

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

It is my pleasure to submit to you the 2003-2004 Annual Report of the Manitoba Labour Board, outlining its activities over the past twelve-month period.

We continue to experience a high level of activity mainly dealing with matters under *The Labour Relations Act*.

The Board is also looking forward to hosting the Annual Labour Relations Boards' Chairpersons' Conference in June 2004, which provides boards from across Canada an opportunity to share experiences and ideas to further assist us in serving the labour relations community.

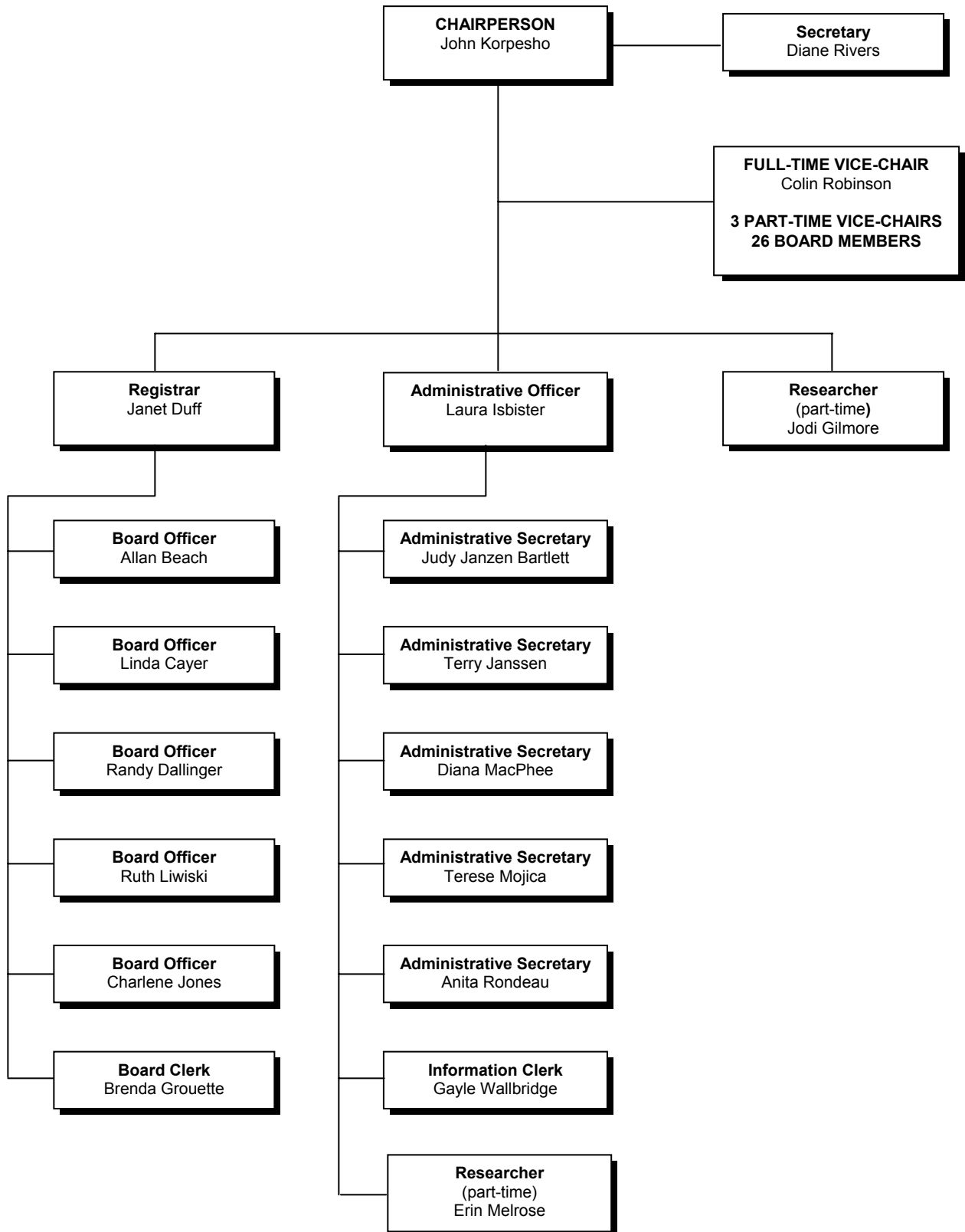
I would like to express my gratitude to the Vice-Chairpersons, Members and staff for another year of dedicated service to the Board and look forward to continue providing the labour relations community with service in a timely manner.

J.M.P. Korpesho,
Chairperson

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Manitoba Labour Board Organization Chart as of March 31, 2004



The Manitoba Labour Board

INTRODUCTION

Report Structure

The Annual Report is prepared pursuant to Subsection 138(14) of *The Labour Relations Act* which provides:

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

Role

The Manitoba Labour Board is an independent, quasi-judicial tribunal. As mandated under Section 138(1) of *The Labour Relations Act*, the Board is responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under various statutes. The majority of the applications are filed under the following Acts of the Consolidated Statutes of Manitoba:

The Labour Relations Act (L10)

The Employment Standards Code (E110)

The Board also adjudicates certain matters arising under the following Acts of the Consolidated Statutes of Manitoba:

The Workplace Safety and Health Act (W210)

The Essential Services Act (E145)

The Pay Equity Act (P13)

The Construction Industry Wages Act (C190)

The Remembrance Day Act (R80)

The Elections Act (E30)

The Public Schools Act (P250)

The Victims' Bill of Rights (V55)

Objectives

The main objectives of the Manitoba Labour Board are 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;
- assist parties in resolving disputes without the need to proceed to the formal adjudicative process; and
- provide information to parties and/or the general public regarding their dealings with the Board or about the Board's activities.

Mandate

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

OPERATIONAL OVERVIEW

Adjudication

During the reporting period, the Board consisted of a full-time Chairperson, a full-time Vice-Chairperson and three part-time Vice-Chairpersons. The remainder of the Board was comprised of twenty-six Board Members. The Board's members consist of an equal number of employer and employee representatives. Biographies of individual Board Members can be found later in this report. The part-time Vice-Chairpersons and Board Members are appointed by Order-In-Council and are paid in accordance with the number of meetings/hearings held throughout the year. The Board's office is located in Winnipeg. The Board conducts hearings throughout the province on an as needed basis. 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 oversees 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. With the exception of hours of work exemption requests, matters pursuant to *The Employment Standards Code* are referred to the Board by the Director of the Employment Standards Division. The Board processes the requests for hours of work exemption from employers seeking variation from the standard hours of work or the weekly day of rest. For all types of applications, the Registrar determines the hearing dates, where required, and ensures that each application is processed efficiently.

Reporting directly to the Registrar are five Board Officers (four Board Officers handle labour relations and one Board Officer handles employment standards) and one Board Clerk. The four 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. 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 it 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. There are also several instances where the Board Officer and Board Clerk are involved in mediation efforts in an attempt to resolve the issues.

Administrative Support Services

The Administrative Officer is responsible for 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 five administrative secretaries, one information clerk and one part-time researcher.

The staff of the 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 Researcher position provides 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*.

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.

PUBLICATIONS AND WEB SITE

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 was discontinued as of December 31, 2002.

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.

Guide to The Labour Relations Act - a publication discussing, 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* relating to 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. A listing of these bulletins is included later in this report and the full text is 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). The Board also provides copies of Written Reasons for Decision and arbitration awards to various publishers for selection and reprinting in their publications.

The Manitoba Labour Board's web site at <http://www.gov.mb.ca/labour/labbrd> provides 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.

MANITOBA LABOUR BOARD MEMBERS

The Manitoba Labour Board is comprised of a full-time Chairperson, a full-time Vice-Chairperson, three part-time Vice-Chairpersons and twenty-six Board Members. There is equal representation of employer and employee views. In the year under review, the Board consisted of the following members.

Chairperson

John M.P. Korpesho

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

Vice-Chairpersons

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 resigned from the Board in 2003 to take on a full time position with the Department of Justice.

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.

Colin Robinson

Appointed to the Board as full-time Vice-Chairperson in 2003, Mr. Robinson holds a Bachelor of Arts (Honours) degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. He was called to the Bar in 1995 and has practiced since that time primarily in the fields of labour and administrative law. Mr. Robinson also served as Deputy Chief Commissioner of the Residential Tenancies Commission from 2001 to 2002. He is active in the community and served on the United Way Campaign Cabinet in 2002.

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 (FCHRP) 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 held senior management positions in which she integrated human resource management with business needs including communication and printing, agriculture, manufacturing, health care retail and co-operatives businesses. Her human resource management experience includes both unionized and non-unionized workplaces. Ms. Devlin is a member of the Human Resource Management Association of Manitoba.

Edward J. Huebert

Appointed in 1994, he was 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. Mr. Huebert resigned from the Board in July 2003.

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 of the 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 founding member 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 Manitoba and Winnipeg Chambers of Commerce, Human Resource Management Association of Manitoba and Manitoba Safety Council.

Maurice D. Steele

Appointed in 1999, he was President of M.D. Steele Construction Ltd. until his retirement in May 1999. Mr. Steele is President of Logan Farms Ltd. and Stradbrook Investments Ltd. both founding partners of the Land Owners Group. Mr. Steele is also Vice-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. Ms. Cassista resigned from the Board in July 2003.

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 has recently been appointed as a Trustee on the St. Boniface General Hospital/UFCW Local 1869 Long Term Disability Income Trust 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

First sat as a board member from 1988 - 1996, Mr. McFarland was reappointed 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 Manitoba Apprenticeship Board. 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 IUOE 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. Mr. Paterson also serves on the Board of Destination Winnipeg.

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, Ms. Sigurdson has been employed by CUPE since 1986 and is currently the Education Representative. Her duties include providing and delivering leadership training for CUPE members in areas such as collective bargaining, grievance handling, health and safety, equality issues and communications. Previously she worked for many years with health care workers, first as an activist and then negotiating provincial collective agreements, assisting Locals with grievance handling and Local administration. She is an Executive Vice-President of the Manitoba Federation of Labour and a board member of the Winnipeg Regional Health Authority. She is a graduate of the Labour College of Canada.

