. The Employer testified that the lay-offs were a result of economic necessity. It gave three reasons for the lay-off. First, nine employees had been hired for a project, which later did not work out. Second, due to high inventory and a slow down in business, production had to be slowed down. Third, the computerized monthly accounting indicated a financial loss and steps had to be taken to offset the loss. The Employer submitted that criteria used to select employees for lay-off was not seniority, but it decided to keep essential employees.

Held: The Board found contradictions in the evidence given by the Employer and the Union witnesses. The Board noted that the Employer could have called the supervisor as a witness to substantiate its evidence but she was not called. The Board drew negative inference from this and found that the evidence of the Union was preferred over the Employer's evidence. Furthermore, the Board drew a negative inference from the Employer's lack of evidence to substantiate its arguments and the manner in which the lay-offs were conducted. Therefore the Board found that the Employer had not discharged its onus and had committed unfair labour practices. The Union requested a discretionary certificate, but the Board was of the view that the true wishes of the employees could still be obtained. It ordered that the Employer reinstate and compensate the laid off employees, and that it pay the Union \$500 for the interference with its rights resulting from the unfair labour practice.

CanWest Galvanizing Inc. -and- United Steelworkers of America, Local 4095
Case No. 99/00/LRA
May 3, 2001

SUCCESSORSHIP - REVIEW – PRACTICE AND PROCEDURE - Particulars - 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.

SUCCESSORSHIP - REVIEW - EVIDENCE - Employer seeking review and reconsideration of finding of successorship - New evidence would not lead Board to any different disposition

On February 16, 2000, by Order 1172, the Board found that a "sale of business" had occurred within the meaning of section 56(1) of *The Labour Relations Act*, and that the Employer was a successor employer to the former employer, Dominion Bridge. The Employer filed an application for review and reconsideration of the decision. The Employer argued that the Board adopted a "functional approach", as opposed to an "instrumental approach". It contended that the Board misapplied and/or misconstrued the test of functional economic vehicle. Finally, documentary evidence was now available that was not known or available at the time of the hearing.

Held: The Board did not agree that it had adopted a "functional approach". It could not find anything in the Reasons for Decision that would indicate that it took a functional approach to the issue. Further, it found that

the Employer's submissions lacked particularity regarding the Board's alleged misapplication of the test of functional economic vehicle. As to the grounds that new evidence was available, the Board found that the "new evidence", which was a number of invoices of the former employer, would not lead it to any different disposition. The Employer argued that the documents proved that custom galvanizing was only a small part of the former employer's business. However, since the Board had come to the same conclusion in its original decision, the Board could not find that the evidence would lead to any different disposition. In its Reasons, the Board specifically stated "the fact that only part of Dominion Bridge's work was custom galvanizing is in our view immaterial." The Board was and continued to be of the view that the fact that galvanizing was only a small part of the business did not preclude a finding of successorship. The Board stated that it expects parties to comply with Section 17(1)(c) of the *Manitoba Labour Rules of Procedure*, which requires parties, in the absence of new evidence, to file a concise statement showing cause why the board should review or reconsider the original decision.

Dairyworld Foods - and - Retail Wholesale Canada, Cdn Service Sector Div. of USWA, Local 765

Case No. 61/98/LRA

June 18, 2001

DECERTIFICATION - 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.

PRACTICE AND PROCEDURE - STATUS - 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.

The Employee, who was employed as a Registered Distribution Operator (RDO), filed an application requesting the Board declare that no collective agreement was in force and effect that was applicable to the RDO's; that no bargaining rights existed with the Union and if they did, those rights should be terminated; and, no certification covering the RDO's existed and if so, it should be cancelled. He maintained that nothing in the collective agreements applied to the RDO's and that the terms and conditions of their employment were governed differently and set out in the letter of understanding and other documents independent of the collective agreement. Both the Employer and Union agreed that the RDO's were established as separate units, but they would not be separate for purposes of bargaining rights and certification.

Held: The Board noted that the Employee raised an issue as to employee status. The Union objected to this issue being considered because the application had not placed that issue before the Board. The Board, noting that the application consistently referred to the RDO's as employees, allowed the objection. Accordingly, for the purpose of this application, the Board assumed the RDO's were employees and made no determination on that issue.

An examination of the contractual arrangements respecting the RDO's confirmed that their terms and conditions of employment were different from those of other employees in the bargaining unit, and that the Employer and Union intended that they should be treated as a separate group. However, the documents did not show an intention to treat them as a separate unit for bargaining purposes. As well, the existing certificates and the scope clause of the collective agreements did not exclude the RDO's from the bargaining units. Further, the reference in the letter of understanding to the RDO's forming part of a separate unit was not determinative of the issue, given the Employer and the Union agreed to their inclusion in the larger units. The Board was reluctant to interfere and impose a different view of what is appropriate where an Employer and a Union have agreed on the description of the bargaining unit. The Board was not persuaded that it should amend the description of the bargaining unit to exclude the RDO's because of the different terms and conditions of employment which apply to them. The Board noted that it was not unusual for collective agreements to contain different terms and conditions of employment for different groups of employees and to have separate groups or units of employees within a single bargaining unit. Having found that the RDO's remain part of the bargaining unit, the Board dismissed the application for cancellation of certification or

termination of bargaining rights as the petition did not have the minimum support required by the Act to conduct a vote.

Buhler Versatile Inc.- and -National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 2224

Case No. 220/01/LRA

July 30, 2001

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

DUTY TO BARGAIN IN GOOD FAITH - 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.

DUTY TO BARGAIN IN GOOD FAITH - REMEDIES - 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.

The Union testified that, during the bargaining meetings, the Chief Executive Officer (CEO) made many comments such as "You're not going to like my proposal" or "If backed into a corner, I'll padlock the doors". He also made constant threats to sell or to close the plants. He failed to provide supporting material to justify his demands as requested by the Union. At each meeting, he would demand further concessions from the Union. After the sixth meeting, the Union went on strike as it was of the view that the CEO was bargaining it to impasse. After the strike had been on for two months, the Union became aware that the CEO failed to disclose a vital decision to allow a customer to terminate a contract to purchase tractors rather than requesting an extension of the contract. At this point, the Union filed an application alleging that the Employer had failed to bargain in good faith and failed to make every reasonable effort to conclude a collective agreement.

Held: The Board found that the CEO ought to have known that certain of his demands that would eliminate a number of longstanding provisions in the existing collective agreement, including the health and welfare benefits and seniority, could not have been accepted by the Union and still have them maintain credibility with its members. It was troubled that his strategy was based on his constant threats of plant closure. The CEO consistently displayed an unwillingness to enter into any rational and informed discussions and provide supporting arguments throughout those negotiations. The evidence was clear that each time the Union modified its position, the CEO offered less. This, in itself, satisfied the Board that he breached the duty to bargain in good faith by purposely avoiding attempts to find some "common ground" to resolving the outstanding issues. The Board decided that the tactics utilized throughout by the CEO were calculated to see how much more he could squeeze out of the Union before it capitulated to his demands. The Board found unequivocally that the Employer's actions caused the strike to take place. It was satisfied that the Employer's conduct during the bargaining sessions, up to the strike were such that they contravened the duty to bargain in good faith and to make every reasonable effort to enter into a collective agreement. In addition, the Board found that the decision to allow the termination of the tractor contract fell within the types of decisions that labour boards have stated must be disclosed to a union in a timely fashion. This issue would have been a major point of discussion during the bargaining sessions, as it would have serious ramifications as to the continued viability of the plant. The law clearly put the onus of this type of disclosure on an employer. This, the Board was satisfied, was not done. Therefore, the Employer committed a further breach of section 63(1) of the Act.

