

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

It is my pleasure to submit the 2002-2003 Annual Report outlining the activities of the Manitoba Labour Board during the period April 1, 2002 to March 31, 2003.

As mentioned in the last report, the full-time Vice-Chairperson position filled by Ms. Diane E. Jones, Q.C., and Ms. Joy M. Cooper continued to enable the Board to meet its statutory obligations in a more timely fashion. This has resulted in a noticeable decrease in processing times.

The Board also completed the task of conducting the restructuring of bargaining units in the urban health care sector during this reporting period. I am pleased to report that the co-operation of the stakeholders during this process resulted in a minimal amount of disruption to the health care community.

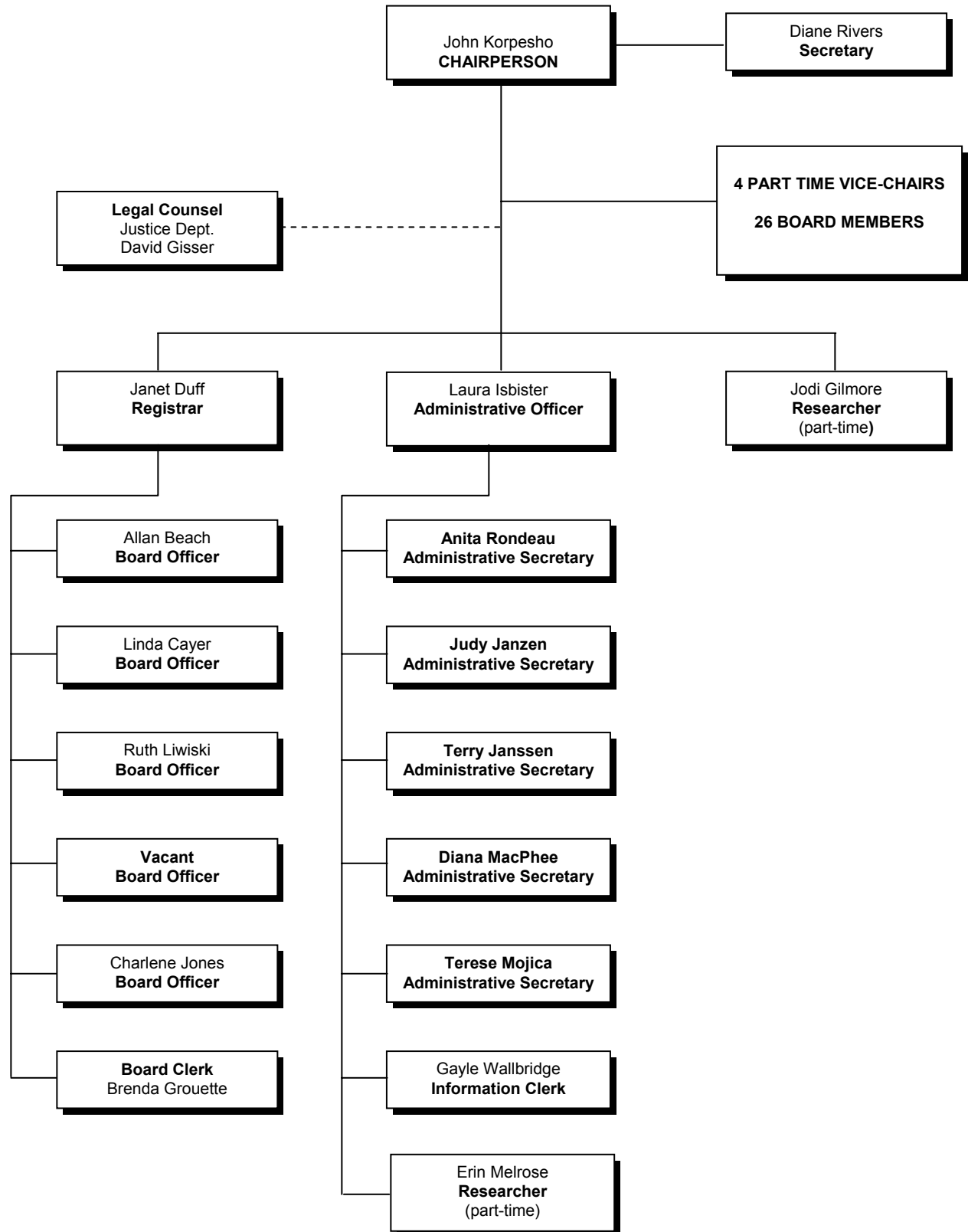
As in past years, I extend my gratitude to the Vice-Chairpersons, Board Members and staff who, without their dedication and support, the completion of another successful year would not have been possible.

We look forward to the many challenges the future has in store and thank the labour relations community for their continued support of the Manitoba Labour Board.

J.M.P. Korpesho,  
Chairperson

## TABLE OF CONTENTS

	Page
Letters of Transmittal	3
A Message from the Chairperson	7
Organization Chart	10
Objective & Introduction	11
Operational Overview	12
Library	13
Publications and Web Site address	13
Financial – Expenditure Summary	14
Labour Board Members	15
Summary of Performance	20
Achievements and Priorities for 2003-2004	21
Summaries of Significant Board Decisions Pursuant to <i>The Labour Relations Act</i>	22
Summaries of Significant Board Decisions Pursuant to <i>The Payment of Wages Act</i>	27
Summaries of Significant Court Decisions	28
Statistical Tables	31
Information Bulletins	
#1 Review and Reconsideration	36
#2 Rule 28 – <i>Manitoba Labour Board Rules of Procedure</i>	38
#3 Adjournments Affecting Continuation of Proceeding	39
#4 The Certification Process	40
#5 Streamlining of Manitoba Labour Board Orders	41
#6 Financial Disclosure	42
#7 Fee Schedule	43
#8 Arbitrators' List (Interim)	44
#9 Filing of Collective Agreements	46
#10 Steps to follow in applying for an Hours of Work Exemption Order	48
#11 Steps to follow in applying for a Meal Break Reduction	49
#12 Steps to follow in applying for a Permit to be exempted from the Weekly Day of Rest	50
#13 Process for the settlement of a First Collective Agreement	51
#14 Objections on Applications for Certification	52
#15 Manitoba Labour Board's decision respecting Bargaining Unit Restructuring in the Urban Health Care Sector	53



**Manitoba Labour Board Organization Chart  
March 31, 2003**

# THE MANITOBA LABOUR BOARD

The Manitoba Labour Board is an independent tribunal responsible for the administration and adjudication, in a fair and efficient manner, 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** fairly and reasonably, and in a manner that is acceptable to both the labour and management community including the expeditious issuance of appropriate orders which respect and represent the majority wishes of employees;
- ◆ **To assist parties** in resolving disputes without the need to resort to the formal adjudicative process; and
- ◆ **To provide information** to parties and/or the general public regarding their dealings with the Board or about the Board's activities.