SUMMARY OF PERFORMANCE

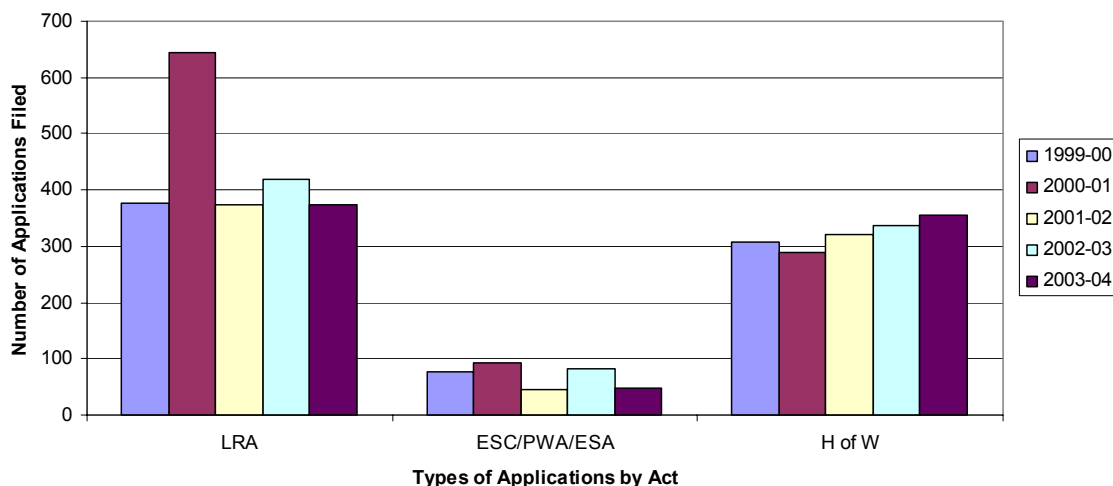
The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes, namely: *The Labour Relations Act*, *The Employment Standards Code*, *The Payment of Wages Act*, *The Workplace Safety and Health Act*, *The Pay Equity Act*, *The Essential Services Act*, *The Victims' Bill of Rights*, *The Elections Act* and *The Public Schools Act*.

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.

The Board monitors 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.

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**



Details regarding the number of applications filed can be found later in this report.

Note: On May 1, 1999, *The Payment of Wages Act* and *The Employment Standards Act* were repealed and *The Employment Standards Code* was proclaimed in force.

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, 2003 - March 31, 2004

Indicator	Actual 2002-2003	Actual 2003-2004
Percentage of Cases disposed of	83%	85%
Number of votes conducted	37	35
Median processing time (calendar days):		
Certifications	14	20
Decertifications	45	33
Unfair labour practice	91	93
Duty of fair representation	67	114
Expedited arbitration	42	38
Board rulings	285	129
Amended Certificates	64	40
First contracts	63	64
<i>Workplace Safety & Health Act</i>	46	266 ¹
<i>Essential Services Act</i>	7	nil
<i>Elections Act</i>	36	293 ²
Employment Standards Division referrals	103	114
Hours of work exemptions	7	6

1 This figure is not an accurate reflection of the normal median processing time for applications under *The Workplace Safety and Health Act*. The calculation of the median processing time was based on the two applications disposed of in 2003/2004. Due to the specific circumstances of the particular cases, the Board deemed that the applicants abandoned their cases.

2 This figure is not an accurate reflection of the normal median processing time for applications under *The Elections Act*. The calculation of the median processing time was based on one application for which much time elapsed before the parties confirmed their intent to withdraw the application.

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 2,198 collective agreements and 1,873 arbitration awards, an increase of 2% and 4% respectively from the previous reporting period. The Board also issued Written Reasons for Decision; the collection consists of 597 written reasons reflecting a 6% 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 2003 edition of the "Compendium of Grievance Arbitration Decisions" in March 2004. This was the earliest a compendium has been published after the calendar year-end. The expeditious publication of this edition was possible due to the clearing of a long-time backlog processing arbitration awards.

Continuous Improvement - Priorities for 2004/2005

- Increase mediative settlements
- Reduce median processing times for processing applications
- Implement and test automated information system (case management)
- Relocate the Board's office to more appropriate space
- Improve client service
- Promote staff development and training initiatives and succession planning

Financial

Manitoba Labour Board

Expenditures by Sub-appropriation	Actual 2003/04 (\$000s)	FTE's	Estimate 2003/04 (\$000s)	Variance Over/(Under) (\$000s)	Expl. No.
Total Salaries	1,144.9	18.00	1,161.1	(16.2)	
Total Other Expenditures	331.9		260.6	71.3	1.
Total Expenditures	1,476.8	18.00	1,421.7	55.1	

Explanation Number:

1. *Over-expenditure reflects higher travel related expenditures, increased costs for office space, legal fees, publications and additional computer related expenditures for case management system and Desktop Initiative implementation.*

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

Winnipeg Regional Health Authority (Health Sciences Centre) - and - International Union of Operating Engineers, Local 987 - and - Manitoba Association of Health Care Professionals

Case No. 143/00/LRA

April 20, 2003

APPROPRIATE BARGAINING UNIT - Health Care - Classifications within Rehabilitation Engineering and Biomedical Engineering categories determined to fall within maintenance and trades unit rather than technical/professional paramedical unit as they were not involved to any significant degree in direct patient care and training not dissimilar to others who achieve recognition in a trade.

Resulting from the Manitoba Labour Board report as to the bargaining unit appropriateness in the urban health care sector, the parties disagreed within which unit a number of positions fell. The classifications were grouped into two categories; Rehabilitation Engineering and Biomedical Engineering. The Employer contended that the positions in question fell within the technical/professional paramedical unit while the Bargaining Agents submitted that the positions fell within the scope of the maintenance and trades unit. In support of its position, the Employer presented the Board with an overview of the training required for the various classifications, as well as the job functions as they related to patient care. The Bargaining Agents submitted that the positions identified by the Employer should remain with the maintenance and trades unit as the employees did not provide direct patient care.

Held: In regards to the Rehabilitation Engineering group, the Board was satisfied that, although a number of the classifications had specific training unique to their individual discipline, they were not dissimilar to other persons who had achieved recognition in a particular trade, i.e. an electrician. In dealing with the Biomedical Engineering group, the Board referred to criterion set out in ***Health Employers Assn. of British Columbia - and - Health Sciences Association of British Columbia - and - Hospital Employees' Union and B.C. Government and Service Employees' Union - and - Certain Biomedical Engineering Technologists, [1996] B.C.L.R.B.D. No. 219, Case No. 28011 (Junker)***. One criterion referred to by the BCLRB to determine if a classification fell into the paramedical profession was whether the employees perform an important role in either the diagnosis or treatment of patients, residents, or clients; health promotion; or the prevention of illness.

As well, the Board noted the Employer's submission made during the bargaining unit review wherein it took the position that the technical/professional paramedical unit employees would include those classifications where focus is on patient care, as opposed to a focus upon equipment or the like. In this case, the Board was satisfied that the classifications were not involved to any significant degree in direct patient care. Therefore, the employees were not employed in a classification that would remove them from the maintenance and trades bargaining unit and bring them within the technical/professional paramedical unit as defined by the Board in its bargaining unit restructuring process.

Southeast Resource Development Council t/a Southeast Medical Referral - and - United Food & Commercial Workers, Local 832

Case No. 363/02/LRA

July 25, 2003

REVIEW AND RECONSIDERATION- Board took exceptional step of proceeding on own motion to review order on constitutional jurisdiction issue as it had never addressed that important issue.

JURISDICTION - Constitutional - Indians - Employer providing transportation services exclusively to aboriginal people who came from reserves to Winnipeg for medical treatment fell within provincial jurisdiction on labour relations matters.

The Employer provided transportation services exclusively to aboriginal people who came from reserves to Winnipeg for medical treatment. After the Board certified the Union to represent a unit of drivers and dispatchers, the Employer objected on the grounds that its labour relations were subject to federal jurisdiction. It argued that as per section 91(24) of the *Constitution Act* its operations were infused with "Indianness"

because Indian bands, through the corporation and financed by the federal government, provided a health service to Indians only and because of the native language aspect of the service. It also argued that its operations fell under section 92(10)(a) (“Lines of Steam and other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.”). The Union raised the objection that the issue of jurisdiction had not been raised during the certification proceedings.

Held: While the Employer should have raised this issue in the certification proceeding, the Board took the exceptional step of proceeding on its own motion to review the order solely on the constitutional jurisdiction issue given it had not addressed this important issue in the past. The argument that section 92(10)(a) brought the case into the federal sphere was not applicable as the operation could in no reasonable way be viewed as extending beyond the limits of the Province. The transportation aspect of the operation was carried out completely in Manitoba, and almost exclusively in Winnipeg. Under section 92 (13) of the *Constitution Act, 1867* the provinces have exclusive legislative authority over property and civil rights and this has been construed to give provinces jurisdiction over labour relations, except where the employment was in relation to a federal work, business or undertaking. The exception to the general rule that provincial laws applied to Indians is “Indianness” which meant that provincial laws could not affect aboriginal rights or treaty rights. With respect to section 91(24), the Supreme Court has determined that the spending of federal money cannot bring a matter which is otherwise provincial into federal competence. Also, while the Employer was controlled by the band councils, that participation did not infuse the Employer with the same status as a band council, nor with the same legal obligations that were imposed on band councils by the *Indian Act*. In any event, jurisdiction over labour matters depends on legislative authority over the operation, not the person of the employer or the employees. Similarly, the health of Indians or the transportation of Indians were not matters which distinguish Indians from non-Indians in any cultural, historical or legal rights sense, and therefore they were not at the core of section 91(24). Using the functional test to determine whether the business was a federal work or undertaking, the Board noted that the employees in the bargaining unit drove or dispatched vehicles which was not a traditional Indian activity and did not promote native culture. Other than the ability to speak a native language being an asset, the job responsibilities were no different than if the incumbent were transporting non-aboriginals. The preference to employ aboriginal employees and for employees who speak a native language was irrelevant. Even assuming the provision of health care to reserve Indians was an obligation of the federal government, such an obligation did not create exclusive legislative authority over the subject. In any event, this was not a health service, but a transportation service and all the services were provided in Winnipeg. Accordingly, on the basis of the functional test, the Board concluded that the Employer was not a federal work or undertaking under section 91(24) and therefore the Board had the jurisdiction to certify the Union.

Sperling Industries - and - United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 254
Case No. 373/03/LRA
July 30, 2003

FIRST COLLECTIVE AGREEMENT - JURISDICTION - Board's failure to provide reasons for certification order did not invalidate the application for first collective agreement or deprive the Board of jurisdiction to proceed to consider the merits - Board also held that it may impose a first collective agreement despite that no employees were in the bargaining unit - Preliminary objections dismissed.

The Union was the certified bargaining agent for all Red Seal Journeymen and Indentured Apprentice Plumbers and Steamfitters employed by the Employer. Before the parties had commenced collective bargaining, the lone employee in the bargaining unit tendered his resignation. The Employer informed the Union that since no employees were in the bargaining unit the Union had no legal right to insist that the Employer bargain with it. As the parties were unable to settle the terms of a collective agreement, the Union filed an application for the Board to settle the provisions of a first collective agreement. The Employer advanced two preliminary objections to the Board's jurisdiction to impose that agreement. First, it submitted the Board failed to exercise its jurisdiction when it did not provide reasons for its earlier decision to grant certification to the Union, despite the fact that the Board advised the parties in writing that it would do so. Second, the Employer submitted the Board may not impose a first collective agreement as no employees were in the bargaining unit.

