

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

I am pleased to submit the 2004-2005 annual report outlining the activities of the Manitoba Labour Board during the period April 1, 2004 to March 31, 2005.

The Board has, as in previous years, provided a wide range of adjudicative functions during this reporting year. We have also engaged in a review of a number of internal processes to see where efficiencies may be achieved.

It was Manitoba's distinct pleasure to host a highly successful conference of Labour Board chairs and senior officials in June 2004. The discussions of issues, in most cases common to all jurisdictions, was most enlightening.

Together with the department's Information Systems branch, the Board's case management project team continued its analysis and development of a comprehensive automated system. It is anticipated that Phase 1 of this program will be tested and introduced early in the next reporting period.

A significant activity this past year was the preparation of a Workplace Safety Plan to promote security and safety of staff and clients.

After 34 years with the provincial government, 23 of those years as Chair of the Manitoba Labour Board, I plan to retire at the end of my current term.

I am looking forward to spending more time with family, working on long neglected hobbies and adding new activities.

I extend my appreciation and gratitude to current and past vice chairs, Board members and staff for their dedication and service to the Board.

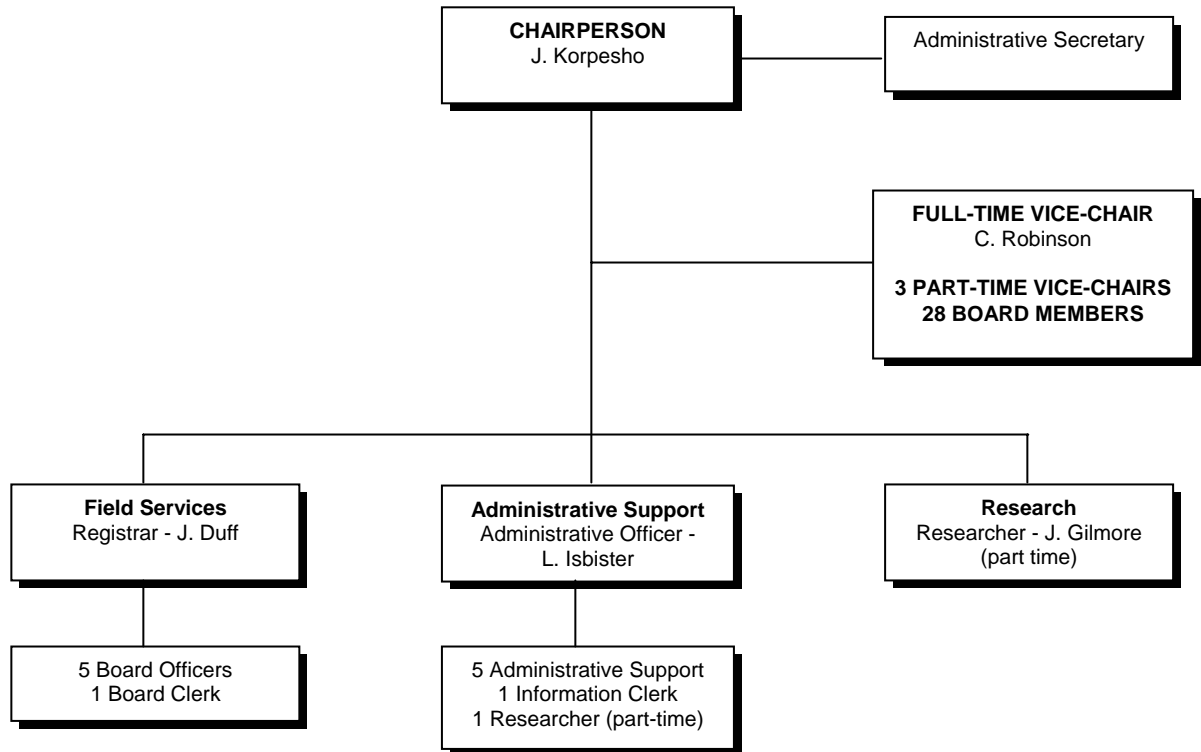
J.M.P. Korpesho,  
Chairperson

## Table of Contents

---

Message from the Chairperson	4
Organization Chart	6
Introduction/Mandate	7
Role and Objectives	7
<b>Operational Overview</b>	
Adjudication	9
Field Services	9
Administrative Support	9
Research	9
Library and Web Site	10
<b>Labour Board Members</b>	11
<b>Summary of Performance</b>	
Program Performance Measurements	16
Major Accomplishments	18
Ongoing Activities	18
<b>Financial Information</b>	18
<b>Summaries of Significant Board Decisions</b>	
Pursuant to <i>The Labour Relations Act</i>	19
Pursuant to <i>The Employment Standards Code</i>	26
<b>Summaries of Significant Court Decisions</b>	28
<b>Statistical Tables</b>	30
<b>Information Bulletins</b>	35

# Manitoba Labour Board Organization Chart as of March 31, 2005



# 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, 1 full-time Vice-Chairperson and 3 part-time Vice-Chairpersons. The remainder of the Board was comprised of 28 Board Members with an equal number of employer and employee representatives. Biographies of 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 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. The Registrar determines the hearing dates where required, and ensures that each application is processed efficiently. Reporting directly to the Registrar are 5 Board Officers: 4 Board Officers handle labour relations and 1 Board Officer with 1 Board Clerk handle employment standards and expedited arbitration matters.