## INTRODUCTION

The Board is responsible for the administration and/or adjudication of certain sections of the following statutes:

### ***The Labour Relations Act***

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

### ***The Workplace Safety and Health Act***

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

### ***The Essential Services Act***

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

### ***The Pay Equity Act***

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

### ***The Employment Standards Code***

As the Wages Board appointed pursuant to the *Code*, the Board hears complaints referred to it by the Employment Standards Division regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to *The Construction Industry Wages Act* and *The Remembrance Day Act*. The Board also handles hours of work exemption requests from employers seeking variation from the standard hours of work, and applications for exemption from the weekly day of rest.

### ***The Public Schools Act***

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

### ***The Victims' Bill of Rights***

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

### ***The Elections Act***

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

## **OPERATIONAL OVERVIEW**

### **ADJUDICATION**

In 2002/2003, the Board consisted of a full-time Chairperson and 4 part-time Vice-Chairpersons. The remainder of the Board was comprised of 26 Board Members, consisting of an equal number of employer and employee representatives. Information about individual Board Members can be found later in this report. Vice-Chairpersons and Board Members are appointed to the Board by Order-In-Council and are paid 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 also travels, as required, to rural centres. The Board does not retain legal counsel on staff; legal services are provided through Civil Legal Services of the Department of Justice.

### **FIELD SERVICES**

The Registrar is responsible for overseeing the day-to-day field services of the Board. All applications filed with the Board pursuant to *The Labour Relations Act*, *The Workplace Safety and Health Act*, *The Essential Services Act*, *The Pay Equity Act*, *The Elections Act*, *The Public Schools Act*, and *The Victims' Bill of Rights* are processed through the Registrar's office. The Registrar determines the hearing dates and ensures that each application is processed efficiently. Reporting directly to the Registrar are 5 Board Officers (4 Board Officers handle labour relations and 1 Board Officer handles employment standards) and 1 Board Clerk.

The 4 labour relations officers process various cases and conduct investigations pertaining to the applications filed with the Board. They may be appointed to act as Board Representatives to endeavour to effect a settlement between parties where there has been an allegation of an unfair labour practice. The resolution of complaints through this dispute resolution process reduces the need for costly hearings and disharmony in the workplace. Officers also perform other functions including acting as Returning Officers in Board-conducted votes, attending hearings and assisting the Registrar in the processing of applications. The officers are responsible for communicating with all parties and with the public regarding information on Board policies, procedures, and jurisprudence as relates to a specific issue or case. Board Officers may also play a conciliatory role to assist parties in concluding both first collective agreements and subsequent agreements.

The assistance of the Board Officers in mediation and the dispute resolution process has been favourably accepted by the labour relations community.

The fifth Board Officer, with the assistance of the Board Clerk, is responsible for processing all *Employment Standards Code* referrals, requests for hours of work and weekly day of rest exemption, and expedited arbitration referrals. The Board Officer and Board Clerk attend hearings to record appearances, case law and exhibits and to assist the Board and parties with any issues that might arise.

## **ADMINISTRATIVE SUPPORT SERVICES**

The Administrative Officer is responsible for supervising the administrative support of the Board including fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures to ensure departmental and government policies are implemented. Reporting to the Administrative Officer are 5 administrative secretaries, 1 clerk and 1 part-time researcher.

Administrative Support Services and Field Services work closely to ensure the expeditious processing of applications. They also continue to work extensively on upgrading and maintaining the Board's automated databases.

## **RESEARCH SERVICES**

The 2 Researchers provide the Board with reports, statistical data and jurisprudence from other provincial jurisdictions, and undertake other research projects as required by the Board. They also summarize and index arbitration awards and Written Reasons for Decision for publication in the *Compendium of Grievance Arbitration Decisions* and in the *Index of Written Reasons For Decision*.

The Researcher position, reporting to the Chairperson, was formerly part-time but was increased to 1 full-time equivalent (FTE) during 2002-2003 and is currently filled by 1 permanent part-time employee and 1 part-time term employee.

## **MANITOBA LABOUR BOARD LIBRARY**

The Board maintains a collection of texts, journals, reports and other publications dealing with industrial relations and labour law in Manitoba and other Canadian jurisdictions. Pursuant to amendments in *The Labour Relations Act* in 1985, all arbitration awards and collective agreements in the province must be filed with the Manitoba Labour Board. Copies of these documents are maintained in the Board's Library and can be viewed by the public in the Board's office, or made available in accordance with the fee schedule (Information Bulletin No. 7 contained later in this report).

## **PUBLICATIONS AND WEB SITE ADDRESS**

Copies of the various statutes and regulations are available for purchase from Statutory Publications, Department of Culture, Heritage & Tourism, 200 Vaughan Street, Winnipeg, Manitoba.

Publications produced by the Board:

*Compendium of Grievance Arbitrations* - 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 Statutory Publications.

*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. This publication may be obtained directly from the Board.

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

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

The *Guide to The Labour Relations Act* explains, in laypersons' terms, the various provisions of *The Labour Relations Act* and the role of the Manitoba Labour Board and Conciliation & Mediation Services. Formerly in booklet form, the Board plans to make the updated Guide available on its web site.

The Board distributes copies of *Written Reasons for Decision* following certain Board decisions. As noted above, a subscription service for the *Index of Written Reasons for Decision* is available. The Board also produces *Information Bulletins* regarding the Board's practice and procedure. These bulletins are included later in this report and are also posted on the Board's web site.

Copies of the Board's written reasons for decision and arbitration awards can be accessed through **QL Systems Limited** (Quicklaw). Copies of arbitration awards are also sent to various publishers for selection and reprinting in their publications.

You are invited to visit the Manitoba Labour Board's web site at <http://www.gov.mb.ca/labour/labbrd> for additional information about the Board and links to other departmental divisions, Quicklaw and Statutory Publications. To enhance its delivery in providing timely information, the Board has also improved client service with expansion of an email address [mlb@gov.mb.ca](mailto:mlb@gov.mb.ca).