Held: With regards to the first objection, the Board held that the Certification Order remained in effect despite the absence of reasons and that the order and reasons were not inexorably linked. If the Employer wished to challenge the Certification Order it could have applied to the Board for review in accordance with section 143(3) of *The Labour Relations Act* and Rule 17 of the *Manitoba Labour Board Rules of Procedure*. The Board noted that the Order had not been stayed or otherwise affected by a subsequent Court Order or by a subsequent Order of the Board. The Certification Order, having not been cancelled, remained operative. The Board also considered the provisions of the first contract legislation, where the prerequisites required to file a first contract application have been satisfied, the Board must consider the application and impose a collective agreement within sixty-three days of receipt of the application. The *Act* did not grant discretion to the Board to delay, adjourn or dismiss an application for imposition of a first collective agreement. The Board's failure to provide reasons did not invalidate the present application or deprive the Board of jurisdiction to proceed to consider the merits. Therefore, the first preliminary objection was dismissed. With regards to the second preliminary objection, the Board did not accept that section 87 expressed a legislative intent that the unit must contain employees at the time that the application was filed. To accept that argument would indeed wreak havoc with industrial relations in the province, particularly in the construction industry where the ebb and flow of employment can result in the absence of employees covered by a collective agreement for a period of time. It is not reasonable to construe the definition of "collective agreement" in such a fashion as to terminate or suspend a collective agreement if there are no employees in the bargaining unit. Therefore, the Board dismissed the preliminary objections and imposed the terms and conditions of the first collective agreement.

Salvation Army Haven - and - Canadian Union of Public Employees, Local 2348 - and - Robert M. Vinck
Case No. 455/03/LRA
September 18, 2003

DUTY OF FAIR REPRESENTATION - COLLECTIVE AGREEMENT - WAGES - Retroactive Pay - Employee voluntarily terminated full-time employment and converted to casual status prior to settlement being reached on new collective agreement - Applicant not an employee pursuant to newly signed collective agreement so as to be eligible for retroactive pay - *Prima facie* case not established - Application dismissed.

The Employee alleged that the Union contravened section 20(b) of *The Labour Relations Act* by not pursuing the payment of retroactive pay on his behalf after the finalization of the new collective agreement. The Union took the position that the application should be dismissed as the Employee voluntarily terminated his full-time employment and converted his employment status to that of a casual employee prior to the date of the final Memorandum of Agreement and was, therefore, excluded from the final payment.

Held: The Board found the employee voluntarily terminated his full-time employment prior to the final Memorandum of Settlement being entered into. Upon reviewing the Memorandum of Agreement, the Board found there was no agreement to extend the payment of retroactive pay to persons who had terminated their employment prior to the conclusion of the final terms of the new Collective Agreement. The Applicant knew that the final settlement was imminent. He could have canvassed the Bargaining Agent as to his eligibility to the retroactive pay if he terminated his employment. He did not. Being kept on the casual list was of no assistance to him as casual employees were excluded from the terms and conditions of the Collective Agreement. Therefore, the Board decided that the Applicant failed to establish a *prima facie* case that he was an employee who was represented by the Bargaining Agent, pursuant to the Collective Agreement, at the time the Collective Agreement was finalized.

St. James-Assiniboia School Division No. 2; Seven Oaks School Division No. 10; School Division of Portage la Prairie No. 24; Pine Creek School Division No. 30; Brandon School Division No. 40 - and - Manitoba Teachers' Society

Case Nos. 223/02/LRA to 246/02/LRA
November 13, 2003

BARGAINING UNIT - EMPLOYEE - Casual - *Public Schools Act* defined teachers as those employed with written contracts - Substitute teachers were not employed under written contracts and therefore were not deemed employees for the purpose of inclusion in bargaining units covering "all teachers employed".

VOLUNTARY RECOGNITION - Substitute teachers - Existence of pay rates and other incidental benefits for substitute teachers in the collective agreement did not in itself determine they had been given voluntary recognition.

The Union filed an application seeking a Board determination pursuant to section 142(5)(a), (d), (e) and (h) of *The Labour Relations Act* in regards to the inclusion of the classification of "substitute teacher" within the existing teachers' bargaining unit throughout Manitoba. *The Public Schools Act* contained provisions dealing with the issues of collective bargaining between teachers and school divisions. The legislation defined teachers as those employed with "written contracts". The certificates issued to the various school divisions and bargaining agents defined the unit as "all teachers employed." The Employer submitted that although many of the collective agreements had references to "substitutes", they, in most cases, only related to the issue of wage rates, the inclusion of which did not imply that substitutes were covered by a particular Collective Agreement.

Held: The Certificates issued to the respective school divisions and teachers' associations by the Collective Agreement Board describe the Bargaining Unit as: "a bargaining unit composed of all teachers employed by". In reviewing this issue, the Board found that *The Public Schools Act* clearly and purposefully defined a teacher for the purpose of the certification process as having a "qualified teacher employed under a written contract". Although substitutes were qualified teachers, they were not employed under a written contract referred to in the definition found in the applicable legislation. The Board was therefore satisfied that substitutes were not deemed employees for the purposes of the certificates issued pursuant to *The Public Schools Act*, and accordingly, the application failed on Section 142(5)(a) and (d). With regards to Section 142(5)(e), the Board was satisfied that the existence of pay rates and other incidental benefits did not in itself determine the substitutes have been given voluntary recognition. Many collective agreements reference pay rates and limited such things as hours and type of work for classifications of employees who are not within the bargaining unit. This was done, not only to establish base rates for probationary or casual employees, but also as a protection and deterrent to the undermining of the rights of those employees within the scope of the collective agreement. Therefore, the Board found the evidence was insufficient to conclude that the school divisions had voluntarily recognized substitute teachers. The Board declined to make a determination as to whether substitute teachers were a unit appropriate for collective bargaining as per Section 142(5)(h) until an appropriate application for certification was before the Board.

Sperling Industries Ltd. - and - United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 254

Case No. 732/01/LRA

October 7, 2003

APPROPRIATE BARGAINING UNIT - APPLICATION FOR CERTIFICATION - Automatic - Management - Despite job title being "Piping Superintendent" incumbent did not supervise any other persons as he was only employee in the applied for unit - Board not persuaded individual exercised management functions primarily - Union had 100 percent support and met required minimum support for certification without a representation vote - Application for certification granted.

The Union filed an application for certification for a unit described as "Red Seal Journeymen and Indentured Apprentice Plumbers and Steamfitters". Only one person was in the applied-for unit. The Employer's position was that he should be excluded because he performed management functions primarily and was therefore not an employee for the purposes of the *Act*. His job posting referred to the position as a "pipefitter/supervisor". The Employer produced a spreadsheet showing a breakdown of the individual's hours spent at various tasks. The spreadsheet appeared to indicate that he spent a majority of his time on "supervision" as opposed to working with the tools of the trade. The individual testified that he used the tools of the trade about half the time and that the majority of his time was spent on pipefitting, including estimating which was part of any trade. The rest of the time he performed tasks such as ordering material for jobs or meetings with other staff to discuss work. He testified that he had never disciplined anyone, and never been told that he had the authority to fire.

Held: The Board did not give much weight to the fact that the individual was called a "piping superintendent". Job titles in themselves were not of much significance generally; it was what the employee actually did that was important. The Board did not find the spreadsheet to be helpful as the individual's diary for the same

week indicated he was working on piping in the shop for many hours. The Board was not satisfied that the individual had the power to implement any discipline. There was no question that the individual did not supervise any other persons in the unit as there were no other persons in the unit. The Board was not persuaded that the individual exercised management functions primarily so that he should be excluded from the unit. Accordingly, the Board determined that the individual was an employee for the purposes of the *Act*. Since there was 100 percent support for the Union, the Union met the required minimum support for certification without a representation vote under section 40(1), and the Board granted the application for certification.

City of Winnipeg - and - Amalgamated Transit Union, Local 1505

Case No. 771/02/LRA

October 27, 2003

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

The Employer created the position of Facilities Maintenance Coordinator ("FMC") to reclaim a lost supervisory position which had been represented five years earlier by Winnipeg Association of Public Service Officers ("WAPSO"). At the time of the posting, the Building Services in Charge ("BSIC") position was vacant and remained as an existing but unfilled classification at the time of the application. The BSIC position fell under the Amalgamated Transit Union ("ATU") bargaining unit. The ATU applied for a Board Ruling that the FMC position was the same as BSIC position, and therefore, should be included in the ATU's bargaining unit. It submitted that given the *degree of similarity* between the work of the FMC and the BSIC, the Employer could easily have carved out the FMC duties which were inconsistent with ATU member status and asked the Supervisor of Facilities Maintenance or the Superintendent to handle them. This would allow the basic job to continue as part of the ATU bargaining unit.

Held: From reviewing the bulletin notices and the job descriptions, the Board found that the two positions were similar, but not identical. The Board found a clear distinction and significant differences between the FMC and the BSIC in terms of personnel and disciplinary functions. The FMC was fully authorized to appraise the performance of subordinates, discuss performance problems and take remedial action, determine and impose formal disciplinary action, and participate in the selection process for vacancies. The BSIC was limited to reporting on performance and disciplinary issues to the supervisor. The Board noted that the incumbent deferring in favour of his supervisor on some occasions did not negate the reality of the FMC's authority as compared to the BSIC. Another important difference was that the FMC did no hands on work at all, whereas the BSIC did some. The Board also found that in creating the FMC, the City *de facto* discontinued the BSIC position. Although the BSIC technically continued on the books, in reality most of the job has been swallowed by the FMC, with work on tools being assumed by existing regular electricians. The FMC position clearly fell outside the ATU Certificate and within the WAPSO unit. The Board found that a carve-out could be accomplished without serious disruption to the facilities maintenance operation. However, the City was entitled to establish the job requirements and qualifications for the FMC. The Board could not overrule the City and direct it to revise its organizational structure. Historically, the City used a WAPSO position, which was lost during the 1995 cutbacks and essentially restored with the creation of the FMC in 2000. On these facts, ATU's argument that the Employer had departed from a long established practice was not particularly strong. Therefore, the Board concluded that the Facilities Maintenance Coordinator was not the same position as the Building Services In Charge and should not be included within the ATU bargaining unit.