The Board ordered the Employer to cease and desist any action that contravened the requirements to bargain in good faith and the parties were to immediately commence collective bargaining with the view to entering into a collective agreement. The Board stated that the remedies were to be compensatory, and not punitive, as they are intended to bring the employees back to the status that they had enjoyed prior to the strike. The Board, having satisfied itself that the strike was precipitated by the Employer's contravention of the duty to bargain in good faith, ordered the Employer to immediately compensate each employee who was a member of the bargaining unit and who was employed by the Employer at the time the strike commenced for all lost wages and employment benefits they would have earned had the strike not occurred, less monies earned, exclusive of strike pay. It also ordered that the terms and conditions of the expired collective agreement were, in keeping with the provisions of Section 10(4) of *The Labour Relations Act*, deemed to be in full force and effect up to and including the day the strike ended. Further, the Employer was ordered to compensate the Union for the strike expenditures totalling \$170,025.00. The Employer was ordered to pay interest at the prime rate on all monies payable. The Board declined to issue compensation to the Union with respect to its legal and expert witness fees, and further declined to issue compensation with respect to severance, as there has been no closure of the plant and the Collective Agreement between the parties has been made whole.

Decision of Member G.H. Stewart: Mr. Stewart found a monumental lack of communications on both sides contributed to the failure of the negotiations. Although he agreed that the CEO bargained in bad faith he found the strike was premature as other options other than the strike option were available to the Union. He would not have ordered compensation for all wages lost, but rather for the interference of the employees' rights pursuant to Section 31(4)(f).

Churchill Regional Health Authority - and - The Province of Manitoba - and - Manitoba Nurses' Union
Case No. 760/00/LRA
September 5, 2001

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.

UNFAIR LABOUR PRACTICE - 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*.

UNFAIR LABOUR PRACTICE - 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.

The Employer encountered difficulty in recruiting and retaining staff to work in its health facility, which was located in a remote northern community. It approached the Union, but the Union was not prepared to re-negotiate with the Employer. Similar issues faced most bargaining units, and the Union was adamant that there would be only "central table" bargaining. Since the Union refused to talk, the Employer decided to offer to pay a "signing bonus", with a further promise of a "bonus" at the expiration of one year and it increased the salary scale being paid to nurses. The Union then filed an application for a Board Ruling, alleging that the Employer and the Province of Manitoba were interfering with the administration of the Union, and, in particular, had violated section 6(1) of *The Labour Relations Act*. The Union acknowledged that the Province did not have any direct negotiations with the parties but, nevertheless, the Province, as the primary funder of health care, had involved itself in the matter and, as it ultimately would be responsible for any additional costs.

Held: The Board did not accept that the Province was party to the unfair labour practice. The representatives of the Province had no direct or indirect contact with the bargaining unit or its members. Assuming the role of "quasi-mediator" did not constitute the Province as being guilty of an unfair labour practice. The Board held that the application did not contain a *prima facie* case against the Province and dismissed the application as it related to the Province.

While the Board was appreciative of the problems confronting the Employer, the consideration of motive is applicable only to the penalty or remedy imposed. It is not an excuse for breaching the provisions of the legislation, which does not make any provision for consideration of extenuating circumstances. While the Employer did not consciously attempt to undermine the Union, it did enter into separate written contracts with some of its staff and did recruit and retrain nurses by direct negotiation. According, it was in breach of *The Labour Relations Act* and had committed an unfair labour practice. In considering the remedy, the Board noted the Employer attempted to negotiate with the Union and then, when unsuccessful, it sought the mediative efforts of the Province. The Board ordered that the Employer cease and desist its practice of negotiating terms and conditions of employment with individuals and refrain from entering into any further individual contracts. Subsequent to the Board issuing the Order, the Union requested clarification on whether the order required the Employer to stop paying the superior benefits they agreed to provide in the contracts they signed with the nurses. The Board responded that it had intended that its Order would apply only to further individual contracts or incentives entered into or granted outside of the Collective Agreement and **not** to those which have already been granted and which were in place.

Marusa Marketing Inc. - and - United Food & Commercial Workers, Local 832

Case No. 624/00/LRA

September 28, 2001

REVIEW AND RECONSIDERATION - CHARTER OF RIGHTS - EMPLOYER - 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*.

The Board dismissed the Union's applications for certification and for unfair labour practices. Subsequently, the Board granted the Union's application for review and reconsideration, which was heard by an expanded panel of five. The expanded panel confined its role to defining and clarifying the policy issues with respect to employer communications to employees and to what extent employer's freedom of speech is fettered by the provisions of *The Labour Relations Act*.

Held: Section 6(2) of the *Act* deemed that certain employer communications, including statements that it objected to unions or to the union, was deemed to be interference with the formation of a union. In 1992, Section 6(2) was repealed. The Board was of the view that the absence of such a deeming provision, however, did not limit its discretion to consider such a statement to be employer interference and an unfair labour practice in a particular case. Section 32 of the *Act* expressly states that the protection for free speech does not apply if the person expressing the views interferes with the formation or selection of a union. The *Act* does not restrict to the same degree employer communications at other times. Therefore, freedom of speech protection of Section 32 does apply at times other than the organizational period, subject to other prohibitions against intimidation, coercion, threats or undue influence. The Board has a long-standing position that while an employer is free to not want a union, it is not free to profess or proclaim its negative views of the union or unionization in general to the employees. The test to assess whether the communication should be considered interference is not the actual effect on any particular employee. The onus on the union is to satisfy the board that viewed objectively, the average employee would likely be negatively influenced against the union and not to establish that the communication had an actual negative effect on any employee. If the communications were found to constitute interference, the Board must then ask if the communications were saved by the qualifications in Section 6(3)(f) that the statements were fact or opinions reasonably held with respect to the employer's business. The Board must also scrutinize statements made at employer meetings with employees in the same way it would examine statements made in writing. Also, statements made at captive audience meetings should be given a strict level of scrutiny as innocent statements made in written form may take on a more ominous aspect if delivered in a compulsory meeting. Finally, the Board noted that Sections 32(1) "freedom of speech" protects employees' rights to discuss the union or matters related to the union during business hours, unless as per Section 33(2) the ongoing operation of the workplace is disrupted.