## Financial

### (e) Manitoba Labour Board

Expenditures by Sub-appropriation	Actuals 2002/03 \$	FTE	Estimate 2002/03 \$	Variance Over/(Under)	Explanation No.
Total Salaries	1,027.6	17.00	1,055.30	(27.7)	
Total Other Expenditures	321.1		262.3	58.8	1
Total Expenditures	1348.7	17.00	1,317.6	31.1	

Explanation:

1. The over expenditure in operating is attributed to an increase in space and associated ACRS costs (rent), travel expenses and computer costs.

## **MANITOBA LABOUR BOARD MEMBERS**

The Manitoba Labour Board is comprised of a full-time Chairperson, 4 part-time Vice-Chairpersons and 26 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**

#### **Joy M. Cooper**

Appointed on a part-time basis since 1985, she holds 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. She was seconded from the Department of Justice in 2001 as a full-time Vice-Chairperson on a time-share basis, and in September 2002 she was re-appointed to the Board as a part-time Vice-Chairperson. Ms. Cooper also acts as an arbitrator under collective agreements, as an adjudicator under the *Canada Labour Code*, and as a consultant on legal policy and programs.

#### **William D. Hamilton**

Appointed on a part-time basis in 2002, he holds a Bachelor of Arts degree from the University of Winnipeg and a Bachelor of Law degree from the University of Manitoba. Mr. Hamilton, for some years, has carried on an active practice as an interest and grievance arbitrator/mediator in Manitoba.

#### **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 as a full-time Vice-Chairperson on a time-share basis, and in September 2002 she was re-appointed to the Board as a part-time Vice-Chairperson.

#### **Arne Peltz**

Appointed on a part-time basis in 2002, Mr. Peltz is a chartered arbitrator and carries on an active practice as an interest and grievance arbitrator/mediator in Manitoba. He also serves as an adjudicator under the *Manitoba Human Rights Code* and the *Canada Labour Code*. Mr. Peltz was the Director of the Public Interest Law Centre for 21 years and entered private practice in 2003 as counsel to the firm of Gange Goodman & French, with an emphasis on aboriginal law and civil litigation.

### **Employer Representatives**

#### **Jim Baker, C.A.**

Appointed in 2000, Mr. Baker is President and CEO of the Manitoba Hotel Association (MHA). 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.

**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.

**Edward J. Huebert**

Appointed in 1994, he has been 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 served 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 Fellow of the Certified Human Resource Professionals (FCHRP). She is a Past President of the Human Resource Management Association of Manitoba, a founding Director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the Canada Labour Code in Ottawa. She has represented Canadian employers at the United Nations in Geneva and is currently an active member of the Designation Review Committee of the 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 (BOMA); 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.

**Chris Lorenc**

Appointed in 2003, he is currently President of the Manitoba Heavy Construction Association; President of the Infrastructure Council of Manitoba; President of the Western Canada Roadbuilders & Heavy Construction Association; and Vice-Chair of the Transportation Awareness Partnership. A lawyer by background, Mr. Lorenc graduated from the University of Manitoba with Bachelor of Arts and LL.B (law) degrees. He is a former Winnipeg City Councillor having served for 9 years between 1983 and 1992. During his tenure on Council, he chaired a number of Standing Committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of cultural, community, and hospital organizations.

**Yvette Milner**

Appointed in 1996, Ms. Milner is a Senior Manager with Deloitte & Touche. She has expertise and experience in human resources, safety and disability management with past work experience in the public and private sectors. Ms. Milner currently leads the Safety and Disability Management practice in the Winnipeg office of Deloitte & Touche. Prior to joining this firm she ran her own consulting practice for 8 years. Active in the Winnipeg business community, Ms. Milner is an active member of the Employers Task Force on Workers Compensation. She also holds memberships in the Winnipeg Chamber of Commerce, 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. Mr. Stanton's term expired December 2002.

**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 10 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.

## **Employee Representatives**

### **Bernie Atamanchuk**

Appointed in 1985, he had worked with the United Food and Commercial Workers Union (UFCW) 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 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. She continues to be active in the community working on civic and government campaigns.

### **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.

### **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.

### **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 (UFCW) 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 Arbitration 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 (CUPE) and, since 1987, has been employed as an Equality Representative with CUPE. Her work is primarily in the areas of pay equity, employment equity, harassment, and other human rights issues.

**James Murphy**

Appointed in 1999, Mr. Murphy is the Business Manager of the International Union of Operating Engineers (IUOE), Local 987, being elected to this position in 1995. He held the positions of Business Representative of the IUOE 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, is currently Vice-President of the Manitoba Building and Construction Trades Council, Vice-President of the Allied Hydro Council of Manitoba, and Vice-President of the Manitoba Federation of Labour. 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 (CAW) 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 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.

**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 and a board member of the Winnipeg Regional Health Authority.

## SUMMARY OF PERFORMANCE

The Manitoba Labour Board adjudicated employer-employee disputes referred to it 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*, *The Victims' Bill of Rights*, *The Elections Act* and *The Public Schools Act*.

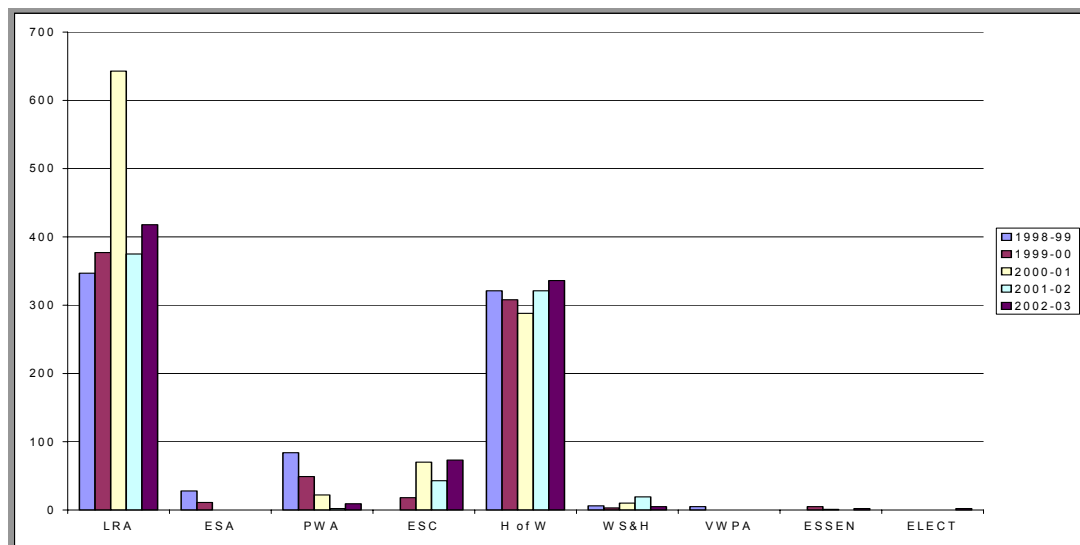
With the legislative amendments of 2001/2002, *The Labour Relations Act* applies to teachers, bargaining agents for units of teachers and school boards, with limited exception. During the reporting period, the Board continued to re-issue school division bargaining certificates, which involved Board hearings to deal with the determination of specific classifications and bargaining unit descriptions.