Faroex - and - United Food and Commercial Workers Union, Local 832 - and - Nicolas Winko
Case No. 1010/01/LRA
December 4, 2003

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

REMEDY - DECERTIFICATION - Board has no authority to order vote in decertification application in absence of specific language in *Labour Relations Act*.

The Applicant Employee filed an application for decertification which was supported by thirty-three employees. The nominal roll filed by the Employer showed that the number of employees at the time of filing the application was sixty-four. The Union in its Reply to the application objected that the employer's nominal roll did not include a number of employees who did not support the petition. If those individuals were included the Applicant's support level would fall below the minimum required by the legislation. After investigating the individuals' status, the Employer acknowledged that three should be listed on the nominal roll. The Employer confirmed that an agreement was reached with the Union, whereby an employee in Maintenance would be recognized as being in the bargaining unit while the position he held would remain an excluded position within the Maintenance Department. The Employer confirmed that although two of the individuals on Workers Compensation had been off work for some time, as the Employer had taken no action toward their employment status, they ought to have been listed. However, the Applicant still questioned the inclusion of the three individuals.

Held: While the Applicant disagreed as to whether the three employees should be included on the nominal roll, the Employer and the Union were in the best position to know who should be considered an employee at a particular time. Absent some question about the relationship of the Union to the Employer and the status of the Union itself, the Board would not question an agreement between an employer and a union on such an issue. Independent of that agreement, the Board found that the three individuals should be included on the nominal roll. The Maintenance employee should be included as he was in the unit at the date of the application and that his position was excluded was irrelevant. The individuals on Workers Compensation should be included because they had a sufficient continuing interest in the unit. Both hoped to return to work and neither had been terminated. Accordingly, since sixty-seven persons were on the nominal roll without question, and only thirty-three of the employees on the nominal roll supported the petition, the application had the support of less than fifty per cent of the employees. Therefore, the application was dismissed. With respect to the submission that the Board should order a vote based on a finding of an unfair labour practice, the Board noted there was no authority in *The Labour Relations Act* for such a remedy. The provisions of the *Act* regarding cancellation of certification would have to contain specific language giving the Board the power to order a vote in those circumstances.

Faroex Ltd. - and - United Food and Commercial Workers Union, Local 832 and Evangeline Kmet - and - Andrew Good
Case No. 18/02/LRA
December 4, 2003

DECERTIFICATION - PRACTICE AND PROCEDURE – *Prima facie* – Applicant alleged Shop Steward unfairly attempted to compel or induce him to oppose and not support an application for decertification – Held reasonable employee would not view Steward's statements that wages would be cut and jobs were in jeopardy to be intimidation, fraud or coercion – *Prima facie* case not established – Application dismissed.

The Applicant filed an application for an unfair labour practice alleging that the Union breached Sections 8(c), 8(e) and 19(d) of *The Labour Relations Act* in seeking by intimidation, fraud or coercion to compel or induce him to oppose and not support an application for decertification. Specifically, he alleged a shop steward stood so as to prevent him from doing work. She told him that if the Union were decertified, wages would be cut and

his father's job with the Employer would be in jeopardy. Later he learned that neither of these statements was true.

Held: The Board was inclined to dismiss the case without any hearing at all. However, in light of ongoing acrimony in this particular workplace, which had resulted in a number of applications before the Board, it felt that hearing the oral submissions of the parties was important. The Union urged the Board to consider that the communications did not intimidate the Applicant as he signed the petition anyway. In the context of a preliminary motion to dismiss, the Board stated that it had to consider the allegations in an objective manner without regard to the actual effect on the person allegedly victimized by the alleged misconduct. Assuming the Shop Steward did make the statements attributed to her, the Board could not see how these statements could reasonably be viewed as intimidating or coercive. For an action to be "intimidation or coercion" there must be some force or threatened force, whether of a physical or non-physical nature. The statements made did not imply that the Shop Steward had the power to reduce wages or affect an employee's job security. She had no force, physical or non-physical to apply. The statement concerning the reduction in wages was not fraud. It might turn out to be *wrong*, but it could not even be said to be a falsehood. While the job security statement could be characterized as a lie, it certainly could not be said that the Applicant was being induced to "part with some valuable thing or surrender a legal right" which was part of the definition of fraud. In the Board's opinion, the statements made must be viewed from the perspective of the reasonable employee who is possessed of critical faculties and the ability to assess issues and inquire on his or her own behalf. The Board was not of the view that the statements were such as they would overpower the critical faculties of the reasonable employee. After hearing the oral submissions, the Board found a *prima facie* case had clearly not been established. Accordingly, the application was dismissed.

Carlson Structural Glass Inc. - and - Manitoba Fibreglass Union - and - Camilo Llave
Case No. 713/03/LRA
January 8, 2004

DUTY OF FAIR REPRESENTATION - Union's withdrawal of grievance on the advice of legal counsel and absence of a grievance being filed by Employee satisfied Board the Employee failed to establish *prima facie* case and that Union had not acted contrary to section 20 - Application dismissed.

The Union filed a grievance on behalf of the Employee which was later withdrawn on the advice of legal counsel. The Employee was subsequently terminated as a result of an alleged attendance issue. He contacted the Union in regards to loss of wages but did not file a grievance in regards to his termination. Subsequently, the Employee filed an application pursuant to section 20 of *The Labour Relations Act* alleging that the Union failed to represent him in regards to his termination.

Held: The Board, in considering the material filed, was satisfied that the Applicant has failed to establish a *prima facie* case that the decision to withdraw the grievance contravened section 20 of *The Labour Relations Act*. In addition, in the absence of a grievance being filed by the Applicant, the Board was further satisfied that the Union had not acted contrary to section 20(a) in respect of this termination of employment. Therefore, the application was dismissed.

E.H. Price Ltd. -and - Linda Giesbrecht - and - Sheet Metal Workers' International Association
Case No. 526/03/LRA
January 20, 2004

DUTY OF FAIR REPRESENTATION - *Prima facie* - After interviewing and questioning potential witnesses, Union decided not to take Employee's grievance to arbitration - Employee raised issues of management incompetence and a Workers Compensation issue which were not relevant to an unfair labour practice application - Applicant failed to establish *prima facie* case - Application dismissed.

The Union filed a grievance disputing the Employee's termination. The grievance was taken to step 3, at which time the substance of the grievance was discussed with the Employer, as well as interviewing and questioning potential witnesses. After considering all the relevant facts, the Union decided that the matter would not be taken to arbitration. The Employee filed an application, pursuant to section 20 of *The Labour Relations Act*, alleging that the Union committed an unfair labour practice.

Held: In her application, the Employee raised issues of management incompetence and a Workers Compensation issue. The Board noted that those matters were not relevant to the application before it, and in particular, as it related to section 20 of the *The Labour Relations Act*. After considering the totality of the material before it, the Board was satisfied that the Applicant had failed to establish a *prima facie* case that the Respondent acted contrary to Section 20(a)(i) and (ii) of *The Labour Relations Act* in determining that it would not take this matter to arbitration. Therefore, the Board dismissed the application.

University Of Manitoba - and - Canadian Union of Public Employees, Local 3909
Case No. 408/03/LRA
February 5, 2004

BARGAINING UNIT - Appropriate Bargaining Unit - Professional Employee defined - Sessional Lecturers employed in the School of Music who were, or who were entitled to be, a member of the Manitoba Registered Music Teachers' Association, created under legislation were not professional employees for the purposes of *The Labour Relations Act*.

The Union filed an application seeking that the Board determine that Sessional Lecturers employed in the School of Music were employees represented by the Union. The Employer stated that the individuals in question were "professional employees" as defined in section 1 of *The Labour Relations Act*. As the Certificate specifically excluded professional employees, the Employer asserted that the individuals in question did not fall within the bargaining unit. The parties requested that the Board decide the preliminary issue of whether a person who is, or is entitled to be, a member of the Manitoba Registered Music Teachers' Association (MRMTA), created under *The Manitoba Registered Music Teachers' Association Incorporation Act*, was a "professional employee" for the purposes of *The Labour Relations Act*.

Held: Despite the fact that legislation was enacted to incorporate the MRMTA, the Board did not accept that Registered Music Teacher was a profession. The definition of "professional employee" required that individuals practice their profession under the auspices of a "professional organization" or be eligible to do so. A "professional organization" was an entity established to govern the practice of a profession in its entirety. The MRMTA merely had the statutory authority to govern those individuals who voluntarily choose to associate themselves with the entity. Absent that affiliation, those individuals could carry on work in their chosen field with impunity. Therefore, the MRMTA was a "voluntary association" rather than a "professional association." The concept of a profession entailed a minimal academic qualification. The MRMTA Act contemplated an individual becoming a "Registered Music Teacher" even where the educational requirements of subsection 9(2)(a) were not met. The fact that the legislation contemplated the registration of members who potentially had no academic qualifications, suggested that the fundamental prerequisites required for a calling to be labelled a "profession" were not met in the case of "Registered Music Teachers." Registered Music Teachers may perform the same duties in the same manner as ordinary music teachers. To say that they apply "specialized knowledge" challenged ordinary logic. In the result, the Board concluded that a person who was, or was entitled to be, a member of the MRMTA created under *The Manitoba Registered Music Teachers' Association Incorporation Act* was not a "professional employee" for the purposes of *The Labour Relations Act*.

Monarch Industries Ltd. - and - Monarch Industries Employees' Association - and - Eduardo Rodriguez
Case No. 549/02/LRA
February 20, 2004

DUTY OF FAIR REPRESENTATION - REMEDY - Board dismissed Employer's and Union's request for costs against Applicant as he believed he was victim of an injustice and Association's conduct, while not arbitrary, was questionable.

DUTY OF FAIR REPRESENTATION - Applicant complained that Association accepted offer to reduce discipline without consulting him - Association's communication with Applicant not of a standard that bargaining unit member could expect from union but it cannot be said to have acted arbitrarily - Application dismissed.

The Applicant filed a grievance relating to a written reprimand he received for failing to wear required hearing protection equipment. The Employer considered the matter closed after it reached a settlement with the Association and because the Applicant had accepted a verbal reprimand as a resolution to his grievance. Subsequently, the Applicant filed an application alleging that the Association failed in its duty of fair representation. His principal complaint was that the Association accepted the offer to reduce the discipline without consulting him. He also complained that the Association did not inform him in advance of the purpose of a meeting with management to address the issue of his hearing protection nor did it advocate on his behalf during the course of the meeting. As well, he complained that the Association did not properly investigate his complaint.