Addendum to Reasons: Vice-Chairperson, J.M. Chapman, Q.C., noted that the Union had alleged that the decision of the original panel did not follow established Manitoba Labour Board policy wherein discretionary certification automatically follows the commission of an unfair labour practice. At the time of the hearing only 2 or 3 discretionary certificates had been ordered, a number which did not establish a "policy". He also was of the opinion that the majority minimized the effect of Section 32 of the *Act*. He stated that freedom of speech is not only a fundamental right, but is now enshrined in the legislation. It should not be abrogated unless there is clear cogent and convincing evidence. Most significantly, he felt the Union incorrectly interpreted the original panel's decision as compelling the Union to call witnesses to prove that they were detrimentally affected by the actions of the Employer. There is not any responsibility on a union to call a witness in a reverse onus situation. However, one cannot disregard the fundamental and basic principle of the law of evidence that, once a party calls a witness, then the party is bound by the evidence of that witness. To disregard or to minimize truthful testimony because it does not support the expectations of the party calling that witness is contrary to the long established principles of the law of evidence. With respect to "captive audiences" and/or the "letters" and/or the "public address announcements", the Board is faced with a case where the evidence is that the alleged unfair labour practices had no affect on the witnesses. When an aggrieved party calls evidence, the vast preponderance of which clearly establishes beyond doubt that the alleged violations had absolutely no affect, then the Board is hard-pressed to conclude that the employees did not have the ability to express their wishes concerning unionization, free of influence by the Employer.

Mr. E. Huebert, Board Member, agreed with the comments made by Mr. Chapman.

Elite Holdings Inc. t/a Academy Towing, Kildonan Towing, Eddie's Towing -and – Larry Robinson
Case No. 559/01/LRA
October 23, 2001

EMPLOYEE - INDEPENDENT CONTRACTOR - 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*.

UNFAIR LABOUR PRACTICE - 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*.

The Applicant had operated his own towing business before becoming a driver for the Employer. On the day in question, he had worked 13 hours when the Employer asked him to take another call. The Applicant advised he was too tired to work longer. The Employer fired him and withheld his pay for the previous four weeks. The Applicant engaged the services of a collection agency with respect to the unpaid wages. The Employer responded by paying the earnings less amounts for a parking ticket, repairs and interior cleaning. The Applicant also filed a complaint with the Employment Standards Branch which determined he was an independent contractor and therefore not covered by the *Code*. As well, pursuant to section 93 of the *Code*, the Branch would not proceed with the claim as the claimant had taken other action to collect the wages claimed. The Applicant then filed an application for an unfair labour practice under section 7(h) of *The Labour Relations Act* claiming he was terminated for exercising his statutory rights to refuse to work overtime as per section 16 of *The Employment Standards Code*. The Employer admitted that the termination was for refusing to continue to work, but was of the view that the Applicant was an independent contractor, and therefore not protected by *The Employment Standards Code*. It submitted the Applicant had signed an agreement declaring that he was an independent contractor. He was paid a commission, but he was responsible to submit his income tax and other statutory remittances. He also paid for gas and car washes and signed a non-competition agreement which prohibited him from performing similar work on a self-employed basis or for any other employer.

Held: The Board found, without doubt, the Applicant was an employee within the meaning of the *Code*. It gave little weight to the documents he was required to sign. Rather it looked at the substance of the relationship and found the Employer exercised complete control over the Applicant. He worked the hours

determined by the Employer and provided services to customers dispatched by the Employer. Serving former customers did not support the view that he was an independent contractor as those customers were now *current* paying customers of the Employer. It also noted that payment by commission was definitely not a factor to determine employment status. Given the Applicant was found to be an "employee", the Board ruled the Employer breached the overtime provisions of the *Code*. It also committed an unfair labour practice under section 7(h) of *The Labour Relations Act* for terminating an employee for exercising his rights under the *Code*. As provided by Section 31(4) of the *Act*, the Board ordered compensation representing the shortfall between what the Employer actually paid him after the intervention of the collection agency and his earned commissions. The Employer did not have any legal right to withhold any amount with the exception of the deduction for fuel. The Board raised concerns about the processes which led to this application. The employment standards officer made no Order, and therefore there was nothing for the Applicant to appeal. The officer invoked section 93 of the *Code* which provides that the Director may refuse to accept or investigate, or to continue to investigate, a complaint if the applicant is proceeding with other action. In the Board's view, using a collection agency is not "proceeding with other action" which it found to mean the pursuit of a legally enforceable order of a court, tribunal, arbitrator or other adjudicator.

J.C. Foods Ltd. - and - United Food & Commercial Workers, Local 832
Case Nos. 631/00/LRA & 183/01/LRA
November 20, 2001

DISCRETIONARY CERTIFICATION - VOTE - UNFAIR LABOUR PRACTICE - 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.

The Employees, whom had been laid off, were returned to work as remedy for certain unfair labour practices. They were required, at the direction of their supervisor, to take their coffee and lunch breaks with her, on the day before and the day of the representation vote. They also testified that work, which was assigned to them, was different than what they had performed prior to their lay-off. Further, they performed their jobs in isolation of other employees. As well, they continued to work when all the other employees were allowed to leave early. The Employer explained this was because electricians performing work in the plant required that production cease early. The Union argued that as a result of these actions, the Board would not be able to ascertain the true wishes of employees and a discretionary certificate should be issued.

Held: The Board found that the Employer did isolate the Employees on their return to work by requiring them to take their coffee breaks and lunch breaks with their supervisor. Further, having these three employees work at a table by themselves when the common practice was to have six employees at a table was significant. The supervisor's explanation for this action was not sufficient, particularly when these employees had not been required to take breaks in this fashion before the lay-off and after the vote. Keeping those employees whom had been returned to work under the watchful eye of management ensured for all practical purposes that there would be little or no opportunity to talk to other employees. In addition, it would not be lost on other employees that the Employees were being treated differently both in the timing of their breaks, with whom they took their breaks with and with whom they stood and worked. The Board was satisfied that the Employer had committed unfair labour practices contrary to the *Act*. None of the remedies proposed by the Employer would remove the influence that these circumstances had on the employees. Accordingly, the Board determined that the true wishes of the employees could not be ascertained by way of the representation vote and the Union had evidence of membership support adequate for the purposes of collective bargaining. Therefore, it ordered that a discretionary certificate be issued.

Burntwood Regional Health Authority - and - Manitoba Nurses' Union,
Case No. 762/00/LRA
December 7, 2001

UNFAIR LABOUR PRACTICE - REMEDIES - 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.

The Employer offered to provide tuition reimbursement allowances up to \$14,000 for nine nurses and the repayment of a student loan for one nurse in order to retain their services. The Employer also paid a rental subsidy to two nurses in remote northern communities. The Union objected to these transactions and filed an application alleging that the Employer had committed an unfair labour practice contrary to section 6 of *The Labour Relations Act* by entering into individual contracts of employment with existing and/or prospective members of the Applicant's bargaining unit.

Held: The Board held that the Employer had committed an unfair labour practice contrary to section 6 of *The Labour Relations Act* by entering into individual contracts of employment with existing and/or prospective members of the Applicant's bargaining unit. While the Board is aware of the difficult circumstances which the Employer finds itself experiencing in regard to recruitment and retention of nurses, 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. Board ordered Employer to cease and desist its practice of negotiating terms and conditions of employment with individuals without consent of the Union.