The Board continued to monitor its internal processes to improve efficiencies and expeditious processing of applications/referrals. The Board conducted formal hearings, however, a significant portion of the Board's workload is mediative and administrative in nature. Where possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its Board Officers to mediate outstanding issues and complaints.

The Board's decisions established policy, procedures and precedent and provided for a more sound, harmonious labour relations environment. In an effort to strengthen communications with the parties who deal with the Board, the Board held and will continue to hold consultation and information sessions on specific issues under various statutes, as it deems advisable.

During the reporting year the Board 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) are indicated in the chart below, with hours of work applications shown separately from *The Employment Standards Code*.

**Manitoba Labour Board  
Number of Applications Filed**



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, 2002 - March 31, 2003

Indicator	Actual 2001-2002	Actual 2002-2003
Percentage of Cases disposed of	87%	83%
Number of cases Board Officers appointed	31	37
Percentage settled	45%	43%
Number of votes conducted	22	37
Median processing time (calendar days):		
Certifications	15	14
Decertifications	33	45
Unfair labour practice	110	91
Duty of fair representation	53	67
Expedited arbitration	53	42
Board rulings	201	285
Amended Certificates	127	64
First contracts	63	63
<i>Workplace Safety &amp; Health Act</i>	62	46
<i>Essential Services Act</i>	N/A	7
<i>Elections Act</i>	N/A	36
Employment Standards Division referrals	106	103
Hours of work exemptions	6	7

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 2,156 collective agreements and 1,806 arbitration awards, an increase of 7% and 2% respectively from the previous reporting period. The Board also issued Written Reasons for Decision; the collection consists of 564 written reasons reflecting a 2% 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

- ◆ Completed the Health Care Bargaining Unit Restructuring
- ◆ Issued a variety of publications to improve communication and disseminate information including the quarterly "Report of Activities of the Manitoba Labour Board", updated the "Index of Written Reasons for Decision" and completed the "Compendium of Grievance Arbitration Decisions" to 2002

### Continuous Improvement - Priorities for 2003/2004

- ◆ Increase mediative settlements
- ◆ Reduce median processing times for processing applications
- ◆ Review/issue certificates in the public school sector
- ◆ Implement and test automated information system (case management)
- ◆ Relocate the Board's office to more appropriate space
- ◆ Improve client service – publications and expanded web site
- ◆ Promote staff development and training initiatives and succession planning

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

### **Seven Oaks General Hospital - and -Seven Oaks Nurses, Local 72 of the Manitoba Nurses Union**

**Case No. 258/00/LRA**

**June 6, 2002**

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

The Employer filed an application for a Board Ruling that (FPCM) were not employees within the meaning of *The Labour Relations Act*, that they were not covered in the bargaining unit for which the Union had been certified and were not covered by the terms and conditions of the current collective agreement. The Union contended that the FPCM was merely doing bargaining unit work that had previously been done by charge nurses.

**Held:** The FPCM facilitated resolutions to many difficulties in all units. The charge nurse must be responsible within the parameters of the authority she has been given for her unit only, even after midnight when the hospital reverts to the "old" charge nurse system. The FPCM disciplining a CUPE member convinced the Board that the position of FPCM is significantly different from that of the charge nurse. The additional responsibilities which the FPCM has for the Staffing Office, which was central to the facility, was a further example of managerial functions because the FPCM exercised authority over the Staff Manager, who was out of scope, and four clerks who were represented by CUPE. The limited personal hiring done by FPCM did not alter her performance of managerial functions through the Staffing Office and the facility as a whole. The FPCM has the authority, on a facility wide basis, to exercise independent judgement and discretion, which has an economic impact on the livelihood of bargaining unit employees and creates a conflict of interest between the position and the bargaining unit status. The same authority has not been given to charge nurses. Finally, the FPCM were not required to be clinicians nor are the duties they perform clinical. The certificate which the Union sought to enforce was for nurses. In the "Review of Bargaining Unit Appropriateness in Manitoba's Urban Health Care Sector", the Board clearly determined that the appropriate bargaining unit for nurses was all nurses practicing the profession of nursing. Therefore, the Board determined the Facility Patient Care Managers were not employees within the meaning of *The Labour Relations Act*, and that they were not covered in the bargaining unit for which the Respondent had been certified and were not covered by the terms and conditions of the current collective agreement.

### **Canada Safeway and - United Food & Commercial Workers, L. 832 - and -Daniel Wiebe**

**Case No. 411/00/LRA**

**July 26, 2002**

**UNFAIR LABOUR PRACTICE - DUTY OF FAIR REPRESENTATION - Discharge - Negligence - Union Representative erred in advising Applicant that he only had to work one shift within six-month period to maintain his employment status - Applicant discharged as collective agreement provided that the period was four months - Held Union refusal to proceed with grievance not breach of duty of fair representation as Applicant failed to provide critical information to Union, failed to check collective agreement himself as suggested and failed to avail himself of internal Union appeal procedures.**

The Applicant, who was a part-time employee, asked his Union Representative what period of time could lapse without him receiving shifts at work before he would be terminated from his employment. The Union Representative advised the Applicant that the period of time was six months. Relying upon this information,

the Applicant requested a leave of absence for six months and refused call-in shifts. Subsequently, the Employer terminated the Applicant as per section 18.19 of the collective agreement, which indicated that any part time employee who had no working hours for a consecutive four-month period would be terminated. The Union attempted to convince the Employer to rescind the termination, but to no avail. The Applicant filed a grievance, and ultimately, the Union refused to proceed with the grievance. The Applicant then filed an application with the Board alleging that the Union neglected its duty of fair representation. The Union Representative testified that he had received the call from the Applicant on his car cell phone while driving. He confirmed that he had advised the period was six months, but he told the Applicant that he was unsure as he did not have the collective agreement with him and suggested that the Applicant check the collective agreement himself.