Held: The complaint that the Association did not advocate on the Applicant's behalf did not accord with the facts. The Board did not see what there was for the Association to investigate in this particular situation as the essential facts were clear. The Association proposed a reasonable compromise and proceeded in the not unreasonable belief that the Applicant agreed with it. It succeeded in reducing a written reprimand to a verbal reprimand, the mildest form of discipline. However, the Board did not think that the Association's communication with the Applicant was of a standard that a bargaining unit member should be able to expect from his union. The conversations appear to have taken place on the shop floor, certainly not conducive to communication, especially when one of the parties was hearing-impaired. As well, the Association did not know the purpose of the meeting in advance. A better practice would have been for the Association to ask the Employer before the meeting why it was being called, so that the Association could have prepared the Applicant for the meeting. While the Association may not have acted as sensitively and professionally as it should have, it cannot be said to have acted arbitrarily. Therefore, the Board dismissed the application. Counsel for the Employer and the Association requested costs on the basis that the application was an abuse of the Board's process. The Board held that the application was not so frivolous and without merit as to warrant an award of costs. The Applicant genuinely believed that he was the victim of an injustice and the Association's conduct was questionable, even if it falls short of arbitrariness. The Board was also not prepared to make an order of costs against the community organization assisting the Applicant to present his case as it was not a party to the proceeding. Its representative was not a professional labour relations practitioner and he was assisting the Applicant as a contribution to the community.

Brandon University - and - Brandon University Faculty Association - and - James Kepron
Case No. 468/03/LRA
March 17, 2004

DUTY OF FAIR REPRESENTATION - TIMELINESS - Arbitrary Conduct - Employee alleged Association failed to properly represent him when he was denied tenure - Board refused to accept application as it was filed three years after critical event, denial of tenure not a dismissal under Section 20(a) of *The Labour Relations Act* and for failure to establish *prima facie* case that Association's conduct was arbitrary under Section 20(b) of *Act*.

The President of the University denied the Employee's application for tenure. The Employee appealed the decision to the Tenure Appeals Committee ("TAC") which dismissed the appeal. The Employee raised concerns to the Association regarding the President's nominee to TAC. The Association and the University resolved that the Association would await the decision of TAC before taking any further action. The Employee was copied on all correspondence related to those discussions. Subsequently, the Association and the Employee filed a Notice of Application in the Court seeking an order to quash the TAC decision. The Court found TAC was an arbitration board and as per Section 128(3) of *The Labour Relations Act* the judicial review application was statute barred as it should have been filed thirty days after the TAC decision. Years later, the Employee filed an application with the Board alleging that the Association failed in its duty of fair representation. The Association and the University contested the application on the grounds that the Employee had failed to establish a *prima facie* case and that the application was "unduly delayed".

Held: The Board dismissed the application for three reasons. First, the Applicant had unduly delayed the filing of his complaint. The critical events were first, the TAC decision, issued five years prior to the filing of the application and second, the Court judgment, issued three years prior. The Employee sought advice from his lawyer when the Court decision was issued and was aware that he could have filed an unfair labour practice complaint at that time. By any objective standard, three years constituted undue delay within the meaning of section 30(2) of the *Act*. The Employee submitted that the delay was explained by the fact that the

Association had control of the process. The Board was satisfied that the Employee was not only aware of the steps the Association was taking but also that he participated in and concurred with those decisions. Second, the Employee's contention that the Association failed to take "reasonable care" was premised on the position that a denial of tenure constituted a "dismissal" within the meaning of section 20(a). "Dismissal" in section 20(a) means a dismissal in the culpable or "no just cause" sense commonly understood in collective bargaining relationships, academic or otherwise. The non-granting of tenure did not constitute a "dismissal" within the meaning of section 20(a). Third, the Applicant failed to establish a *prima facie* case that the Association's conduct was arbitrary under Section 20(b). The Association made an advocate available to the Employee. It raised the Employee's concerns regarding the President's nominee on TAC. To later argue that the Association ought to have been an abiding presence throughout both the tenure process and the TAC proceeding because the Court judgment characterized TAC as an arbitration board was an overstatement and did not disclose arbitrary conduct on the part of the Association. The application for judicial review was done on the basis that the TAC was not an arbitration board. That type of application was not subject to the thirty-day limitation period. Throughout all of the proceedings, the Employee was privy to the key strategic discussions and decisions which were made by the Association. Therefore, because there was an undue delay under Section 30(2) and that the application did not disclose a *prima facie* case, the Board dismissed the application.

Winnipeg Regional Health Authority - and - Dr. Stella Babic, also known as Dr. Mensura Altumbabic - and -
The Professional Association of Residents and Interns of Manitoba

Case No. 847/01/LRA

March 19, 2004

DUTY OF FAIR REPRESENTATION - Motivation of Employer - Failure to Refer Grievances to Arbitration - Medical Resident's termination resulted from failure to meet condition of employment to be enrolled in post graduate program and be registered on Educational Register, not because of complaints made about colleagues and superiors - Association entitled to rely on legal opinion not to refer grievances to arbitration - Resident failed to establish *prima facie* case that Association and Employer committed unfair labour practices.

The Employee, who was a post graduate medical resident, had been released from the Pathology Residents Training Program. The Employer terminated her employment because she failed to meet the condition of employment that a medical resident must be enrolled in a post graduate medical education training program and be registered on the Educational Register. The Employee filed a number of grievances which related to the termination and to other incidents, but the Association did not take any of the grievances to arbitration. The Employee then filed an application for unfair labour practice against the Association and against the Employer. She alleged that the Employer was harassing her and taking retaliatory and discriminatory action against her for complaining about various colleagues and superiors. The Employee was of the opinion that the Association refused to properly investigate the situation, refused to proceed to arbitrate her grievances and was acting in a discriminatory and harassing manner towards her. The Applicant was not satisfied with the legal counsel or the legal opinions which the Association retained and felt that she had been left with many unanswered questions.

Held: Upon review of the legal opinions provided by the Association, the Board found the Association had acted in good faith and with due diligence. Further, the Association was entitled to rely on the legal opinion it obtained, which concluded that the grievances would not likely succeed at arbitration. The decision not to arbitrate the Applicant's grievances was not unreasonable. With respect to the allegations made against the Employer, the evidence showed that the Employee's termination from her employment was as a result of her release from the Pathology Residents Training Program and of her failure to maintain her registration on the Educational Register. Therefore, the Applicant failed to establish a *prima facie* case in these particular circumstances. The Board, therefore, dismissed the application.

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

(CAHRD) CENTRE FOR ABORIGINAL HUMAN RESOURCE DEVELOPMENT - and - Marissa Fontaine-Ellis
Cases No. 421/02/ESC & 586/02/LRA
April 22, 2003

UNFAIR LABOUR PRACTICE - NOTICE - Employee filed claim for three days wages in lieu of notice - Payroll evidence showed she was paid in full - She also claimed termination contrary to Section 133(1)(b) of *The Employment Standards Code* as it resulted from job complaints she made - Held Employee terminated at end of probationary period for unsuitability - Employee complained about "labour issues" but did not advise Employer about complaint filed with Labour Board - She did raise filing a complaint post-termination, but that was not relevant time period for purposes of section 133(1)(b) - Complaint under Code not established and unfair labour practice application dismissed.

EVIDENCE - Employee requested proceedings be taped - While it was Board's policy to not tape proceedings, it would consider request if Employee retained services of a court reporter and made transcript available to Board and all parties.

The Employee filed a claim for wages in lieu of notice arguing that she was owed three days pay. She also raised, for the first time, during the course of the hearing the claim that she was terminated as a result of a letter she wrote in which she complained about aspects of her job. She argued the termination was contrary to section 133(1)(b) of *The Employment Standards Code*. The Employer took the position that she had been hired as a term employee. Her employment was terminated at the end of her probationary period, as it determined her performance was unsatisfactory. One of the Employee's pay stubs reflected seven days notice and a second reflected three days notice, such that the Employee was paid her two weeks wages in lieu of notice in full.

Held: The Employee requested that the proceedings be taped. She was advised that it was not the Board's policy or practice to tape proceedings, but that if she wished to retain the services of a court reporter and make any transcript available to the Board and all parties the Board would consider her request in that regard. With respect to the three days wages, the Board reviewed the payroll documents and was satisfied that the Employee had been paid in full. The claim for unpaid wages in lieu of notice was therefore dismissed. Turning to the issue of section 133(1)(b), nowhere in the documents or the unfair labour practice application did the Employee allege that her termination was the result of her advice to her Employer that she would be filing a complaint with the Labour Board or anywhere else. The testimony of the Employee and the letter revealed that she had complaints about "labour issues". However, that was not the type of complaint contemplated by section 133(1)(b). She did raise filing a complaint post-termination, but that was not the relevant time period for the purposes of section 133(1)(b). The Board was satisfied that the Employee was hired on a term position. The Employer determined it would not extend the term in light of its serious concerns regarding the Employee's suitability. Therefore, the Board found that the evidence was not sufficient to establish a successful complaint under section 133(1)(b) of the *Code* and therefore the unfair labour practice application was dismissed.

El Dorado Trading Centre Ltd. - and - Dmitri Werbeniuk
Case No. 730/02/ESC
May 6, 2003

EMPLOYEE - Employer disputed Order for wages owing claiming no employer-employee relationship existed and that he only agreed to have Employee work as a favour so that he could get some business experience and training - Held employee-employer relationship existed as evident from Payroll Time Record signed by the Employer as based on discussions between the Employer and the Employee about continued employment.

WAGES - Rate of Pay - Although Employee stated rate of pay was \$15.00 per hour, complaint form, which was signed by him, had rate of \$14.00 per hour. In assessing rate of pay, Board was satisfied that information on complaint form, signed by Employee, was the rate to be used in this matter.

The Employee contended that the Employer hired him to work on a temporary basis at a rate of \$15.00 per hour. After he had worked a nine-week period, the Employee requested full-time employment. The Employer stated that he was not prepared to pay \$15.00 per hour but offered him \$10.00 per hour. He asked the Employee to take the day off and think about it. When the Employee came in the next day, the Employer was not at work and he was told he had been fired. As a result of a claim the Employee filed with the Employment Standards Division, the Employer was ordered to pay \$6,768.01 for wages, vacation wages and overtime. The Employer disputed the Order. He argued that no employer-employee relationship existed between the parties. He claimed that he only agreed to have the Employee work as a favour so that he could get some business experience and training in the brokerage business. The Employer also disputed owing wages for one week of the hours claimed because the business was closed due to the Employer's health problems.