Integrated Messaging Inc. - and - United Food & Commercial Workers, Local 832
Cases No. 100/00/LRA & 136/00/LRA
December 12, 2001

UNFAIR LABOUR PRACTICE - Decertification - 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.

PETITION OF OBJECTION - DECERTIFICATION - 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.

PRACTICE AND PROCEDURE - PETITION OF OBJECTION - 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.

Following an application for decertification, the Union filed an application alleging the Employer breached sections 6(1) and 17 of *The Labour Relations Act*. Eleven days before the decertification application was filed, two individuals, who six months earlier had been promoted to out of scope positions as "floor managers", both returned to the bargaining unit as "senior supervisors". A day after the "reassignment" both signed the petition for decertification. A week later, one circulated a letter to the employees attacking the Union. The Union alleged the purpose of the demotion was for the two individuals to promote the decertification. They explained their decision to return was influenced by the collective agreement which provided that an employee could return to the bargaining unit within six months, which occurred at the same time as the application was filed.

Held: The Union's suspicions were understandable given the creation of the "senior supervisor" positions, the reassignments to them, and the related correspondence, took place very quickly. However, the evidence

did not establish that the Employer instigated or encouraged or otherwise improperly influenced the employees to take the action they did. The Board found that the individuals made their decision independently. Therefore, it held on the balance of probabilities that the Employer did not interfere with the Union.

The Board found that the evidence did not indicate management authority and functions which must be present to exclude the individuals from the bargaining unit on the basis that they exercised management functions primarily. While the Board found that they should not be considered to be management or agents of management in terms of the unfair labour practice allegations, it was satisfied that the average employee would perceive these two individuals to be managerial. They were called managers, they had business cards and an office and they participated in disciplinary meetings and signed disciplinary documents as management representatives. The Board was of the view that it should discount the signature of any employee who is perceived to be managerial. In addition, the support of persons who signed the petition after those individuals was not counted as the inference could be drawn that an employee would think management endorsed the petition and this could affect the employee's decision. While no specific rule exists in *the Manitoba Labour Board Rules of Procedure* requiring signatures be witnessed, most applications for decertification comply with the unwritten requirement by including a witness's signature beside each employee's signature. Other factors that tainted the voluntariness of the petition were that the Applicants did not have possession of the petition at all time, the petition was circulated at the workplace, the petition did not state that the employees signing it were appointing the Applicants to represent them, and one of the Applicants delivered the petition to the Board offices when she was scheduled to work which could appear to other employees as an indication that the petition was blessed by management. Therefore, the Board was not satisfied that 50% of the affected employees voluntarily supported the application. While the *Act* did not state expressly the voluntariness of a petition, it is implied. As a result, the Board dismissed the application for decertification.

Alpine Interiors Ltd. - and - Alpine Drywall and Plastering (Manitoba) Ltd. - and - QSI Interiors Ltd. - and - Manitoba Regional Council of Carpenters, Lathers, Millwrights & Allied Workers, L. 343

Case No. 389/01/LRA

February 15, 2002

SUCCESSORSHIP - 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 employees 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.

The Union requested the Board declare that Alpine had sold part of its business to QSI and that it was the bargaining agent for those employees of QSI set out in the collective agreement between Alpine and the Union. The principal owner ("Owner") of Alpine owned 26% of the shares of QSI and had been involved in QSI for over 30 years. Three years before the application was filed, QSI expanded its operations in Manitoba. Around that time the Owner advised the younger shareholders of QSI that he wanted to retire, but they were not interested in buying Alpine. He decided to wind down Alpine after he could not find a buyer. The Owner then sold half of Alpine's equipment to QSI. He did not sell Alpine's account receivables, customer list, goodwill, inventory, real property or leasehold improvements to QSI or anyone else. After Alpine wound down operations, the majority of its 50-60 employees went to other companies. Only one of its key employees was hired by QSI. Just before the company wound down, it had been awarded some subcontracting for work. The Owner decided to have the contractor cancel the contract since Alpine would not be able to fulfill its obligations. He asked that the contract be awarded to QSI. The Union submitted that the Owner wound down Alpine at the same time QSI started its business in Manitoba in earnest. Further, the Owner's persuasion of the contractor to transfer the contract from Alpine to QSI and the movement of key personnel for Alpine to QSI all amounted to a transfer of part of Alpine's business.

Held: The Board found that the Owner had a continuing involvement with QSI at the same time as he was running Alpine. His decision to wind down Alpine and the subsequent sale of his shares and resignation of his directorship of QSI marked a decrease in his involvement in QSI. The Owner was implementing his decision to wind down towards retirement. While there were a couple of employees who went to work for QSI and while some equipment was sold to QSI, these are not determinative of the sale of a business in these

particular circumstances. The contract was not the Owner's to transfer. The contractor dealt with the contract and releasing Alpine from its obligation and then determining where the contract would be awarded was solely within the contractor's discretion. On the facts before the Board, the movement of that contract did not amount to the sale of a business as contemplated by the *Act*. Therefore, the application was dismissed.

SUMMARIES OF SIGNIFICANT COURT DECISIONS

Faroex -and - United Food & Commercial Workers Union, Local 832

Court of Queen's Bench of Manitoba

Manitoba Labour Board Cases No. 692/99/LRA and 436/00/LRA

Docket Nos. CI 00-01-19665

Heard by Justice Beard

Delivered April 20, 2001

The Employer applied for judicial review of a finding by the Manitoba Labour Board that the Employer did not comply with section 22(1) of *The Labour Relations Act* and thereby committed an unfair labour practice. At the Board hearing, the Union Representative testified that he attended the Employer's premises and requested a plant tour, stating that he was there simply to observe. He was not at the plant for any reason related to the *Act*, but rather he was there to conduct surveillance with respect to health and safety issues at the plant.

Held: Justice Beard stated that the standard of review to be applied in this case was that of "patently unreasonable", that is, did the Board make a patently unreasonable error of law in making its decision. The standard of review did not entitle her to overturn the decision of the Board merely if it is wrong, as the level of deference gives the Board the "right to be wrong". It is only when its interpretation cannot be rationally supported by the relevant legislation that the decision becomes patently unreasonable, and therefore, subject to review. Section 22(1) clearly states that the union representative is to have access for the purpose of communicating with any employee in the unit with respect to any matter relating to the *Act* or a collective agreement. She noted that the Union Representative was not at the plant for the purpose of communicating with an employee for any purpose relating to the *Act*. Given the visit was not one for which the Employer was required to grant access under the legislation, the Employer could not have breached the legislation. Therefore, the Board was in error in concluding that the Employer committed an unfair labour practice. There is nothing in that section that gives the union the right to enter the employer's premises for any purpose other than to communicate with a member of the bargaining unit, and there is nothing ambiguous in the legislation which allows for any other interpretation. The Board, in coming to the conclusion that it had, was not interpreting the existing legislation liberally and broadly, but rather was rewriting. Justice Beard concluded that, in extending the legislation as it had, the Board had acted in a manner that was patently unreasonable. Therefore, she ordered that the decision of the Board be quashed.