**Held:** The Board found that the Union had filed a grievance in a timely fashion and then withdrew it. However, it had not been provided with critical information from the Employee regarding conversations he had with the Employer. Also, the Applicant did not avail himself of the internal Union appeal procedures. The Applicant was attempting to maintain rights to a position with the Employer, but in this Board's view the Applicant took no steps on his own initiative to ascertain his rights. He did not accept promotion, he did not work any shifts, and he did not make full disclosure to the Union of his conversations with the Employer. Additionally, he did not take advantage of his right to appeal the decision of the Union not to proceed with the arbitration. The Board concluded that the evidence did not show any breach of section 20 of the *Act*, and, accordingly, the application was dismissed.

**INCO Ltd.- and - United Steelworkers of America, Local 6166 - and - Jimmy Luhowy**  
**Case No. 839/01/LRA**  
**August 16, 2002**

**DUTY OF FAIR REPRESENTATION - Contract Administration - Failure to Refer Grievance to Arbitration - Employee alleged Union failed in its duty of fair representation when it decided not to proceed with discharge arbitration - Delay result of conversations the Employee had with counsel over issues he raised - Employee 's witness testified the Union conducted thorough and complete investigation - Employee presented his case to union membership with an advocate who spoke on his behalf - Board satisfied Union not in contravention of section 20 - Application dismissed.**

The Employee, who was employed as a trackman, was discharged for theft in regards to bonuses claimed. The Union filed a grievance, but based on legal opinion received from internal legal counsel, it determined the matter would not proceed to arbitration. The Employee appealed the decision, but the general membership rejected his appeal. The Employee then filed an application for an unfair labour practice alleging that the Union failed in its duty of fair representation. He alleged that the Union did not conduct a thorough and complete investigation and it took an unreasonable time to finalize its decision not to proceed to arbitration.

**Held:** In regards to the Employee's allegation of the Union's delay in obtaining the legal opinion, the Board was satisfied that the delay did not contravene section 20 of the *Act*. If anything, the delay was as a result of a number of conversations the Employee had with counsel over an eight or nine-month period dealing with additional issues he raised himself. It was also satisfied that it could find no fault in the Union's decision of not proceeding to arbitration. In the words of the Employee's own witness, a thorough and complete investigation was conducted. The Union was entitled to, and relied on, the legal opinion provided by legal counsel in making its decision not to proceed to arbitration. The Applicant appealed the decision and was not only allowed to present his case to the general membership, but was also provided with an advocate who spoke on his behalf. The membership, having heard the respective positions, chose to disallow his appeal. The Board was satisfied that there was no contravention of section 20 in the process utilized by the Union. Accordingly, the application was dismissed.



**Manitoba Clinic - and - Manitoba Association of Health Care Professionals**

**Case No. 1031/01/LRA**

**September 11, 2002**

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

In October 1996, the Union was certified as bargaining agent for cardiology technicians. Prior to any bargaining taking place, the Employer faced a personnel crisis and arranged to have cardiology services provided by an independent agency. In April 2001, the Employer again began to employ cardiology technicians. A labour relations officer with the Union heard a rumour that the Employer had hired cardiology technicians. Other Union officials believed that the Employer would advise if there was re-employment based upon discussions when the contracting out arrangements were first made. The rumours were not pursued any further. In September 2001, when the Union did receive information that there were employees in the cardiology unit, it attempted to roll them into the proposals it had prepared for laboratory technicians. The Employer filed an application requesting the Board investigate whether the Union had abandoned its bargaining rights regarding the cardiology technologists and technicians pursuant to Section 53(2) of *The Labour Relations Act*. The Employer urged the Board to note that the constituency of the bargaining unit had changed completely since certification, and that there had been no representation for five years. Further, the proposals, which the Union put forward in September 2001, were only definitions and wage rates; it did not fashion proposals to fit cardiology work.

**Held:** The Board found that the Union relied on the impression that the Employer would notify it if contracting out arrangements were to change and upon the long history of good relations with the Employer. The Union could have acted more diligently when rumours began to surface about cardiology employees being hired, but that it did not act may be the result of an error of judgement and as a less than desirable standard of performance, but it does not amount to abandonment of bargaining rights. In any event, there were no employees in the unit until spring 2001 and the Board was not prepared to say that a Union must bargain for an empty unit. The umbrella approach of rolling the cardiology technicians in with laboratory technicians can at best be characterised as asserting bargaining rights for the cardiology technicians, albeit without any employee input or individualization of employees. Therefore, the Board was satisfied that the Union did not fail to exercise its bargaining rights and not satisfied that the Union has abandoned its bargaining rights. As a result, it dismissed the Employers' application.

**Boeing Canada Inc. - and - CAW, Local 2169 - and - Paulo Cordeiro**

**Case No. 463/02/LRA**

**December 19, 2002**

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

The Employee requested that the Union file two grievances on his behalf for a written warning and for a three-day suspension that he received. As a result of his concerns respecting the handling of his grievances by the Union, the Employee filed a claim pursuant to Section 20 of *The Labour Relations Act*. His concerns included the Union's not advising him of the status of his grievances, the quality of the legal opinion obtained by the Union and the existence of a further appeal process which he says he was only advised of by union officials in

Toronto. The Union advised the Employee that his grievance respecting a written warning would not proceed to arbitration because it would be expunged after a year. With respect to the suspension, the Union had obtained a legal opinion, which advised that the grievance would be dismissed if the matter proceeded to arbitration. After informing the Grievor of that opinion, the Union asked if he had any other facts to add, but he did not send any new information. Further, the Union submitted that it was negotiating with the Employer to get a portion of the suspension days back. Because the grievances were still active, the Employee did not have anything to appeal.

**Held:** The Board did not find there to be any arbitrariness, discrimination or bad faith on the part of the Union. Some of the Employee's frustration in these matters could have been avoided if the Union had communicated with him in writing rather than verbally about the status of his grievances. However, that is not sufficient to establish an unfair labour practice. The Union is not bound to take every grievance to arbitration. The Union had obtained a legal opinion, which clearly set out the unlikelihood of success at arbitration. It reasonably relied on the opinion in determining whether or not to proceed to arbitration on the Employee's behalf. The Board did not share the Employee's concern about the quality of the legal opinion provided. As a result, the Board dismissed the application.