Held: The Employer was presented with and regularly acknowledged, by affixing his signature, the receipt of documents referred to as a "Payroll Time Record". These records contained the hours claimed by the Employee as having been worked during those particular time frames. The Board was satisfied that, based on the evidence presented, in particular, the discussions between the Employer and the Employee about continued employment, that an employee-employer relationship existed. The Board was further satisfied that the Employee's claim should be limited to those hours for which the Employer, by his signature on the payroll records, had acknowledged. Therefore, the seven days that the Employer was under medical care was excluded from the claim, as the Employer did not authorize the hours. Throughout the proceedings there was confusion as to the rate of pay to be applied in assessing the amount owed to the Employee. Although the Employee stated that the rate of pay was to be \$15.00 per hour, the complaint form, which was signed by him, had the rate of \$14.00 per hour. In assessing the rate of pay, the Board was satisfied that the information on the complaint form, signed by the Employee, was the reference to be used in this matter.

Kildonan Ventures Ltd., trading as Kildonan Auto & Truck Parts - and - Matt Bruce
Case No. 749/02/ESC
June 18, 2003

NOTICE - Forfeiture - Employer's action of removing Employee's time card caused Board to question whether Employer was prepared to let him work out notice period- Unlikely Employee would quit without notice as he was aware he would lose money and his prospective employer was willing to wait two weeks for him to start new job - Employer's claim for insufficient notice dismissed - Employee's claim for wages and wages in lieu of notice allowed.

The Employer submitted that the Employee came in to work on the day in question, and said it was his last day. The Employer claimed that when he told the Employee he needed to give two weeks notice, they had an argument and that the Employee said he was leaving anyway. The Employee testified that he spoke to the Employer about his two weeks notice at the end of his shift the evening before the day in question. The next morning when he came to work, he found his time card gone. He said he went in to see the Employer who had the time card on the table in front of him. The Employee testified that the Employer was angry and told him to leave. The Employer filed a claim for forfeiture for insufficient notice of termination by the Employee and the Employee filed a claim for wages and wages in lieu of notice.

Held: The Employer did not deny that he had removed and placed the time card on his desk. This action caused the Board to question whether the Employer had made his mind up about the Employee the evening before the argument took place and was not prepared to let the Employee work out his notice. Given that the Employee testified that he was aware that he would lose money and that his prospective employer was willing to wait for him to start, it was unlikely that he would quit without notice. Therefore, the Board dismissed the Employer's claim for insufficient notice and allowed the Employee's claim for wages and wages in lieu of notice.

Kildonan Ventures Ltd., trading as Kildonan Auto & Truck Parts - and - C. Robertson
Case No. 751/02/ESC
June 18, 2003

NOTICE - Forfeiture - Employee attempted to negotiate a shorter notice period - Employer told him in frustration to "leave now" - Claim for wages allowed, but claim for wages in lieu of notice and claim for insufficient notice not allowed.

The Employee gave notice to the Employer as he had received another job offer. He claimed he asked if he could work only one week of the notice period but that he was willing to work out the two weeks. He also offered to work out the notice period by having his brother work for the company. He was ready and willing to work out the two weeks. However, it was his understanding that he was not welcome to work any more days because the Employer told him "he could leave now". The Employee had filed a claim for wages and wages in lieu of notice. In response, the Employer filed a claim for forfeiture for insufficient notice of termination.

Held: The Board found that the Employer was not prepared to let the Employee work out the two weeks notice and said as much when he told the Employee he could "leave now". The Board noted that the Employer did not deny he said the comment but that he said it in frustration after the Employee attempted to negotiate a shorter notice period. The Board noted that there was no hardship on the Employer's business as a result of the termination of the employment relationship. The Board allowed the Employee's claim for wages, which he had already earned. However, it did not allow the claim for wages in lieu of notice nor the Employer's claim for insufficient notice.

Convergys Customer Management Inc. - and - Randy Luba
Case No. 211/03/ESC
September 3, 2003

NOTICE - WAGES - Evidence presented, including Employee's own exhibit, show he knew consequences of his continued tardiness and failure to call in as instructed - Held Employer had "just cause" to terminate his employment without being required to provide pay period's notice or wages in lieu of notice - Claim for wages in lieu of notice dismissed.

The Employee filed a claim for wages in lieu of notice. He contended that his employment was terminated without just cause and, therefore, he should be entitled to a pay period's wages in lieu of notice. In his defence, he submitted a document titled, *Constructive Action Plan* ("CAP"), addressing his attendance issues and a follow-up document. The CAP document referred to 14 incidents of lateness during a two-month period and that an improvement was expected. The follow-up document stated that the Employee had not made improvements in the area of punctuality. It referred to an additional 21 incidents of lateness during a second two-month period. (The Board noted that these particular documents were presented to it by the Applicant himself and were signed by him as having been received and read.) A second CAP document was given to the Employee again dealing with his tardiness and outlining another 11 incidents of lateness from the previous CAP. That document clearly stated that, if there was no satisfactory improvement, immediate termination of employment could occur. The Applicant acknowledged receipt of the document by affixing his signature to it. Five months later, as a result of another 16 incidents of tardiness without notifying the Employer, his employment was terminated.

Held: Based on the evidence presented, including the Employee's own exhibit, which he later denied presenting, the Board was satisfied that the Employer had "just cause" to terminate his employment without being required to provide him with a pay period's notice or wages in lieu of notice. The Employee knew the consequences of his continued tardiness and his failure to call in as instructed. His claim for wages in lieu of notice was dismissed.

Broadway Messenger and Courier Ltd. - and- Robert Kleinsasser & Clifford Kitching
Case Nos. 726 & 727/02/ESC
December 19, 2003

INDEPENDENT CONTRACTOR - EMPLOYEE - Courier drivers owned vehicles and equipment and paid costs relating to vehicle - However, Employer dispatched calls and set rates charged to customers - Compensation by commission rather than by hourly wage did not mean individuals were independent contractors - Board held Applicants were Employees as defined in *The Employment Standards Code*.

The Employment Standards Division ordered the Employer to pay wages owing to the Employees, who were engaged as couriers. The Employer disputed the payment and referred the matter to the Board. The Board was asked to determine whether the Employees were employees, as defined by *The Employment Standards Code*, or were they independent contractors, as argued by the Employer.

Held: The Board noted that both Employees owned their own vehicles and one owned the dolly he used to carry heavy goods. As well, they paid the requisite fuel, maintenance and insurance costs relating to the vehicles. However, the work which they performed was essentially for the benefit of the Employer. The Employer dispatched calls to the Employees. The type of call, the number of calls, the rate charged and, therefore, the remuneration earned, lay within the control of the Employer. The Employees were expected to be available to take calls when the dispatch was operating. They were "disciplined" for any failure to do so the next day, when the dispatcher chose not to give them calls. The Employees were paid bi-weekly based on a commission rate of 75% of all deliveries made and certain other non-statutory deductions. However, being compensated in this fashion rather than by an hourly wage did not mean they were independent contractors. Risk of profit/loss was largely out of their control since the rate charged to customers was set solely at the discretion of the Employer. Therefore, the Board found an employer-employee relationship existed between the Employer and the Employees. The Employer was ordered to pay the amount of wages owing as set out in the Employment Standards Division's Order. Having regard to the relatively new definition of employee, which replaced the definitions previously found in *The Payment of Wages Act* and *The Employment Standards Act*, the Board found the Employees to be employees of the Employer.

Bobcat of Central Manitoba - and - Philippe Gervais
Case No. 534/03/ESC
January 16, 2004

NOTICE - Employee files claim for wages in lieu of notice - Four warning notices for lateness, two of which Employee signed and Notice of Warning policy satisfy Board that Employee terminated pursuant to section 62(h) and (p) of *The Employment Standards Code* - Claim for wages owing dismissed.

The Employee claimed that he gave verbal notice to the Employer to be worked out after he completed his fourth level heavy duty mechanic course. The Employer countered that, on the day in question, the Employee was informed he was terminated as he came to work late. The Employee filed a claim for wages in lieu of notice alleging he was terminated without proper notice being given. The Employer claimed that he was terminated due to an attendance issue and for non-adherence to company policy. The policy stated that any employee receiving three or more Notice of Warnings would be dismissed immediately. The Employer submitted into evidence four warning notices, the last of which was issued two days before the Employee claimed to have given notice.

Held: The Board was satisfied that the Employee received all four warning notices. Some discussion was also exchanged as to what was recorded on the *Record of Employment* by the Employer. The Board found that it had no significance in relation to what actually transpired. The Board found that the position put forth by the Employer was more credible than that of the Employee. The warnings, two of which he signed, and policy speak for themselves in satisfying the Board that the Employee was terminated pursuant to section 62(h) and (p) of *The Employment Standards Code*. Therefore, the Board found that no further wages were owing and dismissed the claim.

SUMMARIES OF SIGNIFICANT COURT DECISIONS

Union Centre Inc. - and - Hotel and Restaurant Employees and Bartenders Union, Local 206 -and - Cosmas Rowel

Court of Queen's Bench of Manitoba
Manitoba Labour Board Case Nos. 390/02/LRA & 493/02/LRA
Docket No. CI 02-01-29599
Heard by Justice Schulman
Delivered April 14, 2003

When the Union withdrew the Employee's grievances, he filed an application with the Board alleging the Union failed in its duty of fair representation. In its three-page reply, the Union argued that no factual basis had been established to support the allegation. The Employee made no response. The Board, and in the absence of any supporting particulars, was satisfied that the Employee failed to establish a *prima facie* case and dismissed the application. The Employee then made an application to the Board that it "review and rescind" the earlier ruling. He requested an opportunity to present argument and, if necessary, to amend his application and stated that if the Board required particulars, it should have demanded them prior to dismissing the application. The Board, following consideration of material and written submissions filed, was satisfied that no new evidence has been provided that would constitute a reasonable basis for review or reconsideration so as to affect its original decision. The Employee filed for judicial review arguing that the decisions of the Board should be set aside because he was refused an oral hearing and because the Board was wrong in dismissing his applications on the basis that he had failed to make out a *prima facie* case.

Held: The exclusive jurisdiction vested in the Board under section 143 of *The Labour Relations Act* to decide any question of law or fact, and the deference that is ascribed to the decision, applies to an allegation of an unfair labour practice brought by an employee against his or her union. The Court found that it was open to the Board to reach the conclusion that it was not sufficient for the Employee to recite a bare-bones allegation; that it could properly conclude that a concise statement of material facts required, at a minimum, a statement of what more the Union ought to have done in order to comply with its statutory obligation; and that the providing of such information was not the subject of particulars. Once the Union made a substantive response to the bare-bones allegation, it was open to the Board to make a preliminary assessment of the case in the absence of a substantive response from the Employee. It was open to the Board to conclude that the "new evidence" referred to in Rule 17(1) of the *Manitoba Labour Board Rules of Procedure* was not limited to the kind of newly-discovered evidence a court would require to re-open a trial or set aside a decision. It was also open to the Board to conclude that, if the Employee had pertinent information to provide in response to the position advanced by the Union and the Employer on the first application, he would have put a concise statement of it before the Board in his application for a re-hearing. As well, the Board had the discretion whether or not to convene a hearing. It is the Board that has the jurisdiction in labour relation matters and decisions of the Board are final and not subject to judicial scrutiny unless there has been a denial of natural justice or the Board has otherwise exceeded its jurisdiction by the decision it has made. The Court concluded that the Employee was not denied natural justice when he was not given the opportunity to present his complaint in person and the decision to dismiss his unfair labour practice complaint was not patently unreasonable. Therefore the application for judicial review was dismissed.