Protect-A-Home Services Inc. - and - Craig Heber

Court of Appeal of Manitoba

Manitoba Labour Board Cases No. 423/99/PWA

Docket Nos. AI 01-30-04866

Heard by Justice Monnin

Delivered July 4, 2001

The Employer filed a letter with the Director of the Employment Standards Division disputing the terms of its order and requesting a referral to the Board for a hearing. The Employer failed to accompany his request with a deposit as required by section 8(12.2) of the *Act*. The Director wrote the Employer informing it that a deposit should have accompanied the referral request and that the Director was extending the time to pay. The Employer then paid the deposit. At the Board hearing, the Employee alleged that because the deposit had not been paid at the time of requesting the referral, and that no extension of time had been requested within the initial time set for requesting such a referral, the matter was not properly before the Board. The Board issued an order finding that it had the jurisdiction to determine whether the referral from the Employment Standards Division was proper. It found that the Director's discretion had to be exercised during the initial appeal period and as it was not, the matter was then not properly before it. The Employer filed an appeal to the Court of Appeal which granted leave to appeal on two questions of law. First, did the Manitoba Labour Board err in finding that it had jurisdiction to determine whether a referral from the Employment Standards

Division was proper? Second, did the Board err in finding that the referral in this matter was not made in accordance with the statutory provisions of *The Payment of Wages Act*?

Held: Justice Monnin stated that the Board was mistaken that the *Act* provided an extension of time must be applied for within the initial time stated to request a referral. All that the *Act* provides, as per section 8(12), is that a request for a referral must be made within seven days of receiving the order "*or within such further period of time as the director may allow*". Justice Monnin stated that the Board is entitled to ensure itself that the deposit monies have been paid and that the request for a referral has been made within the prescribed time limits, or that there has been an extension of time granted within which to perfect a request for a referral. However, without a specific statutory authorization the Board has no jurisdiction to inquire as to how or why the Director might have exercised his discretion. If a party to the proceedings under the *Act*, whether an employer or an employee, feels that the Director has not exercised his discretion judicially, the matter is to be resolved by taking an application for judicial review before a judge of the Court of Queen's Bench. It is not within the jurisdiction of the Board to consider the exercise of such discretion. Therefore, Justice Monnin allowed the appeal and declared the Board's order to be a nullity.

AOV Adults Only Video - and - Manitoba Labour Board - and - the Director of Workplace, Safety & Health
Court of Queen's Bench of Manitoba
Manitoba Labour Board Case No. 431/99/WSH
Docket Nos. CI 01-01-21429
Heard by Justice Beard
Delivered March 4, 2002

The Manitoba Labour Board had upheld an order of the Director of Workplace Safety & Health which had affirmed an improvement order made by a safety and health officer. The Employer applied for an order of *certiorari* to set aside the decision of the Board and to declare the improvement order invalid. Before deciding on the merits, the Court was asked to decide on three preliminary matters:

- i. whether to strike the whole of the affidavit filed by the applicant in support of the application on the basis that the alleged errors by the Board are intra-jurisdictional, in that they relate to matters that are within the exclusive jurisdiction of the Board to hear and determine. Being that the errors are intra-jurisdictional, the respondents argued that the applicant is not entitled to file any additional evidence, but was limited to relying only on the record;
- ii. if the affidavit was allowed to be filed, whether to expunge portions of the affidavit; and
- iii. whether the record of the Board includes all exhibits filed at the Board hearing, or at least a list of those exhibits

Held: Madame Justice Beard decided the three preliminary questions as follows:

- i. the applicant raised several grounds of review in which it alleged that the Board exceeded its jurisdiction or acted without jurisdiction. Because the allegation is jurisdictional in nature, the applicant is entitled to file affidavit and/or extrinsic evidence in support of its allegations that the Board acted outside of its jurisdiction and that its decision is patently unreasonable;
- ii. portions of the affidavit that were worded as legal argument were expunged. Paragraphs relating to events that occurred after the Board hearing were found to be not relevant to the judicial review and were expunged. Justice Beard did not expunge statements based on the deponents personal knowledge of window coverings as he had a working knowledge of the laws in Manitoba regarding same and therefore the statements were not opinion evidence that he was not qualified to offer; and,
- iii. the record of the Board consists of the initiating document, the pleadings and the adjudication and reasons, but not the evidence of the supporting documents except those included in the reasons. The record of the Board does not include any of the documents considered by the Board or any exhibits, other than those incorporated into its decision, and does not include a list of exhibits from the hearing before the Board

TABLE 1
STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT BY THE MANITOBA LABOUR BOARD
(April 1st, 2001 - March 31st, 2002)

	Cases			Disposition of Cases				Number of Cases Disposed of	Number of Cases Pending
	Carried Over	Cases Filed	Total	Granted	Dismissed	Withdrawn	Did Not Proceed		
Application for Certification	9	44	53	36	7	5	0	48	5
Application for Revocation	1	19	20	12	3	2	0	17	3
Application for Amended Certificate	128	45	173	160	0	2	0	162	11
Application re: Unfair Labour Practice	38	58	96	12	22	41	1	76	20
Application for Board Ruling	16	18	34	4	1	11	0	16	18
Application for Reconsideration	6	11	17	0	15	0	0	15	2
Application for Successor Rights	0	0	0	0	0	0	0	0	0
Application for Termination of Barg. Rights	2	0	2	1	0	0	0	1	1
Application pursuant to Section 10(1) ¹	0	0	0	0	0	0	0	0	0
Application pursuant to Section 10(3) ²	0	10	10	10	0	0	0	10	0
Application pursuant to Section 20 ^{3*}	3	20	23	0	11	5	0	16	7
Application pursuant to Section 22 ⁴	1	1	2	0	0	2	0	2	0
Application pursuant to Section 58.1 ⁵		0	1	1	0	0	0	0	0
Application pursuant to Sec. 69,70 ⁶	0	0	0	0	0	0	0	0	0
Application pursuant to Section 76(3) ⁷	3	8	11	4	1	3	0	8	3
Application pursuant to Section 87(1) ⁸	2	13	15	7	0	5	0	12	3
Application pursuant to Section 87.1(1) ⁹	0	2	2	0	0	2	0	2	0
Application pursuant to Section 115(5) ¹⁰	0	22	22	7	0	14	0	21	1
Application pursuant to Section 132.1 ¹¹	0	2	2	1	1	0	0	2	0
Referral for Expedited Arbitration**	14	101	115	-	-	-	-	98	17
TOTALS	223	375	598	254	61	92	1	506	92

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

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

³ Duty of Fair Representation

⁴ Access Agreements

⁵ Business coming under provincial law is bound by collective agreement

⁶ Complaint re ratification vote

⁷ Religious Objector

⁸ First Collective Agreement

⁹ Subsequent agreement to first collective agreement

¹⁰ Request for the Board to appoint arbitrators

¹¹ Disclosure of information by unions

* Statistical correction – Section 20 application should be reflected in Unfair Labour Practices