**Marquette Regional Health Authority - and - Manitoba Nurses' Union, - and- Manitoba Government and General Employees' Union**

**Case No. 675/01/LRA**

**January 16, 2003**

**APPROPRIATE BARGAINING UNIT - Health Care - Nurses' Union requested that classification of home care case coordinator be moved out of the technical/professional unit represented by the MGEU and into the nurses bargaining unit - Board found MGEU's certificate excluded "nurses" but meant nurses "practising the profession of nursing" - Held coordinators not "practising the profession of nursing" as an essential part of their job functions and should remain in the technical/professional paramedical unit.**

The Union filed an application requesting a Board Ruling that the classification of home care case coordinator (coordinator) be moved out of the technical/professional paramedical unit represented by the MGEU and into the nurses bargaining unit represented by the Union. Prior to regionalization, the predecessor employer required the position be occupied by nurses. After regionalization, the Employer continued to hire only nurses. The coordinators continued to be represented by the MGEU despite that they all were nurses and that the MGEU certificate excluded nurses. The Employer submitted that since regionalization, the position's qualification requirements had been broadened to include social workers. However, the coordinators were still all nurses because the direct service nurses were encouraged to compete for the positions to advance their careers, and it had difficulty attracting social workers.

**Held:** The Board was not persuaded that the 1996 job description continued in force, having not been superceded by a new one. The qualifications of the position had changed and the fact that the job description was not amended or a new one was not developed to reflect the change was a mere oversight. The Board was not persuaded that the coordinators must have nursing skills to perform the job. It is a matter of professional opinion whether the job could be better done by a nurse. The Employer changed the job requirements because it believed professionals other than nurses could do the job. The Board was not going to question that kind of policy decision. Further, the explanation for the failure to hire persons other than nurses was reasonable. The Union submitted the fact that the hours working as a coordinator are considered by the professional licensing authority for nurses as hours worked as a nurse, in order to maintain licensure, goes to establish that the functions are nursing functions. The Board did not find this persuasive. No one from the licensing authority was brought to testify as to the criteria used in this respect or the policy that guided the acceptance these hours. The MGEU Certificate excluded "nurses" but this can only be intended to mean nurses who are employed as nurses "practising the profession of nursing". By the evidence of an incumbent coordinator, the Board found that only a small part of her job could be considered "practicing the profession of nursing". In conclusion, the Board was of the view that the coordinators were not "practising the profession of nursing" as an essential part of their job functions and therefore should remain in the technical/professional paramedical unit.

**Canwest Galvanizing and/or La Corporation Corbec - and -United Steelworkers of America, Local 4095,**

**- and - Felix Bednarski**  
**Case No. 491/02/LRA**  
**March 21, 2003**

**DUTY OF FAIR REPRESENTATION - Employee alleges Union failed in its duty of fair representation when it failed to seek judicial review of an arbitration award - Despite finding Section 20 does not preclude the obligation to seek judicial review of an award, filing an application for judicial review is not a duty within the scope of the administration of a collective agreement for which a union is responsible - Union Representative's conduct could not sustain a finding of "gross negligence" - Application dismissed.**

Following receipt of an arbitration award, Union's counsel advised that an application for judicial review would be going ahead. However, the application was not filed within the 30-day time period prescribed in Section 128(3) of *The Labour Relations Act*. As a result, the Employee filed an application alleging that the Union and the Representative had acted contrary to Section 20 of the *Act* by failing to file for judicial review. The Union contended that the Employee had not established a *prima facie* case because the duty imposed under Section 20 did not encompass an obligation to seek judicial review of an arbitration award. The Employee submitted that while the Representative was entitled to rely on legal counsel, he was aware of the 30-day time limit and took no steps himself to ensure compliance with that time limit. His behaviour constituted gross negligence as it was uncaring and reckless.

**Held:** Judicial review is part of the enforcement procedure under a collective agreement and is a step that may be undertaken in extremely rare circumstances to protect a right under a collective agreement. The Board was guided by a decision of the Supreme Court in which it ruled that the duty of fair representation may continue even after an arbitrator's final decision has been released. It also concluded that where the union has an exclusive representation mandate, the corresponding duty extends to everything that is done that affects the legal framework of the relationship between the employee and the employer. The Board was satisfied that both the Representative and the Employee knew Union's Counsel would be representing the Union in the judicial review proceedings. The Union Representative obviously had some level of concern because he called Counsel 4 or 5 times when he never received a response to his previous call(s). Yet, he said he was not concerned and assumed that matters were going forward. The Board did not find the belief that the Union Representative harboured at the time reflected perfunctory, non-caring, or grossly negligent conduct nor did it show a complete disregard for the Employee's rights. The Union Representative's honestly held assumption did not constitute arbitrary conduct. A critical factor that the Board considered was that filing an application for judicial review was not a step which the Union representative could directly control himself. The Union Representative did not possess the expertise of legal counsel so he could not draft a judicial review application and file it in Queen's Bench. He must assign it to counsel. Mistakes made were errors in judgement and did not constitute gross negligence. Up to the obtaining of the award, there is no question that all of the Union's duties under Section 20 were more than fulfilled. When it came to judicial review, however, the Representative was at a stage where he had to rely on counsel, not for a legal opinion but to actually do the work required to file the application. Therefore, the evidence did not sustain a finding of arbitrariness on the part of the Union and/or the Union Representative. Therefore, the application was dismissed.

## **SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO *THE PAYMENT OF WAGES ACT***

**Protect-A-Home Services Inc. - and - Craig Heber**  
**Case No. 58/00/PWA**  
**November 20, 2002**

**PRACTICE AND PROCEDURE - JURISDICTION - Employer argued Board did not have jurisdiction to consider portion of a claim that covers period beyond date the complaint was filed - Held practical implications allow an order to capture period beyond date complaint filed - *The Payment of Wages Act* specifically limits the time a complaint can go back, but does not restrict the time forward.**

**WAGES - VACATION ENTITLEMENT - Employer argued that since an accounting had been ordered pursuant to a Default Judgment, it was not required to pay vacation wages - Held Employee was an employee at the time for which vacation wages were owing and had not been paid - The accounting was a separate matter - Claim for vacation wages granted.**

The Employee filed a claim for wages owing for the period of February 21, 1999 to March 4, 1999 and vacation wages for December 1, 1998 to March 4, 1999. The Employer took the position that the Board did not have the jurisdiction to consider wages for the period claimed. It argued that the complaint form filed at Employment Standards Division was dated and received February 15, 1999 and the Board should not consider any portion of a claim beyond the date of the complaint. With respect to the claim for vacation wages, the Employer took the position that since an accounting had been ordered pursuant to a Default Judgment, it was not required to pay vacation wages.