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. They may also play a conciliatory role to assist parties in concluding 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 remaining Board Officer with the assistance of the Board Clerk is responsible for processing all *Employment Standards Code* referrals from the Director of the Employment Standards Division, requests for hours of work and weekly day of rest exemption, and expedited arbitration referrals. They attend hearings to record appearances, case law and exhibits and to assist the Board and parties with any issues that might arise. They may also be 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 5 administrative secretaries, 1 information clerk and 1 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 undertakes other research projects as required by the Board. The Researcher also summarizes and indexes arbitration awards and Written Reasons for Decision for publication 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* - since 1985, an annual summary of all arbitration awards rendered in the province of Manitoba and filed with the Board during the calendar year. This publication was discontinued during the reporting period.

*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.

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

The 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 provide greater access to the Board and to enhance its delivery in providing timely information, the Board may also be contacted at its email address [mlb@gov.mb.ca](mailto:mlb@gov.mb.ca).

## **MANITOBA LABOUR BOARD MEMBERS**

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**

#### **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 Laws degree from the University of Manitoba. Mr. Hamilton, for some years, has carried on an active practice as an interest and grievance arbitrator/mediator in Manitoba.

#### **Diane E. Jones, Q.C.**

Appointed on a part-time basis since 1985, she holds a Bachelor of Arts degree (Honours) from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Ms. Jones is currently active as a chairperson in arbitration matters. 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, he is a chartered arbitrator and carries on an active practice as an interest and grievance arbitrator/mediator in Manitoba. Mr. Peltz also serves as an adjudicator under the *Manitoba Human Rights Code* and the *Canada Labour Code*. He was the Director of the Public Interest Law Centre for 21 years and entered private practice in 2003 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, he holds a Bachelor of Arts (Honours) degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. Mr. Robinson was called to the Bar in 1995 and has practiced since that time primarily in the fields of labour and administrative law. He also served as Deputy Chief Commissioner of the Residential Tenancies Commission from 2001 to 2002.

### **Employer Representatives**

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

Appointed in 2000, he is President and CEO of the Manitoba Hotel Association (MHA). Prior to his employment with the MHA, Mr. Baker was a partner in a chartered accountancy firm for 20 years. He is 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, she is a Fellow, Certified Human Resource Professional (FCHRP) and holds a Certificate from the University of Manitoba in Human Resource Management. Ms. Black has been employed in senior human resource management positions in a variety of organizations since 1972. She 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. Ms. Devlin's human resource management experience includes both unionized and non-unionized workplaces.

**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; Labour Legislation Committee, Parliamentarian and Past President of the Building Owners and Managers Association (BOMA) and currently Chair of the BOMA Manitoba Civic Affairs Committee. He is a Member of the Manitoba Employers Council (MEC) and is the Alternate Management Representative of the Arbitration Advisory Sub-Committee of the Manitoba Labour Management Review Committee. He is a frequent international speaker on issues pertaining to the maintenance and service industries. 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. He is also a Board Member of the Prairie Theatre Exchange Foundation Trust.

**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, she is a Senior Manager with Deloitte & Touche. Ms. Milner has expertise and experience in human resources, safety and disability management with past work experience in the public and private sectors. She 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, she 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.

**Clifford O. Olson**

Appointed in 2005, he had been Executive Vice President, Special Projects, Western Canada, Comstock Canada Ltd., for 25 years and had worked for Comstock since 1955 in many other capacities. Mr. Olson is past President of the Winnipeg Construction Association and past Chairman of the Construction Labour Relations Association of Manitoba. Upon his retirement this year, he has been consulting on a part-time basis.

**David Rich**

Appointed in 2005, he has been employed at Richlu Manufacturing for 39 years and is currently the President and C.E.O. Mr. Rich is the President of the Garment Manufacturers Association of Western Canada and has been the Chairman of the negotiating committee for 15 years.

**Maurice D. Steele**

Appointed in 1999, he was President of M.D. Steele Construction Ltd. until his retirement in May 1999. Mr. Steele is President of Logan Farms Ltd. and Stradbrook Investments Ltd. both founding partners of the Land Owners Group. He is also Vice-President of the AVL Limited Partnership representing lands north and west of Winnipeg 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. Mr. Stewart's term expired in 2004.

**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. Mr. Sutton 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 holds 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. Mr. Winston's term expired in 2004.