** See Table 4

TABLE 2

**STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT RESPECTING CERTIFICATES ISSUED
(April 1st, 2001- March 31st, 2002)**

TYPE OF CERTIFICATE ISSUED	NUMBER OF CERTIFICATES ISSUED	NUMBER OF EMPLOYEES AFFECTED
New Certificates	36	1,236

TABLE 3

**STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT RESPECTING REPRESENTATION VOTES
(April 1st, 2001 - March 31st, 2002)**

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending
Certification	11	956	6	4	1	0
Revocation	6	140	5	1	0	0
Termination of Bargaining Rights	1	8	1	0	0	0
Board Ruling	1	140	1	0	0	0
Urban Health Care ¹	2	210	0	0	0	2
Other votes ²	1	1,129	N/A	N/A	N/A	N/A

¹ Urban health care bargaining unit restructuring "preliminary" determination votes.
² Board supervised vote on an employer's final contract offer; conducted at the joint request of the affected parties.

TABLE 4

**STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT RESPECTING REFERRALS FOR EXPEDITED ARBITRATION
(April 1st, 2001 - March 31st, 2002)**

Cases Carried Over	Number of Referrals Filed	TOTAL	Number of Cases Mediator Appointed	Disposition of Cases					Number of Cases Disposed of	Number of Cases Pending
				Settled by Mediation	Settled by Parties	Settled by Arbitration	Declined	Withdrawn		
14	101	115	48	46	27	12	4	9	98	17

TABLE 5
STATISTICS RELATING TO HOURS OF WORK EXEMPTION REQUESTS PURSUANT TO
THE EMPLOYMENT STANDARDS CODE
(April 1st, 2001 - March 31st, 2002)

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Rulings Made	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to The Employment Standards Code re: Hours of Work exemptions	9	321	330	304	2	8	314	16

TABLE 6
STATISTICS RELATING TO THE ADMINISTRATION OF THE PAYMENT OF WAGES ACT
(April 1st, 2001 - March 31st, 2002)

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Cases Not Proceeded With	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 8	19	2	21	3	14	1	18	3

TABLE 7
STATISTICS RELATING TO THE ADMINISTRATION OF THE EMPLOYMENT STANDARDS ACT
(April 1st, 2001 - March 31st, 2002)

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 35	0	0	0	0	0	0	0

TABLE 8
STATISTICS RELATING TO THE ADMINISTRATION OF THE EMPLOYMENT STANDARDS CODE
(May 1st, 2001 - March 31st, 2002)

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 96(1)	23	43	66	34	13	47	19

TABLE 9
STATISTICS RELATING TO THE ADMINISTRATION OF THE VACATIONS WITH PAY ACT
(April 1st, 2001 - March 31st, 2002)

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Plant Vacation Shutdown	2	0	2	0	0	0	2

TABLE 10
STATISTICS RELATING TO THE ADMINISTRATION OF THE WORKPLACE SAFETY & HEALTH ACT BY THE MANITOBA LABOUR BOARD
(April 1st, 2001 - March 31st, 2002)

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/ Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Application for Remedy of Alleged Discriminatory Action	3	11	14	6	8	14	0
Application for Appeal of Director's Order	2	8	10	2	7	9	1

TABLE 11

**STATISTICS RELATING TO THE ADMINISTRATION OF THE ESSENTIAL SERVICES ACT BY THE MANITOBA LABOUR BOARD
(April 1st, 2001 - March 31st, 2002)**

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 8	0	0	0	0	0	0	0

TABLE 12

**FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1st, 2001 - March 31st, 2002)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31, 2002
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Pending from Previous Reporting Period:

General Teamsters Local Union 979	Winnipeg Forest Products, Inc.	January 25, 2001	Board imposed first collective agreement	Expiry date: May 10, 2002
International Alliance of Theatrical Stage Employees Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 63	Prairie Theatre Exchange	January 30, 2001	Parties voluntarily entered into a collective agreement	Expiry date: March 31, 2004

New Applications this Reporting Period:

Canadian Union of Public Employees, Local 1543	Garderie Les Petits Amis Day Care Inc.	April 6, 2001	Board imposed first collective agreement	Expiry date: July 8, 2002
United Food and Commercial Workers Union, Local No. 832	Sobeys West, a Division of Sobeys Capital Inc. operating as Price Chopper	July 3, 2001	Board imposed first collective agreement	Expiry date: August 30, 2002
United Steelworkers of America	Cantalk Canada Inc.	July 9, 2001	Board imposed first collective agreement	Expiry date: Sept. 3, 2002

TABLE 12
FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED (continued)
(April 1st, 2001 - March 31st, 2002)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31, 2002
United Food and Commercial Workers Union, Local No. 832	Sodexo Marriott Services of Canada (Boeing facility)	July 19, 2001	Board imposed first collective agreement	Expiry date: Sept. 18, 2002
United Food and Commercial Workers Union, Local No. 832	Emerald Foods Ltd. trading as Bird's Hill Garden Market IGA	August 3, 2001	Board imposed first collective agreement	Expiry date: October 4, 2002
Service Employees International Union, Local 308	Gimli Recreation Authority	August 17, 2001	Parties voluntarily entered into a collective agreement	Expiry date: Sept. 30, 2004
International Union of Operating Engineers, Local 987	Winnipeg Housing Rehabilitation Corporation	August 17, 2001	Parties voluntarily entered into a collective agreement	Expiry date: October 10, 2003
International Union of Operating Engineers, Local 987	Rural Municipality of Odanah and Rural Municipality of Minto	August 30, 2001	Board imposed first collective agreement	Expiry date: October 30, 2002
Canadian Union of Public Employees, Local 4434	Holy Cross School Inc.	October 18, 2001	Parties voluntarily entered into a collective agreement	Expiry date: January 10, 2004
Canadian Union of Public Employees, Local 1543	Seven Oaks Child Care Centre Inc.	November 1, 2001	Parties voluntarily entered into a collective agreement	Expiry date: June 30, 2002
International Union of Operating Engineers, Local 987	Winnipeg Regional Health Services (Health Sciences Centre)	February 15, 2002	Pending	
Canadian Union of Public Employees, Local 745	Rural Municipality of Kelsey	March 1, 2002	Pending	
International Union of Operating Engineers, Local 987	Winnipeg Regional Health Authority	March 11, 2002	Pending	

January 15, 1990

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 1
REVIEW AND RECONSIDERATION**

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

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

- a. file a concise statement of any new evidence, with such evidence being verified by statutory declaration;
- b. file a statement explaining when and how the new evidence became available and the applicant's reasons for believing that the new evidence so changes the situation as to call for a different decision, order, direction, declaration, or ruling; and
- c. in the absence of any new evidence, file a concise statement showing cause why the Board should review or reconsider the original decision, order, direction, declaration, or ruling.