**Held:** The Board noted that there are practical implications to allow an order to capture the period beyond the date the complaint is filed. It noted the investigation takes place while the employee continues to work and may well disclose a continuing contravention of the *Act* and therefore further monies owing. The *Act* specifically limits the time which a complaint can go back, but does not restrict the time forward. Further, the Employer was not caught by surprise by the inclusion of the period past the date of complaint as it was served with a Production of Records Order prior to the issuance of the Payment of Wages Order. The Board did not agree with the Employer's submission regarding the payment of vacation wages. It found the Employee was an employee at the time for which vacation wages were owing and had not been paid. The accounting was a separate matter. Therefore, the Board allowed the claim for wages for the period February 21, 1999 to March 4, 1999 and vacation wages.

## SUMMARIES OF SIGNIFICANT COURT DECISIONS

### **Emerald Foods Ltd. t/a Bird's Hill Garden Market IGA - and - UFCW, Local 832**

**Court of Queen's Bench of Manitoba**

**Manitoba Labour Board Case Nos. 479/00/LRA & 561/00/LRA**

**Docket Nos. CI 01-01-24777**

**Heard by Justice Hanssen**

**Delivered September 26, 2002**

On October 16, 2000, the Board issued Order No. 1185 wherein it found that the Employer had committed an unfair labour practice with the distribution of the "Notice to Employees" two days prior to a representation vote.

The Board concluded that the circulation of the notice constituted an interference with the formation or selection of the Union contrary to subsection 6(1) of *The Labour Relations Act*. Pursuant to Section 41 of the *Act*, the Board ordered that discretionary certification of the Union should be issued. The Employer filed an application in the Court of Queen's Bench requesting the certificate be quashed. It argued that the Board failed to apply the appropriate legal tests and onus in determining if a contravention of Section 6(1) of the *Act* occurred.

**Held:** The Honourable Mr. Justice Hanssen noted that in the Board's Reasons for Decision, it had reviewed the contents of the communication, the motivation for its issuance and what effect, if any, it might have on the eligible voters. Justice Hanssen found that the Board applied the wrong legal test. It mistakenly believed it only needed to consider the effect the notice "might" have had on eligible voters and not the effect it "would likely have had" on them. If the Board had applied the correct legal test it may have come to a different conclusion. Accordingly, Justice Hanssen declared that the Board committed an error of law on the face of the record and thereby acted beyond or refused to exercise its jurisdiction under the *Act*. Therefore, he ordered that the Board's Order No. 1185 and discretionary certificate be quashed.

### **Emerald Foods Ltd. t/a Bird's Hill Garden Market IGA - and - UFCW, Local 832**

**Court of Queen's Bench of Manitoba**

**Manitoba Labour Board Case Nos. 479/00/LRA & 561/00/LRA**

**Docket Nos. CI 01-01-24777**

**Heard by Justice Hanssen**

**Delivered December 9, 2002**

On September 26, 2002, the Honourable Mr. Justice Hanssen made an order quashing the Manitoba Labour Board Order No. 1185 and discretionary certificate. His order had the effect of terminating the Union's status as the bargaining agent for a unit of employees of the Employer. The Union was seeking a stay of the Justice Hanssen's order pending an appeal to the Court of Appeal. The Union argued it would suffer irreparable harm if the stay was not granted because the terms and conditions of employment provided for in the collective agreement will be lost to employees; if the employees were subject to discipline and discharge, they will be without legal protection; and the Union will be unable to meet its statutory duty of fair representation or to enforce the collective agreement.

**Held:** The Honourable Mr. Justice Hanssen was not satisfied that the Union would suffer irreparable harm if the stay was not granted. The employees would not be without legal rights as they would have recourse to the legal protections afforded to them by common law and *The Employment Standards Code*. If the Union was successful in its appeal, it should be relatively simple to return matters to where they were prior to the order quashing the certificate. The Union's argument that it would be unable to meet its statutory duty of fair representation had no merit. In light of the court order, the Union did not have a duty of fair representation and therefore could not be in breach of it. The balance of convenience test strongly supported refusing the stay. Given the presumption of the correctness of the court order, it did not make sense to allow the Union to continue to function as though it was the legitimate bargaining agent for the employees of the Employer.

**Protect-A-Home Services - and - Craig Heber**  
**Court of Appeal of Manitoba**  
**Manitoba Labour Board Case No. 423/99/PWA**  
**Docket Nos. AI 02-30-05385**  
**Heard by Justice Kroft**  
**Delivered December 23, 2002**

The Employer filed for leave to appeal from an order of the Manitoba Labour Board issued November 20, 2002. The Order granted wages for the period February 21, 1999 to March 4, 1999, and vacation wages for the period December 1, 1998 to March 4, 1999. The Employer based its application on three questions of pure law. First, did the Board have jurisdiction to make an order for wages against an employer for a period which is after the date on which the employee's complaint was filed? Second, assuming the employee proceeded to undermine and sabotage the business of his employer, did that bear on the question of whether leave to appeal should be granted? Third, is the Board empowered to decide on matters which are being dealt with by a court of superior jurisdiction on the date when the order is given?

**Held:** With regards to the whether wages coming due after the date of the claim could be included in the Board's Order, the Honourable Mr. Justice Kroft ruled that was not the kind of decision with which the court should interfere. The fact the employee proceeded to totally undermine and sabotage the business of his employer is not an issue which is encompassed in the Queen's Bench proceeding. It was not a matter for determination under *The Payment of Wages Act*. The third issue did not involve a jurisdictional issue. The Court of Queen's Bench action, absent some specific court order, did not prevent or limit the consideration of a salary claim under the *Act*. In summary, Mr. Justice Kroft found the issues were not of sufficient importance or substance to engage the Court of Appeal. The application for leave was denied.