**Jim Witiuk**

Appointed in 2004, he is currently Director of Labour Relations for Canada Safeway Limited with responsibility for labour relations matters in Manitoba, Saskatchewan and Ontario. Mr. Witiuk sits on a number of Trusteed Health and Welfare and Pension Plans as a Management Trustee and is a Member of the International Foundation of Employee Benefit Plans. He is a past member of the Employment and Immigration Board of Referees. He currently serves on the Provincial Government's Labour Management Review Committee, serves on the group's Arbitration Advisory Sub-Committee and is an active member of the Manitoba Employer's Council. He is a graduate of Carleton University in Ottawa.

**Mel V. Wyshynski**

Appointed in 2004, Mel Wyshynski retired from Inco Limited, Manitoba Division in late 2001 after a 40 year career in the mining industry. At the time of his retirement Mr. Wyshynski was President of the Division and had held that position since 1997. He is also Past President of the Mining Association of Manitoba Inc. (MAMI). He is actively involved in the Dauphin community (Past President of the Dauphin Rotary Club and current President of the Gilbert Plains Country Club) where he has been associated with a number of community initiatives.

## **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, Mr. Atamanchuk 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. He graduated from the Canadian Labour College in Montreal in 1967.

### **Robert P. Bayer**

Appointed in 2004, he has been a Staff Representative with the Manitoba Government and General Employees' Union since 1982. Previously, Mr. Bayer was the Executive Director, Institutional Employees' Union (1975-1982), and Manager, Human Resources, Canadian Broadcasting Corp. - Winnipeg (1965-1975).

### **Lalah Casselman**

Appointed in 2004, she is the Assistant Business Manager for the International Brotherhood of Electrical Workers, Local Union 2034. Duties in this capacity include negotiating and administration of collective agreements with 4 different employers and all labour relations business from grievances to arbitration. Ms. Casselman is also a union nominee for the Canadian Union of Public Employees, holds a Labour Degree, Mediation Certificate and is a member in good standing with Arbitrator and Arbitration Mediation in Manitoba and AMI Canada. When not involved in labour relations matters, she is working towards attaining All Breed status as a Canadian Kennel Club licensed judge.

### **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, Mr. McCormick was employed in various capacities including President and CEO of the UFCW Local 206. He graduated from the Canadian Labour College in Montreal and currently operates the Grievance Arbitration Industrial Relations Consulting Company in Winnipeg. Mr. McCormick's term expired in 2004.

### **Doug McFarland**

First sat as a board member from 1988 to 1996, he was reappointed in 2000. Mr. McFarland has been actively involved in labour relations and is currently employed as a Staff Representative with the Manitoba Government and General Employees' Union.

**John R. Moore**

Appointed in 1994, he is 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 holds 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, anti-harassment training and other human rights issues.

**James Murphy**

Appointed in 1999, he is the Business Manager of the International Union of Operating Engineers (IUOE), Local 987, being elected to this position in 1995. Mr. Murphy held the positions of Business Representative of the IUOE from 1987 through to 1995 and Training Co-ordinator from 1985 to 1987. He sits on the Executive Board of the Canadian Conference of Operating Engineers, is currently Vice-President of the Manitoba Building and Construction Trades Council 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, he 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. He also serves on the Board of the Manitoba Public Insurance Corporation and on the Board of Destination Winnipeg. He is also a member of the Premier's Economic Advisory Council

**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. Mr. Rodgers holds a B. Comm. (Honours) from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board, Big Brothers of Winnipeg, and a Director of the Winnipeg South Blues Junior "A" Hockey Club.

**Lorraine Sigurdson**

Appointed in 1990, she has been employed by the Canadian Union of Public Employees (CUPE) since 1986 and is currently the Education Representative. Ms. Sigurdson's 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.

**Sonia Taylor**

Appointed in 2005, she has been employed since 1991 at a Staff Representative with the United Food and Commercial Workers Union, Local No. 832. Ms. Taylor is actively involved in grievance handling and represents the needs of the membership in industrial and retail sectors.