AOV Adults Only Video Ltd. -and - Manitoba Labour Board - and - Director of Workplace Safety and Health

Court of Appeal of Manitoba
Manitoba Labour Board Case No. 431/99/WSH
Docket No. AI 02-30-05412
Heard by Justice Freedman
Delivered June 9, 2003

The Employer sought an *order of certiorari* from the Court of Queen's Bench regarding a decision of the Board in which it confirmed an Improvement Order requiring that one-way mirrored window coverings replace opaque window coverings. In her preliminary decision, the motions judge determined that affidavit evidence beyond the record of the Board's proceedings could be considered on the application. The motions judge said that the requirement that an intra-jurisdictional error of law must appear on the face of the record did not apply. She stated because the allegations were jurisdictional in nature, the applicant may rely on the affidavit. The Board

appealed the preliminary decision submitting that as the alleged errors were intra-jurisdictional, in that they related to matters that were within the exclusive jurisdiction of the Board to hear and determine, the Employer was not entitled to file any additional evidence, but was limited to relying only on the record.

Held: The Court found that the motions judge based her conclusion entirely on the Employer's assertion of a loss of jurisdiction without considering whether a loss of jurisdiction could be established without taking the affidavit into account. It is not enough for an applicant simply to assert jurisdictional error to be entitled to file an affidavit in support. Such entitlement will only arise, if at all, after an analysis of both the alleged error and the record. If that error can be proven from the record, then the extrinsic evidence is not necessary, nor is it admissible. The Employer challenged that the Board exceeded its jurisdiction on the basis of repugnancy, exceeded its jurisdiction by misconstruing its role as an appellate body, and misapplied the statutory rules relating to burden of proof. The Court found the challenges could be determined from an examination of the Board's reasons and a consideration of the applicable legislation and authorities. No extrinsic evidence was required to establish the existence of any error, whether jurisdictional or otherwise. The final ground was that the Board's decision was patently unreasonable alleging that the Board disregarded evidence that the Improvement Order would not improve the safety of the employees. The Court stated that a judge would have difficulty determining from the record and the reasons whether the Board's decision was or was not patently unreasonable, since the reasons provided almost nothing in the way of detailed explanation for the decision on employee safety. Accordingly, portions of the affidavit, which outlined evidence at the hearing in detail, were admissible to fill in the gaps in the record and to provide the required evidentiary base for a determination to be made.

Emerald Foods Ltd. t/a Bird's Hill Garden Market IGA - and - United Food and Commercial Workers Union, Local 832

Court of Appeal of Manitoba

MLB Cases No. 479/00/LRA & 561/00/LRA

Docket Nos. AI 02-30-05414 & AI 02-30-05426

Heard by Justice Huband

Delivered June 12, 2003

The Board made a finding that the Employer committed an unfair labour practice when it distributed a letter to the employees just prior to a representation vote. The Board ordered that a discretionary certification be issued. The Employer filed an application for judicial review in the Court of Queen's Bench which quashed the Board's order. The Board then appealed to the Court of Appeal.

Held: The motions judge concluded from a sentence in the Board's reasons for decision that the Board had applied the wrong legal test in making its decision and, in so doing, acted beyond its jurisdiction. The motions judge stated that the Board 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. The Court noted that the question was not whether the legal test applied by the Board was incorrect, but rather, whether it was patently unreasonable. In answering that question, the focus must be broadened beyond consideration of a single sentence in the reasons for decision, where the word "might" was used instead of the words "would likely". Consideration must be given to the initial order of the Board and the totality of the reasons for decision. The reasons, read as a whole, convey that the Board was satisfied that an unfair labour practice had taken place. While there is nothing inherently improper in the distribution of the letter, it is for the Board to determine whether the intention was to cause interference and whether that interference had in fact occurred. After weighing the evidence, the legal test applied by the Board and its conclusions cannot be said to be patently unreasonable. Therefore, the appeal was allowed, the order of the Court of Queen's Bench was set aside and the order of the Board was restored.

Manitoba Rolling Mills, a division of Gerdau MRM Steel Inc. - and - United Steelworkers of America, Local 5442 - and - Rainsworth Wilson
Court of Queen's Bench of Manitoba
MLB Cases No. 240/97/LRA & 615/98/LRA
Docket No. CI 98-01-10308
Heard by Justice Suché
Delivered September 26, 2003

The Employee had been dismissed from his employment for being absent from his workstation for unacceptable periods of time. The Union grieved the dismissal. However, it had videotape evidence recording the Employee's activities and had obtained an opinion from its counsel that arbitration would not likely succeed. The Union withdrew the grievance based on the executive's recommendation to not refer the matter to arbitration and that the general membership voted against a referral. The Employee filed a complaint of unfair labour practice with the Board alleging that the Union had breached its duty of fair representation. The Board dismissed the complaint and also dismissed the application for review and reconsideration of its original decision. The Employee then brought an application before the Court seeking an order of *certiorari* quashing the decision of the Board. He argued the Board made an error of law or refused to properly exercise its jurisdiction by failing to consider portions of section 20 of *The Labour Relations Act*. He also argued the Board acted in excess of its jurisdiction or refused to exercise its jurisdiction by failing to consider whether the Union acted in bad faith or failed to take reasonable care to represent him given that neither the Constitution nor By-laws of the Union authorized its general membership to decide whether to refer a grievance to arbitration. Further, the Board failed to consider the conduct of the Union during the grievance committee meeting. The Employee and the Union filed affidavits which the Board and the Employer maintained were not admissible.

Held: The Court did not allow extrinsic evidence on the issue of the Board's failing to consider portions of section 20 of the *Act* because that issue could be decided by examining the Board's decision and reasons. The Court did allow affidavit evidence pertaining to the allegation that the Board's decision was patently unreasonable. The Board's reasons refer to the grievance committee meeting and the membership meeting but the provisions of the By-laws and Constitution were not discussed. Although the documents were filed as exhibits at the Board hearing, they were not part of the record. They needed to be before the Court to decide that issue. The Employee's complaint regarding the conduct of the Union during the meeting related to notice, timing, and format of the meeting. Neither the Board's reasons nor the dismissal order made reference to any of those details. The portion of the affidavits in question which described the evidence before the Board concerning the membership meeting was found to be admissible. Portion's of the Union's affidavit refer to the grievance committee meeting and certain practices of the Union. The affidavit did not reveal whether this information was part of the evidence before the Board. The Court was not prepared to admit the evidence as she would be hearing a different case than the Board heard. On the issue of whether the Board refused to properly exercise its jurisdiction by failing to consider portions of section 20 of the *Act*, the Employee relied on one paragraph in the dismissal order which he argued demonstrated that the Board only directed its attention to the issue of whether the Union had acted in a manner which is arbitrary, discriminatory or in bad faith. The Court noted that the order, read on its own, was somewhat ambiguous. However, the decision and reasons of the Board must be read as a whole and not examined individually or piecemeal. Looking at the entirety of the Board's reasons, the Court was satisfied that it did consider both tests set out in section 20(a) of the *Act*. As to the complaint of whether the Board's interpretation of the By-laws and Constitution was patently unreasonable, the Court found that both documents were silent on the process by which the Union decided to refer grievances. Nothing in the evidence demonstrated a breach of section 20 or that the Union could not decide the matter by a vote of its general membership. The Court ruled that the Board's conclusion that the Union's conduct did not amount to a breach of section 20 the *Act* was not patently unreasonable.

Convergys Customer Management Inc. -and - Randy Luba
Court of Appeal of Manitoba
MLB Case No. 211/03/ESC
Docket No. AI 03-30-05635
Heard by Justice Freedman
Delivered November 7, 2003

The Director of the Employment Standards Division ordered that two weeks' wages be paid by the Employer to the Employee pursuant to section 61 of *The Employment Standards Code*. Both the Employer and the Employee were dissatisfied so the Director referred the matter to the Board. The Board issued its order that the Employee was not entitled to receive wages in lieu of notice. In its Reasons for Decision the Board concluded that the Employer had "just cause" to terminate the employment of the Employee without being required to provide him with a pay period's notice or wages in lieu of notice. It further stated that the Employee knew the consequences of his continued tardiness and his failure to call in as instructed

Held: Section 62 of the *Code* contained several exceptions to the section 61 notice requirement. Of the exceptions, only subsection 61(h) could have applied. That subsection provided that section 61 did not apply if "the employee acts in a manner that constitutes wilful misconduct or disobedience or wilful neglect of duty that is not condoned by the employer". The Court found that it was not clear from the Board's Reasons for Decision whether the Board found that the incidents of lateness constituted "wilful misconduct or disobedience or wilful neglect of duty". The Board said that based on the evidence, the employer had "just cause" to terminate his employment without notice. But the phrase "just cause" is not found in section 62, and having just cause to terminate an employee's employment is not an exception to the notice requirement of section 61, unless that just cause also constituted wilful misconduct or disobedience or wilful neglect of duty. It would not be reasonable to infer from the reasons in their entirety, that the Board made a finding tantamount to wilful neglect of duty on the part of the Employee. While the Board was not bound to frame its decision in precisely the words of the applicable legislation, it must explain its reasons so that one can relate the reasons to the legislation. The Court question whether the Board assessed the evidence against the standard set out in subsection 62(h) as a careful reading of the Board's decision did not make it clear that the required standard was applied. Pursuant to section 130 of the *Code*, a final order of the Board may be appealed to the Court of Appeal if leave to appeal is obtained on a question of law or jurisdiction. Whether the Board applied the correct standard is clearly a question of law and whether a finding of just cause is tantamount to a finding of wilful neglect of duty, is an important matter of substance which ought to engage the attention of the court. Leave was granted to appeal on the question of law " Did the Board err in law and apply an inapplicable standard when it decided, on the basis that there was just cause for termination, that the employment of the applicant could be terminated without the employer being required to provide him with a pay period's notice or wages in lieu of notice?"