TABLE 1

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* BY THE MANITOBA LABOUR BOARD  
(April 1st, 2002 - March 31st, 2003)**

Type of Case	Cases		Total	Disposition of Cases			Number of Cases Disposed of	Number of Cases Pending
	Carried Over	Case Filed		Granted	Dismissed	Withdrawn		
Application for Certification	5	101	106	71	8	9	88	18
Application for Revocation	3	19	22	12	7	1	20	2
Application for Amended Certificate	11	36	47	40	0	0	40	7
Application re: Unfair Labour Practice	20	55	75	2	14	35	51	24
Application for Board Ruling	18	45	63	12	1	19	32	31
Application for Reconsideration	2	16	18	1	14	1	16	2
Application for Termination of Barg. Rights	1	5	6	4	1	1	6	0
Application pursuant to Section 10(3) <sup>1</sup>	0	10	10	8	1	0	9	1
Application pursuant to Section 20 <sup>2</sup>	7	29	36	0	22	5	27	9
Application pursuant to Section 22 <sup>3</sup>	0	2	2	1	0	1	2	0
Application pursuant to Section 58.1 <sup>4</sup>	1	0	1	0	0	0	0	1
Application pursuant to Section 69, 70 <sup>5</sup>	0	1	1	0	1	0	1	0
Application pursuant to Section 76(3) <sup>6</sup>	3	7	10	7	1	1	9	1
Application pursuant to Section 87(1) <sup>7</sup>	3	7	10	5	0	5	10	0
Application pursuant to Section 115(5) <sup>8</sup>	1	25	26	7	0	19	26	0
Application pursuant to Section 130(10.1) <sup>9</sup>	0	6	6	6	0	0	6	0
Application pursuant to Section 146(1) <sup>10</sup>	0	1	1	0	0	0	0	1
Referral for Expedited Arbitration **	17	53	70	-	-	-	63	7
<b>Totals</b>	<b>92</b>	<b>418</b>	<b>510</b>	<b>176</b>	<b>70</b>	<b>97</b>	<b>406</b>	<b>104</b>

<sup>1</sup> 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.

<sup>2</sup> Duty of Fair Representation

<sup>3</sup> Access Agreements

<sup>4</sup> Business coming under provincial law is bound by collective agreement

<sup>5</sup> Complaint re ratification vote

<sup>6</sup> Religious Objector

<sup>7</sup> First Collective Agreement

<sup>8</sup> Request for the Board to appoint arbitrators

<sup>9</sup> Extension of Time Limit for expedited decisions

<sup>10</sup> Prosecution of employer's organization or union

\*\* See Table 3



TABLE 2

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES  
(April 1st, 2002 - March 31st, 2003)**

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	19	788	9	6	2	2
Revocation	7	245	7	0	0	0
Termination of Bargaining Rights	3	25	1	2	0	0
Board Ruling	3	210	3	0	0	0
Urban Health Care <sup>1</sup>	5	2095	5	0	0	0

<sup>1</sup>Urban health care bargaining unit restructuring "preliminary" determination votes

TABLE 3

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION  
(April 1st, 2002 - March 31st, 2003)**

Cases Carried Over	Number of Referrals Filed	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 to Review	Withdrawn			
17	53	70	26	14	21	11	0	17	63	7

TABLE 4

**STATISTICS RELATING TO HOURS OF WORK EXEMPTION REQUESTS PURSUANT TO *THE EMPLOYMENT STANDARDS CODE*  
(April 1st, 2002 - March 31st, 2003)**

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 <i>The Employment Standards Code</i> re: Hours of Work exemptions	16	336	352	321	0	12	333	19

TABLE 5  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE PAYMENT OF WAGES ACT***  
**(April 1st, 2002 - March 31st, 2003)**

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 8	3	9	12	2	1	1	4	8

TABLE 6  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE***  
**(April 1st, 2002 - March 31st, 2003)**

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
Applications pursuant to Section 96(1)	19	72	91	42	16	3	61	30
Applications pursuant to Section 111(2) <sup>1</sup>	0	1	1	1	0	0	1	0

<sup>1</sup> Application for board chairperson to reduce deposit

TABLE 7  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE VACATIONS WITH PAY ACT***  
**(April 1st, 2002 - March 31st, 2003)**

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 8

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY & HEALTH ACT* BY THE MANITOBA LABOUR BOARD  
(April 1st, 2002 - March 31st, 2003)**

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	0	5	5	3	0	3	2
Application for Appeal of Director's Order	1	0	1	0	1	1	0

TABLE 9

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT* BY THE MANITOBA LABOUR BOARD  
(April 1st, 2002 - March 31st, 2003)**

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	2	2	0	2	2	0

TABLE 10

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT* BY THE MANITOBA LABOUR BOARD  
(April 1st, 2002 - March 31st, 2003)**

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 24.2(3)	0	2	2	1	0	1	1

TABLE 11

**FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED  
(April 1st, 2002 - March 31st, 2003)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31, 2003
Pending from Previous Reporting Period:				
International Union of Operating Engineers, Local 987	Winnipeg Regional Health Services (Health Sciences Centre)	February 15, 2002	Parties voluntarily entered into collective agreement	Expiry date: May 12, 2003
Canadian Union of Public Employees, Local 745	Rural Municipality of Kelsey	March 1, 2002	Board imposed first collective agreement	Expiry date: May 2, 2003
International Union of Operating Engineers, Local 987	Winnipeg Regional Health Authority	March 11, 2002	Board imposed first collective agreement	Expiry date: March 31, 2003
New Applications this Reporting Period:				
Canadian Auto Workers, Local 144	Accurate Dorwin	April 23, 2002	Parties voluntarily entered into collective agreement	Expiry date: March 7, 2004
United Food and Commercial Workers Union, Local No. 832	Faneuil ISG	April 25, 2002	Parties voluntarily entered into collective agreement	Expiry date: May 31, 2004
Canadian Auto Workers, Local 468	Hangers Fashion Warehouse	June 25, 2002	Board imposed first collective agreement	Expiry date: August 22, 2003
Canadian Union of Public Employees, Local 1684	Southwest Community Options	September 12, 2002	Parties voluntarily entered into collective agreement	Expiry date: September 8, 2005
United Food and Commercial Workers Union, Local No. 832	Custom Pipe Industrial Plastics	September 30, 2002	Board imposed first collective agreement	Expiry date: December 1, 2003
International Union of Operating Engineers, Local 987	Rehabilitation Centre for Children	October 7, 2002	Parties voluntarily entered into collective agreement	Expiry date: March 31, 2003
United Food and Commercial Workers Union, Local No. 832	Southeast Medical Referral Services (Southeast Resource Development Council T/A)	January 6, 2003	Board imposed first collective agreement	Expiry date: March 6, 2004

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;

.../2

January 15, 1990

- 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.

<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>	<b>Week</b>
<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](mailto:mlb@gov.mb.ca) or via the Internet at [www.gov.mb.ca/labour/labbrd](http://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.