## SUMMARY OF PERFORMANCE

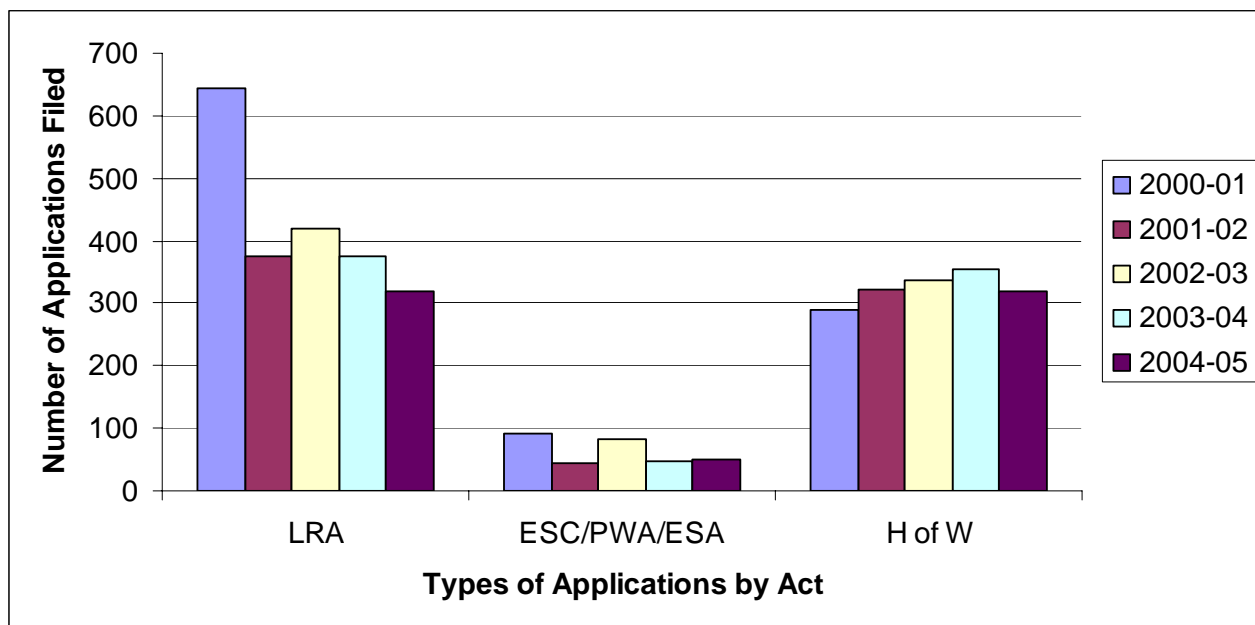
The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes, namely: *The Labour Relations Act*, *The Employment Standards Code*, *The Payment of Wages Act*, *The Workplace Safety and Health Act*, *The Pay Equity Act*, *The Essential Services Act*, *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. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its Board Officers to mediate outstanding issues and complaints.

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.

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, 2005

Indicator	Actual 2003-2004	Actual 2004-2005
Percentage of Cases disposed of	85%	79%
Number of votes conducted	35	27
Median processing time (calendar days):		
<i>Labour Relations Act:</i>		
Certifications	20	18
Decertifications	33	40
Unfair labour practice	93	78
Duty of fair representation	114	67
Expedited arbitration	38	44
Board rulings	129	92
Amended certificates	40	91
First contracts	64	61
<i>Workplace Safety &amp; Health Act</i>	<sup>1</sup> 266	79
<i>Essential Services Act</i>	nil	nil
<i>Elections Act</i>	<sup>2</sup> 293	nil
<i>Employment Standards Code:</i>		
Employment Standards Division referrals	114	94
Hours of work exemptions	6	7

<sup>1</sup>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 2 applications disposed of in 2003/2004. Due to the specific circumstances of the particular cases, the Board deemed that the applicants abandoned their cases.

<sup>2</sup>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 1 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. In addition to the 2,437 collective agreements on file, there are 1,926 arbitration awards and 617 written reasons for decision in the Board's collection (a 3% increase respectively 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.

During this fiscal year, a statistical database was developed to evaluate the number of hearing days scheduled and held. From April 1, 2004 to March 31, 2005, 508 hearing dates were scheduled and 333 proceeded.

Detailed statistical tables and summaries of significant Board decisions can be found later in this report.

## Major Accomplishments

The Board's achievements during the reporting period:

- ✓ Hosted the 2004 Canadian Conference of Labour Board Chairs
- ✓ Developed a statistical database to evaluate the number of hearing days scheduled and held
- ✓ Implemented the Workplace Safety Plan for Board staff
- ✓ Improved administrative processes and procedures to increase efficiencies, eliminate duplication and reduce expenses
- ✓ Promoted sustainable development with expanded recycling/waste management processes and use of environmentally preferable products

## Ongoing Activities

The continuous improvement priorities of the Manitoba Labour Board for 2005/06 include the following:

- increase mediative settlements
- reduce median times for processing applications
- review/issue certificates in the public school sector
- test and implement automated case management and information systems
- relocate to more appropriate space
- expand website
- promote staff development and succession planning

## Financial - Manitoba Labour Board

Expenditures by Sub-appropriation	Actual 2004/05 (\$000s)	Estimate 2004/05 FTE's	Estimate 2004/05 (\$000s)	Variance Over/(Under) (\$000s)	Expl. No.
Total Salaries	1,130.6	18.0	1,192.9	(62.3)	1.
Total Other Expenditures	325.9		270.9	55.0	2.
Total Expenditures	1,456.5	18.0	1,463.8	(7.3)	

### Explanation Number:

1. *Under-expenditure reflects vacancy management strategies to offset Staff Turnover Allowance and operating over-expenditures. Salary savings include the delayed hiring for three vacant positions (Board Officer, Researcher and Administrative Secretary), reducing total per diems for part-time Board Members and the voluntary reduced work week program.*
2. *Over-expenditure reflects higher legal fees due to increased number of appeals, under-budgeted transportation costs of Board Members and Board Officers, under-budgeted publication costs, increased usage of supplies and couriers to meet operating requirements, computer software training costs related to the case management system and unbudgeted website services. These over-expenditures are partially offset by expenditure management strategies to reduce computer related costs, office equipment rentals and telephone charges.*