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

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

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

- a. if there was no hearing in the first instance and a party subsequently finds that the decision turns on a finding of fact which is in controversy and on which the party wishes to adduce evidence;
- b. if a hearing was held and certain crucial evidence was not adduced for good and sufficient reasons, i.e. where this evidence could not have been obtained by reasonable diligence before the original hearing;
- c. if the Order made by the Board in the first instance has operated in a unanticipated way, i.e. having an unintended effect on this particular application;

January 15, 1990

.../2

- d. if the original decision turned on a conclusion of law or general policy, which law or policy was not properly interpreted by the original panel, or whether the decision is inadvertently contrary to earlier Board practice; and
- e. where the original decision sets a precedent that amounts to a significant policy adjudication.

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

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

- a. cases that raise issues of an evidentiary nature will go to a quorum that made the original findings a fact;
- b. cases that allege breaches of the rules of natural justice may be reviewed by the original panel or by a different panel, or may be declined review by the Board depending on the nature of the allegation, i.e. procedural irregularity such as failure to transmit to other parties one party's submissions. More substantive matters such as bias would, in most cases, more properly be dealt with by the Courts; and
- c. cases involving interpretations of the law or matters of Board policy will ordinarily, although not necessarily, go to an expanded panel of the Board including the members of the original quorum.

In all cases, the review request initially would be reviewed by the Chairperson, who, after the appropriate consultation, would determine the method of review, if any, to be implemented.

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

January 15, 1990

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 2
RULE 28**

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

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

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

In situations where a person works sporadically, as indicated in the example below, the person, in most cases, would not be deemed to be an employee for the purposes of Rule 28.

<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>	<u>Week</u>
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>
On	On	Off	Off	On	Off	Off	On	On	Off	Off	On

Clearly, these are general applications of Rule 28 and may be modified in specific situations dealing with a unique industry or employment situation. We trust this information will be of assistance to the community.

December 13, 1990

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 3
ADJOURNMENTS AFFECTING CONTINUATION OF PROCEEDING**

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

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

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

1. The Board's office, whenever possible, should be notified by counsel as to the anticipated length of the proceeding.
2. In situations where adjournments are necessary and the parties cannot agree on continuation dates that are within what the Board considers a reasonable period of time, the Board will set dates on a pre-emptory basis.

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

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

REVISED January 14, 2002

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 4
THE CERTIFICATION PROCESS**

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

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

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

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

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

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

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

This replaces the previous Information Bulletin No. 4 dated January 24, 1997.

January 24, 1997

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 5
STREAMLINING OF MANITOBA LABOUR BOARD ORDERS**

This bulletin is provided to inform the labour relations community of the new procedure that will be implemented by the Manitoba Labour Board, effective immediately in respect to the content of its Orders.

The Board, in recent months, has undertaken a review of a number of operational procedures and has determined that one of its new initiatives will be to implement a streamlining of its Orders. This will result in an abbreviated format and will eliminate such items as a detailed chronological listing of each piece of correspondence. We see this new procedure as one that will eliminate redundant referencing of information already known by the parties, as well as an efficiency issue for our administrative component.

All parties are reminded that any party to a proceeding which is affected by an Order or by a decision of the Board may request the Board in writing to furnish written reasons for its Order or decision. The Board may consider such request for written reasons for its Order or decision and shall notify the parties as to whether written reasons will be provided.

Revised February 2, 2001

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 6
FINANCIAL DISCLOSURE**

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

Should a member of a union complain to the Board that the union has failed to give him or her a financial statement in compliance with the Act, the Board may direct the union to

- a) file with the board, within the time the board determines, a copy of the financial statement of its affairs to the end of its last fiscal year, verified by its treasurer or another officer responsible for handling and administering its funds; and
- b) give a copy of the statement to the members of the union that the board in its discretion may direct.

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

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

This replaces the previous Information Bulletin #6 dated January 24, 1997.

January 24, 1997

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 7
FEE SCHEDULE**

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

Effective February 1, 1997, the Board will, by *Regulation*, be establishing a fee schedule for certain services provided by the Board. The fee schedule will be as follows:

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

More specific information will be provided for in the *Regulation*.

April 1, 1998

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 8 (INTERIM)
ARBITRATORS LIST**

The Board has recently completed its consultative process with the Labour Management Review Committee in regards to the list of arbitrators maintained by the Board.

A number of concerns were raised during this process relating to the following issues:

- a) The continued endorsement of the existing list of arbitrators
- b) Any requirement for new appointments
- c) Review of the existing selection criteria

The members of the Arbitrators Advisory Committee have agreed to undertake a review of these issues in the latter part of 1998.

During this interim period, the existing list of arbitrators will remain in effect until March 1, 1999. With one caveat.

Each time a matter is referred to the expedited process, the employer and union will have the opportunity to inform the Board offices that they do not wish a particular arbitrator to be appointed to that matter.

Each party will have only one veto per referral. Once your decision has been declared to the Board Clerk, an arbitrator will be selected on the basis of who is next available.

The Board will be monitoring the decisions made in this regard for consideration by the Advisory Committee and the Board's consideration of the list.

If you have any questions, please contact the Board's Registrar, Ms. Janet Duff, at 945-4276.

REVISED March 31, 2001

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 9
FILING OF COLLECTIVE AGREEMENTS**

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

It would be appreciated if you could also provide a copy of the collective agreement in electronic format (suggest WordPerfect 6 or better) either by way of disc copy, eMail to mlb@gov.mb.ca or via the Internet at www.gov.mb.ca/labour/labbrd.

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

Employer: _____

INDUSTRY AND SUB-GROUPS FOR CLASSIFICATION OF COLLECTIVE AGREEMENTS

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

January 14, 2002

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 10
STEPS TO FOLLOW IN APPLYING FOR AN HOURS OF WORK EXEMPTION ORDER**

Note:

The Employment Standards Code, specifically Section 10, outlines the standard hours of work, being forty (40) hours in any week and eight (8) hours in any day. All hours worked in excess of the standard hours are to be paid at overtime rates of pay.

Sections 18(1), 18(2), and 18(3) of *The Employment Standards Code* provides that, where the parties agree in writing, the Employer may provide the employee(s) with time off instead of paying overtime wages. Certain restrictions apply in accordance with Section 18(1). Time off must not be less than 150% of the number of hours or parts of hours of overtime.

Where the Employer desires to establish a working week in variation to the standard hours, said application may be made, pursuant to Section 11(1) of ***The Employment Standards Code***, to the Manitoba Labour Board, Room 402 - 258 Portage Avenue, Winnipeg, Manitoba R3C 0B6.

An application may be commenced by way of a letter to the Registrar of the Board, outlining the following:

1. Type of industry and any relevant background information which may be pertinent to the exemption being sought;
2. Which specific employees will be affected by the exemption, for example night shift only, all production employees/warehouse employees, including the total number of affected employees;
3. Daily and weekly maximum hours to be worked, and in the instance of an averaging of hours over a period of time, a clear indication as to the agreed period of weeks.
Some examples are as follows:
Sample 1 - 10 hours per day, 40 hours per week
Sample 2 - 10 hours per day, 50 hours per week, not exceeding 160 hours in a 4 week period.
4. A sample of a proposed bi-weekly shift schedule reflecting daily and weekly hours to be worked, including details as to the meal break and/or coffee breaks provided.
5. The signed voluntary concurrence of a majority of the affected employees, confirming their agreement to work the schedule proposed.