Southeast Resource Development Council Corp t/a Southeast Medical Referral Services - and - United Food and Commercial Workers Union, Local 832
Court of Queen's Bench of Manitoba
MLB Cases No. 309/02/LRA, 363/02/LRA, 10/03/LRA, 73/03/LRA & 243/03/LRA
Docket Nos. CI 03-01-33307 & CI 03-01-35170
Heard by Justice McKelvey
Delivered March 1, 2004

The Employer provided transportation services for medical related purposes in Winnipeg for status Indians living on reserves in Manitoba, Ontario and Saskatchewan. The Employer filed an application seeking judicial review challenging the Board's jurisdiction to certify the Union for a unit comprised of drivers and dispatchers. It also challenged the Board's jurisdiction to impose a first contract between the parties. The Employer argued that the Board acted without jurisdiction in certifying the Union because *The Labour Relations Act* was not constitutionally applicable to the bargaining unit. It submitted that its business operation was inter-provincial by virtue of the fact that a number of aboriginals come to Winnipeg for medical treatment from Ontario and Saskatchewan. It also argued its business was an integral part or necessarily incidental to federal jurisdiction pursuant to section 91(24) of the *Constitution Act*, which stipulated powers within the exclusive jurisdiction of the federal government over "Indians, and lands reserved for the Indians". Regarding the issue of the first contract, the Employer argued that the wages, paid lunch hours and seniority provisions of the first collective agreement were patently unreasonable. It submitted that the Board failed to consider the financial

circumstances of the operation and that band members should have been given familial preference on questions of seniority involving non-band member employees. The issue also arose as to the admissibility of affidavit material submitted by the Employer.

Held: With respect to the certification, the Board's Reasons for Decision were exhaustive and extensive. The Board reviewed a substantive amount of case law and applied it to the facts of the case. The law was well analyzed, accurately summarized and correctly applied to the facts. The findings of facts made by the Board were based on an assessment of the testimony given before it, the submissions of counsel, as well as consideration of the extensive briefs which were filed. The Board determined the actual services, being medical travel, interpretation and escorts, were carried out completely in Manitoba, and almost exclusively in Winnipeg. There was no inter-provincial or international element. The facts were supported by the evidence and the assessment was sustained by reason. The Court did not believe that there had been a "palpable and overriding error" with respect to the findings of fact. It also found that the Board performed the required functional test on the constitutional issue that the labour relations aspect did not go to the core of "Indianness". Therefore, the Court found that the constitutional question of jurisdiction was authoritatively determined in a correct manner. On the issue of the first collective agreement, the Court found the ability to mandate the agreement was within the Board's jurisdiction by virtue of section 87 of *The Labour Relations Act*. In reviewing the return of the Board, there were extensive briefs filed by the parties. A hearing was conducted, evidence was presented, witnesses were examined and cross-examined, and argument was provided. The Board also received collective agreements from two companies which operated a similar business operation. The Board was entitled to review and weigh such material under section 87(6)(a). The agreement was clearly within the jurisdiction of the Board after consideration of the material and evidence before it. It was not up to the Court to consider the correctness of what the Board did, nor could it review or revisit the facts or weigh the evidence. The court could act only if the decision of the Board was patently unreasonable. There was no basis for such a finding and deference must be paid to the Board. As to the admissibility of the first affidavit, there was no jurisdictional error and, accordingly, no affidavit evidence should be admitted. The second affidavit sought to correct an alleged error in the Board's reasons regarding whether the operation was a health care provider. The fact that the Reasons suggested a conclusion which the Employer said was inaccurate was of little consequence. Consequently, no weight would be afforded to the affidavit.

TABLE 1

**Statistics Relating to the Administration of *The Labour Relations Act* by the Manitoba Labour Board
(April 1, 2003 – March 31, 2004)**

	Cases Carried Over	Cases Filed	Total	Disposition of Cases			Number of Cases Disposed of	Number of Cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	18	97	115	78	15	13	106	9
Application for Revocation	2	23	25	12	10	2	24	1
Application for Amended Certificate	7	20	27	15	0	6	21	6
Application for Unfair Labour Practice	24	46	70	2	6	45	53	17
Application for Board Ruling	31	41	72	11	2	13	26	46
Application for Review and Reconsideration	2	24	26	2	18	2	22	4
Application for Successor Rights	0	0	0	0	0	0	0	0
Application for Termination of Barg. Rights	0	1	1	0	0	0	0	1
Application pursuant to Section 10(1) ¹	0	1	1	0	0	1	1	0
Application pursuant to Section 10(3) ²	1	8	9	6	1	1	8	1
Application pursuant to Section 20 ³	9	22	31	0	19	10	29	2
Application pursuant to Section 22 ⁴	0	1	1	1	0	0	1	0
Application pursuant to Section 58.1 ⁵	1	0	1	0	0	0	0	1
Application pursuant to Section 69, 70 ⁶	0	1	1	0	1	0	1	0
Application pursuant to Section 76(3) ⁷	1	3	4	1	3	0	4	0
Application pursuant to Section 87(1) ⁸	0	7	7	3	0	3	6	1
Application pursuant to Section 87.1(1) ⁹	0	0	0	0	0	0	0	0
Application pursuant to Section 115(5) ¹⁰	0	15	15	5	0	9	14	1
Application pursuant to Section 130(10.1) ¹¹	0	8	8	7	0	1	8	0
Application pursuant to Section 132.1 ¹²	0	0	0	0	0	0	0	0
Application pursuant to Section 146(1) ¹³	1	0	1	0	0	1	1	0
Referral for Expedited Arbitration ^{**}	7	57	64	-	-	-	55	9
Totals	104	375	479	143	75	107	380	99

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

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

³ Duty of Fair Representation

⁴ Access Agreements

⁵ Business coming under provincial law is bound by collective agreement

⁶ Complaint re ratification vote

⁷ Religious Objector

⁸ First Collective Agreement

⁹ Subsequent agreement to first collective agreement

¹⁰ Request for the Board to appoint arbitrators

¹¹ Extension of Time Limit for expedited decisions

¹² Disclosure of information by unions

¹³ 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, 2003- March 31st, 2004)**

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending	Vote Conducted but not counted
Certification	28	1175 ¹	10	13	2	1	2
Revocation	4	575	3	1	0	0	n/a
Termination of Bargaining Rights	0	0	0	0	0	0	n/a
Board Ruling ²	3	764	3	0	0	0	n/a

¹ This figure does not include the 5 votes that were withdrawn, pending or not counted.

² The three votes all related to School Division Amalgamation

TABLE 3

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION
(April 1st, 2003 - March 31st, 2004)**

Cases Carried Over	Number of Referrals		Number of Cases Mediator Appointed	Disposition of Cases					Number of Cases Disposed of	Number of Cases Pending
	Filed	TOTAL		Settled by Mediation	Settled by Parties	Settled by Arbitration	Declined to Review	Withdrawn		
7	57	64	29	22	10	7	0	16	55	9

TABLE 4

**STATISTICS RELATING TO HOURS OF WORK EXEMPTION REQUESTS PURSUANT TO *THE EMPLOYMENT STANDARDS CODE*
(April 1st, 2003 - March 31st, 2004)**

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
19	355	374	350	1	10	361	13

TABLE 5
STATISTICS RELATING TO THE ADMINISTRATION OF *THE PAYMENT OF WAGES ACT*
(April 1st, 2003 - March 31st, 2004)

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
8	0	8	0	7	0	7	1

TABLE 6
STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE*
(April 1st, 2003 - March 31st, 2004)

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)	30	47	77	39	12	0	51	26
Applications pursuant to Section 111(2) ¹	0	0	0	0	0	0	0	0

¹ Application for board chairperson to reduce deposit

TABLE 7
STATISTICS RELATING TO THE ADMINISTRATION OF *THE VACATIONS WITH PAY ACT*
(April 1st, 2003 - March 31st, 2004)

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	1	0	1	1

TABLE 8

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY & HEALTH ACT* BY THE MANITOBA LABOUR BOARD
(April 1st, 2003 - March 31st, 2004)**

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	2	0	2	0	2	2	0
Application for Appeal of Director's Order	0	2	2	0	0	0	2

TABLE 9

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT* BY THE MANITOBA LABOUR BOARD
(April 1st, 2003 - March 31st, 2004)**

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

TABLE 10

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT* BY THE MANITOBA LABOUR BOARD
(April 1st, 2003 - March 31st, 2004)**

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
1	0	1	0	1	0	1	0

TABLE 11
FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1st, 2003 - March 31st, 2004)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31, 2004
Pending from Previous Reporting Period:				
No applications were pending from the previous reporting period				
New Applications this Reporting Period:				
United Association of Journeymen And Apprentices of the Plumbing And Pipefitting Industry of US And Canada	Sperling Industries	May 28, 2003	Board imposed first collective agreement	Expiry July 29, 2004
United Food and Commercial Workers Union Local 832	King Transportation	June 25, 2003	Parties voluntarily entered into collective agreement	Expiry August 26, 2006
United Food and Commercial Workers Union Local 832	Association For Community Living ACL (Interlake)	August 8, 2003	Board imposed first collective agreement	Expiry November 2, 2004
Canadian Auto Workers, Local 468	Kodiak Industries	September 12, 2003	Parties voluntarily entered into collective agreement	Expiry October 5, 2006
United Food and Commercial Workers Union Local 832	Gourmet Baker	November 21, 2003	Board imposed first collective agreement	Expiry January 1, 2005
International Brotherhood of Electrical Workers Local 2085	BSD Solutions	January 7, 2004	Parties voluntarily entered into collective agreement	Expiry February 28, 2005
Public Service Alliance of Canada	Avion Services (4030915 Canada T/A)	February 23, 2004	Pending	Pending

Information Bulletins

The Board did not issue any new or amend any existing information bulletins during the reporting period. The following is a list of the current information bulletins:

- #1 Review and Reconsideration
- #2 Rule 28 – *Manitoba Labour Board Rules of Procedure*
- #3 Adjournments Affecting Continuation of Proceeding
- #4 The Certification Process
- #5 Streamlining of Manitoba Labour Board Orders
- #6 Financial Disclosure
- #7 Fee Schedule
- #8 Arbitrators' List (Interim)
- #9 Filing of Collective Agreements
- #10 Steps to follow in applying for an Hours of Work Exemption Order
- #11 Steps to follow in applying for a Meal Break Reduction
- #12 Steps to follow in applying for a Permit to be exempted from the Weekly Day of Rest
- #13 Process for the settlement of a First Collective Agreement
- #14 Objections on Applications for Certification
- #15 Manitoba Labour Board's decision respecting Bargaining Unit Restructuring in the
Urban Health Care Sector

Copies of the information bulletins may be obtained by contacting the Board office by phoning (204) 945-3783 or by writing to 402-258 Portage Avenue, Winnipeg, Manitoba, R3C 0B6, or by visiting the Board's web site at <http://www.gov.mb.ca/labour/labbrd>.