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

Border Land School Division - and - Service Employees' International Union, Local 308 - and -Canadian Union of Public Employees, Local 3573

Case No. 273/03/LRA

April 30, 2004

**AMALGAMATION - APPROPRIATE BARGAINING UNIT - Intermingling - School Division formed from amalgamation of four school divisions - Pursuant to subsection 56(2), Board acted on own motion to determine that employees represented by bargaining agent were intermingled with non-unionized counterparts throughout the new School Division who performed same basic job functions often side by side - Representation vote ordered and conducted.**

The School Division was the product of an amalgamation of four school divisions. The amalgamation brought together some 400 employees amongst which were approximately 42 members of the Service Employees' International Union ("SEIU"). The employees represented by SEIU remained the lone group not covered by a harmonized agreement. The School Division filed an application requesting the Board to determine that a sale of a business occurred and that employees represented by SEIU had been intermingled with various non-certified groups of employees. Pursuant to subsection 56(2), the Applicant requested that the Board act on its own motion to determine whether the employees affected constituted one or more units appropriate for collective bargaining and to order that representation votes be conducted to determine if the employees of the proposed bargaining units wish to be represented by SEIU. The SEIU submitted that the Employer did not have standing to bring the application and that, in any event, the facts did not support a determination by the Board that intermingling had occurred.

**Held:** The Board has broad discretion to act on its own motion to issue remedies pursuant to section 56(2)(d) to (i). It must be satisfied that a request that it act on its own motion be motivated by legitimate and bona fide considerations which are free of anti-union animus. It also must be satisfied that a sale of a business has occurred; at the time of the sale a union was bargaining agent for any of the employees; and that intermingling of employees has occurred. The School Division provided evidence and argument to the effect that its application was not an attempt to oust the SEIU or to foist upon employees terms and conditions of employment that were less generous than that which existed under the collective agreement. Therefore, its request was bona fide and not tainted by anti-union animus. A "sale", as defined in section 1 of the *Act*, occurred when the amalgamation of school divisions created the new School Division. At the time of the amalgamation, the SEIU was the bargaining agent for certain employees in the new School Division. These individuals performed the same basic job functions as their non-unionized counterparts throughout the new School Division. Moreover, some unionized and non-unionized employees in the Division had worked side by side on various occasions. Therefore, the Board concluded that intermingling had occurred in the present case and that the requirements of section 56(2)(a), (b) and (c) of *The Labour Relations Act* had been satisfied.

Having concluded that the requirements of section 56(2)(a), (b) and (c) of *The Labour Relations Act* had been satisfied and, further, that this was an appropriate case upon which the Board may act upon its own motion, the Board considered the issue of bargaining unit appropriateness. The Board historically grants certification for units covering entire school divisions rather than portions thereof or individual schools. It also considered the positions of the parties that separate units based upon occupational classification or grouping thereof was appropriate in this case and it determined the units which were appropriate for collective bargaining. A vote was ordered and subsequently conducted among the employees in the units to determine whether the majority wished to be represented by the SEIU.

UAP INC., carrying on business as NAPA AUTO PARTS - and -General Teamsters Local Union 979

Case No. 14/04/LRA

June 1, 2004

**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT - Community of Interest - Bargaining unit restricted to warehouse employees possessed a community of interest and was viable for collective bargaining - Three employees who occasionally worked in the warehouse but came from other business units were excluded as their inclusion did not make labour relations sense.**



**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT - Fragmentation - Employer argued granting warehouse bargaining unit was first step towards undue fragmentation - Board concluded potential for future bargaining units not sufficient to render bargaining unit of warehouse employees inappropriate.**

The Employer operated a distribution centre for the sale and distribution of auto parts. The operation was comprised of three distinct business units: the Warehouse, Office and Order Desk; the Main Counter; and CMAX which handled materials for auto body services. The Union filed an application for certification for a unit of all warehouse employees. Thirty of the warehouse employees worked in the Warehouse, Office and Order Desk unit while three others performed some warehouse duties but worked in the other business units. The Employer proposed an all employee bargaining excluding commissioned sales persons. The Employer contended that if the applied for unit was granted, benefits and the bonus plan would be difficult to administer and work could be disrupted making the organization more difficult to manage effectively. The Employer commented that management would lose control of the team aspect of the units if but a tiny minority were in the Union while the remainder were not.

**Held:** In consideration of the argument that granting a bargaining unit of Warehouse employees might be the first step towards undue fragmentation, the Board concluded that the potential for future bargaining units was not sufficient to render the bargaining unit inappropriate for collective bargaining. Further, the Board noted that the organizational structure was already divided amongst three business units. The Board determined that a unit restricted to Warehouse employees possessed a community of interest, made labour relations sense and was viable for collective bargaining. The Warehouse employees had similar hours, benefits, scale and manner of pay and other terms and conditions of employment. They were all engaged in various aspects of warehouse work. Thirty of the Warehouse employees were all members of one business unit and were supervised by the same individual. The same could not be said for the inclusion of the three employees who came from the other business units but had occasion to work in the Warehouse for some period during the regular working day. Their inclusion did not make labour relations sense as they reported to a different manager, and were subject to separate payroll systems and bonus programs. Therefore, the Board concluded that a unit of Warehouse employees was appropriate for collective bargaining but wished to craft a bargaining unit description which excluded employees whose inclusion did not make labour relations sense. Accordingly, the Board ordered that the unit of "All Employees of Business Unit 534, ... employed ... as Parts Handlers, Shipping Clerks, Receiving Clerks, Lead Hands, Lead Hand/Supervisors, and "Supervisor, Warehouse", excluding office staff, retail staff, Night Operator and those excluded by the Act" was appropriate for collective bargaining.