Note:

It should be noted that the Board has flexibility in approving shift schedules for certain classes of industry where, in the opinion of the Board, it is not feasible to apply Section 10, and the Board may, pursuant to Section 13 of ***The Employment Standards Code***, by order, authorize such a daily, weekly or monthly maximum of hours as it deems fair and reasonable, and may make those working hours applicable for such periods of the year as it deems proper. This normally applies to seasonal industries such as landscaping, etc.

If you require additional information with respect to filing an application seeking exemption from the provisions of Section 10 of ***The Employment Standards Code***, please contact the Board Clerk at 945-8851.

January 14, 2002

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 11
STEPS TO FOLLOW IN APPLYING FOR A MEAL BREAK REDUCTION**

Note:

The Employment Standards Code, specifically Section 50(1) and 50(2) provides:

Employer to provide break

50(1) Subject to this section, an employer shall not require an employee to work for more than five consecutive hours without a break.

Length of break

50(2) The length of break provided by an employer must not be less than is prescribed unless

- (a) a shorter period is provided for in a collective agreement; or
- (b) the board, on application by the employer, by order approves a shorter period.

The Minimum Wages and Working Conditions Regulation (Regulation 62/99), specifically Section 17 provides:

Minimum time for work breaks

17 For the purposes of subsection 50(2) (work break) of the Code, the length of break provided to an employee by an employer shall not be less than 30 minutes.

An application may be commenced by way of a letter to the Registrar of the Board, outlining the following:

Any request seeking reduction and/or elimination of the one half hour meal period may be commenced by way of a letter to the Board outlining the daily and weekly hours worked by the employees and the reduction sought. Should the request be to eliminate the meal period, the Board would want to know when the employee may eat his/her lunch during the course of the shift. Said request must be accompanied by the signed concurrence of the affected employees.

If you require additional information with respect to filing an application seeking exemption from the provisions of Section 50(2) of *The Employment Standards Code*, please contact the Board Clerk at 945-8851.

January 14, 2002

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 12
STEPS TO FOLLOW IN APPLYING FOR A PERMIT TO BE EXEMPTED FROM
THE WEEKLY DAY OF REST**

Note:

The Employment Standards Code, specifically Section 45, outlines that an Employer shall ensure that each employee has one rest period of not less than 24 consecutive hours in each week.

Where the Employer desires to establish a working week in order to have the business exempt from the weekly day of rest, said application may be made, pursuant to Section 46 of *The Employment Standards Code*, to the Manitoba Labour Board, 402 - 258 Portage Avenue, Winnipeg, Manitoba R3C 0B6.

An application may be commenced by way of a letter to the Registrar of the Board, outlining the following:

1. Type of industry and any relevant background information with particular reference as to the circumstances in which a Weekly Day of Rest will not be provided to the employees.
2. Which specific employees will be affected by the exemption, for example night shift only, all production employees/warehouse employees, including the total number of affected employees.
3. Daily and weekly maximum hours to be worked.
4. A sample of a proposed bi-weekly shift schedule reflecting daily and weekly hours to be worked, including details as to the meal break and/or coffee breaks provided.
5. The signed voluntary concurrence of a majority of the affected employees, confirming their agreement to work the schedule proposed.

Note:

It should be noted that the Board may exempt businesses from Section 45 of *The Employment Standards Code*, where the Board is satisfied that the application of Section 45 to the business:

- a. is an undue hardship to the employer;
- b. is of little or no benefit to the employees owing to the remote location of the business;
- c. in the case of a business that operates only part of the year, unduly restricts the operation of the business; or
- d. causes severe loss to the business owing to the circumstances in which it operates.

Employer and bargaining agent may apply for exemption

47 An employer and the bargaining agent for the employees of the employer's business may apply jointly to the board in writing to have the business exempted from the application of section 45, and the board may by order exempt the business for such period as the board may specify in the order.

If you require additional information with respect to filing an application seeking exemption from the provisions of Section 45 of *The Employment Standards Code*, please contact the Board Clerk at 945-8851.

ISSUED January 14, 2002

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 13
PROCESS FOR THE SETTLEMENT OF A FIRST COLLECTIVE AGREEMENT**

The Manitoba Labour Board wishes to advise of a change in the process affecting applications for settlement of a First Collective Agreement (section 87(1) of *The Labour Relations Act*).

In keeping with past practice, once an application has been filed in accordance with the *Manitoba Labour Board Rules of Procedure*, a hearing date shall be established by the Board and the parties shall be duly informed.

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

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

ISSUED January 31, 2002

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 14
OBJECTIONS ON APPLICATIONS FOR CERTIFICATION**

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

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

ISSUED March 8, 2002

**MANITOBA LABOUR BOARD
INFORMATION BULLETIN NO. 15
MANITOBA LABOUR BOARD'S DECISION RESPECTING
BARGAINING UNIT RESTRUCTURING IN THE URBAN HEALTH CARE SECTOR**

This bulletin is intended to provide information relating to the Manitoba Labour Board's decision relating to bargaining unit restructuring in this urban health care sector.

In May of 1998, the previous administration requested the Manitoba Labour Board undertake a review of the bargaining units in the acute care facilities in the City of Winnipeg and Brandon. The purpose of the review was to reduce the proliferation of bargaining units in health care by establishing standard units that would be common from facility to facility. Although the Board issued its *Review of Bargaining Unit Appropriateness in Manitoba's Urban Health Care Sector* report on December 22, 1998, the review process continued with recommendations being sought from the parties up to the early part of 2002. One of the areas of concern was the issue of, and how to deal with, non-union employees.

As was the case in a number of other provincial jurisdictions, this Board found that standardized units should be adopted for all acute care facilities in Winnipeg. This was in keeping with the Board's determination in the *Review of Bargaining Unit Appropriateness in Manitoba's Rural Health Care Sector* report, issued on January 23, 1998, and subsequently adopted by the Brandon Regional Health Authority.

Further consultation with the stakeholders was initiated after the release of the December 22, 1998, *Review of Bargaining Unit Appropriateness in Manitoba's Urban Health Care Sector* report. As a result, the Board considered a number of additional factors in determining the status of existing non-union employees, including the original intent of the review, as well as the certification and intermingling provisions of *The Labour Relations Act*.

It was ultimately decided that, where the unionized segment in a particular unit was not representative of a majority of the employees in that particular unit, a vote would initially be conducted amongst the non-union employees (Concordia Hospital and Seven Oaks General Hospital facilities) to determine if they wished to be represented by a union. If the majority voted yes, a subsequent vote would be held to determine which union.

In situations where one or more bargaining agents represent a significant majority of employees in a particular unit, the vote choice was restricted to which bargaining agent would represent all employees.