Griffin Canada - and - CAW-Canada - and - Allen Steinthorson and Tim Fedora  
Case No. 269/04/LRA  
June 9, 2004

**RATIFICATION - VOTE - Voting Constituency - Applicants alleged that, pursuant to internal Union documents, they were entitled to separate ratification privileges in collective bargaining process - Intent of *The Labour Relations Act* clearly defined voting constituency as "those employees in the unit or craft unit" as described in Certificate issued by Board and not separate group of employees which are included in the larger certified unit.**

The Applicants represented a group of eighteen "skilled trades workers", who were part of the certified "all plant employees" bargaining unit as certified by the Manitoba Labour Board. They alleged that the ratification vote did not comply with section 69(3) of *The Labour Relations Act*. They contended that, pursuant to internal Union documents, they were entitled to separate ratification privileges in the collective bargaining process. The Union's refusal to grant this group a separate vote was contrary to section 69(3) of *The Labour Relations Act*.

**Held:** Although the application may have an issue relating to the internal Union policies, *The Labour Relations Act* was clear in its intent. As per Section 69(3), the voting constituency was "those employees in the unit or craft unit." The intent clearly was the unit as described in the Certificate and not a separate group of employees which are included in the larger certified unit. Therefore, the Board dismissed the application as it was satisfied the application had no merit.

Aseneskak Casino - and - Manitoba Government and General Employees' Union

Case No. 592/03/LRA

June 15, 2004

Interim Order

**JURISDICTION - Constitutional Law - First Nation Casino - Board finds that casino situated on Reserve land, operated by non-profit corporation and owned by eight First Nations' bands fell within provincial jurisdiction - Interim Order.**

The Union filed an application for certification for an all employee unit employed by the Aseneskak Casino which was owned by eight First Nations' bands. The Employer contested the jurisdiction of the Board, pursuant to subsection 91(24) of the *British North America Act, 1867*. The Employer submitted that this matter dealt with the concept of "Indianness", which placed it within federal jurisdiction. The casino was situated on Reserve land. The employment goal was to have 80 percent of the employees be of Aboriginal descent to ensure gainful employment and self-sufficiency for First Nations' people. The casino was built in a manner that reflected and preserved Native culture and beliefs and that "gaming" was part of the culture of First Nations' people. The establishment of a casino was one step to generating economic wealth for the community.

**Held:** The Board considered the decision of the Saskatchewan Labour Relations Board (SLRB) in *Re: Saskatchewan Indian Gaming Authority Inc. (SIGA) - and - National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, [1999] S.L.R.B.D. No. 50; affirmed [2000] S.J. No. 266 (Q.B.); affirmed [2000] S.J. No. 766 (C.A.); leave to appeal to the S.C.C. denied [2001] S.C.C.A. No. 35. In determining the constitutional issue, the SLRB found that the operation of casinos is a matter falling under the jurisdiction of the Province of Saskatchewan. The federal aspect to the casino did not arise out of the nature of the business or the work performed, but rather from its relationship to and ownership by the First Nations of Saskatchewan. The decision of the SLRB was appealed in the Saskatchewan Court of Queen's Bench. The Court concluded that however one characterizes the indirect role played by the band councils in the ownership and operation of SIGA, it was impossible to conclude the operation of the casinos was pursuant to a statutory power conferred upon the band councils by the *Indian Act*. It was clear that SIGA's authority to operate the casino was not derived from federal legislative authority. Rather, it was established by the agreements between the Province of Saskatchewan and the FSIN and provincial legislation. The Manitoba Labour Board was of the view that the Employer failed to satisfy it that the circumstances of the case would lead to a conclusion different than that reached in the decision of the SLRB. Therefore, the Board was satisfied that *The Labour Relations Act* of Manitoba applied to the Aseneskak Casino.

Laural Food Services Inc. - and -Angela Best

Case No. 351/04/LRA

June 28, 2004

**REMEDY - Interference - Board found Employer committed an unfair labour practice contrary to Section 7 of *The Labour Relations Act* and Section 133(1) of *The Employment Standards Code* - Board ordered Employer to pay \$1500 for the interference of Employee's rights - Substantive Order - Reasons not issued.**

Cancercare Manitoba - and - Manitoba Nurses' Union - and - Thanh Ha - and - St. Boniface General Hospital

Case No. 690/03/LRA

June 29, 2004

**DUTY OF FAIR REPRESENTATION - Arbitrary Conduct defined- *Prima facie* - Local union president made honest mistake in advising Employee he would be able to port his benefits between health care facilities - Honest errors are not considered arbitrary conduct - *Prima facie* case not established.**

The Employee resigned from a part-time position at the hospital. He remained a casual employee with the hospital and at the same time he continued as a full-time employee with Cancercare Manitoba, the Employer. He was advised by his local union president that he would be able to port his benefits. However, pursuant to the terms of the collective agreement, the Employee did not qualify to port his benefits. The Employee sought an exception from the application of this aspect of the collective agreement. The Union denied his request as it decided that it had to enforce the strict wording and intention of the policy in consideration of the numerous

requests that were made in regard to the application of the policy concerning the portability of benefits. The Employee filed an application alleging that the Union failed in its duty of fair representation. He submitted that the Union should be bound by the advice given to him by the local union president, even if it was incorrect advice.

**Held:** The Board found that the local union president made an honest mistake in the advice given to the Employee. Section 20(b) of *The Labour Relations Act* requires much more than that to exist before an unfair labour practice can be found. The Board held there was no evidence of bad faith or discrimination before it. With respect to determining whether the Union acted arbitrarily, the Board quoted from *Ontario Labour Relations Board Law and Practice* that "Flagrant errors consistent with a non-caring attitude may also be arbitrary, but not honest mistakes, errors of judgement, or even negligence." On the facts before it, and upon considering that definition of arbitrary, the Board could not find the Union's conduct to have been arbitrary. The local president's mistake was an honest one, and the determination by the Union to enforce the collective agreement provision and not support the claim of the Employee was made after due consideration of the relevant facts. The Employee had not discharged the onus upon him to establish a *prima facie* case, and the application was dismissed.

Ag World Support Systems Corp. - and - Simplot Canada Limited- and - United Steelworkers of America - and - David Kennedy

Case No. 121/04/LRA

July 7, 2004

**UNFAIR LABOUR PRACTICE - Discharge - Anti-union Animus - Employee discharged for threatening violence against truck driver who allegedly harassed Employee's wife - At three investigatory meetings, Employee failed to apologize, to express remorse and to clearly confirm he did not intend to solve problem with physical violence - Penalty imposed on the basis of *bona fide* considerations and factors and was not influenced by Employee's union membership or activities.**

The Employee was a Grader at Ag World which ran an independent operation which tested and graded potatoes in the Simplot plant. The Employee's wife, who was employed by Simplot, filed a harassment claim against a truck driver who worked for one of their customers. The Employee was interviewed as part of Simplot's investigation into the allegations. When he was asked what he felt ought to be done, he replied that he would have bounced the driver around in his truck. At a second meeting, the Employee was quite upset, used foul language and made another threat to kick the driver. Management of Simplot was concerned that the Employee had not shown any remorse during the second meeting and sent a letter advising so to the Employee and Ag World management. After receiving the letter and meeting with the Employee, Ag World management suspended and ultimately dismissed him from employment. The Union filed an application seeking remedy for an unfair labour practice alleging the Employee was dismissed because of his involvement in the Union. The Employee's evidence was that he wore a Union t-shirt to work regularly and that he was actively involved in attempting to organize on behalf of the Union.

**Held:** The Board accepted that the Employee used foul language during the interview, that he made inappropriate remarks in relation to the driver and that he made the interviewer feel uncomfortable. The interview occurred several weeks after the alleged incident and as such his comments and behaviour may not be considered to have been made in the heat of the moment. Furthermore, at the second meeting, he chose not to withdraw his comments and continued to argue his position in a manner that was neither professional nor appropriate. The only action taken by Simplot was to send the letter which was a mild response and one that was not in any way tainted by anti-union animus. With respect to Ag World, the Board was satisfied that the decision-makers were unaware of the Employee's membership in the Union or involvement with an organizing campaign. Once advised of the letter from Simplot, an investigation was conducted. In the course of the investigation, the Employee failed to apologize, to express remorse and to confirm, in a clear and direct manner, that he did not intend to solve his problems with physical violence. His behaviour had the clear potential to interfere with Ag World's business relationships and threatened its *bona fide* business interests. Furthermore, Ag World had legitimate safety concerns and, by extension, legitimate concerns regarding their potential liability in the event that the Employee's words ultimately translated into actions. The Board was satisfied that the penalty meted out by Ag World was imposed on the basis of *bona fide* considerations and factors and was not influenced by or related in any way to the Employee's union membership or activities.

Branigan's at the Forks - and -United Food & Commercial Workers, Local 832 - and -Julia Doyle, Alison Harapiak, Jocelyn Vielgut, and Melissa Vogt  
Case Nos. 678/02/LRA & 599/03/LRA  
July 8, 2004

**REMEDY - Reinstatement - Waiter's Gratuities or Tips - Parties unable to resolve amount of compensation owing to Persons Concerned - Board calculates wages owing but denied claims for lost gratuities as Union was not able to provide amounts claimed on the individuals' income tax returns for the previous two years - Substantive Order - Reasons not issued.**

Aseneskak Casino - and - Manitoba Government and General Employees' Union - and - Attorney General of Manitoba and Attorney General of Canada  
Case No. 592/03/LRA  
August 25, 2004

**APPROPRIATE BARGAINING UNIT - EXCLUSIONS - Management - Supervisors - Security Supervisors, Surveillance Supervisors, Customer Services Supervisor, Kitchen Supervisor and Restaurant Supervisor excluded from bargaining unit of employees as they exercised management functions although limited - Casino Shift Supervisor and Gift Shop Supervisor did not exercise significant management functions that would preclude them from being included in bargaining unit.**

The Union filed an application for certification for an all employee unit. The Employer disputed the description of the bargaining unit and requested Management Staff, Administration Staff, Surveillance Staff and Supervisors be excluded. The Union agreed to the exclusions of Management Staff, Administration Staff and Surveillance Staff. The parties were unable to agree on whether Supervisors should be excluded. The Supervisor positions in question were: Security Supervisors, Surveillance Supervisors, Customer Services Supervisor, Kitchen Supervisor, Restaurant Supervisor, Casino Shift Supervisor and Gift Shop Supervisor. The Employer submitted that most, if not all, of the Supervisors were responsible for the scheduling, hiring, training, evaluations and discipline of staff.

**Held:** The Board, in considering the duties and responsibilities, was satisfied that including the classifications of Security Supervisors, Surveillance Supervisors, Customer Services Supervisor, Kitchen Supervisor and Restaurant Supervisor in a unit of employees over which they exercise even limited management functions, which could be characterized as being economic in nature, was unfair. However, the Board was not convinced that their limited management functions would preclude them from representation as a separate bargaining unit of supervisors. In regards to the classification of Casino Shift Supervisor and Gift Shop Supervisor, the Employer has failed to satisfy the Board that they exercise any significant management functions that would preclude them from being included in the applied for unit.

United Food and Commercial Workers Union, Local 832 - and - Office and Professional Employees International Union, Local 342  
Case No. 246/04/LRA  
January 26, 2005

**EXCLUSIONS - EMPLOYEE - Bargaining Unit - Confidential Secretary to President and Secretary/Treasurer had been included in bargaining unit covered by successive collective agreements notwithstanding access to confidential information relating to labour relations matters - New duties were not of such a material, significant or regular nature to enable the Board to ignore and essentially re-write long standing mutual covenant between the parties - Board ruled incumbent was an "employee" within the meaning of the Act, was included in the bargaining unit and was covered by the collective agreement.**

**PRACTICE AND PROCEDURE - EVIDENCE - Onus of Proof - Board asked to determine if Confidential Secretary to President was excluded from bargaining unit - This was not exclusion case of first instance as Secretary had been included in bargaining unit covered by successive collective agreements - Onus of proof rested on applicant to satisfy Board that material and significant changes were made to duties to sustain exclusion.**

The Board was asked to determine whether the position of Confidential Secretary to the President and Secretary/Treasurer should be excluded from the bargaining unit on the grounds the incumbents were employed in a confidential capacity in matters relating to labour relations.

**Held:** The Board noted that this was not an exclusion case of first instance as the position in question had historically been included in a bargaining unit covered by successive collective agreements. Therefore, the onus of proof rested on the applicant to satisfy the Board that there have been material and significant changes to sustain the exclusion. Since May 1988 and in all collective agreements negotiated thereafter, the parties had agreed that the incumbent occupied a position of trust and confidentiality, inclusive of matters relating to labour relations, and that, notwithstanding the access to confidential information, the parties had agreed that the Secretary was part of the bargaining unit. The parties had further agreed that any disclosure of confidential information to which this Secretary has access in the performance of his/her duties would subject the Secretary to discharge. From at least 1988, the incumbents were involved in confidential matters relating to labour relations as a regular but relatively minor part of their overall duties. While there have been some additional duties of an investigatory or advisory nature assigned to the most current incumbent, those duties were not of such a material, significant or regular nature to enable the Board to ignore and essentially re-write the long standing mutual covenant between the parties that the President's Secretary was to be included in the bargaining unit, particularly when the "confidentiality" covenant was still operative and binding, as part of the collective agreement. Therefore, the Board ruled that the Confidential Secretary to the President and Secretary/Treasurer was an "employee" within the meaning of the *Act*, was included in the bargaining unit and was covered by the terms and conditions of the collective agreement.

Winnipeg School Division No. 1 - and - Manitoba Teachers' Society - and - Donna Beach  
Case No. 785/03/LRA  
March 14, 2005

**DUTY OF FAIR REPRESENTATION - Employee resigned position on her own accord - Union decided not to proceed to grievance process - Allegations filed under Section 20(a) denied and there was no "dismissal" as contemplated by the Act.**

**DUTY OF FAIR REPRESENTATION - Employee instructed Union not to pursue grievance to rescind resignation as she did not want to disclose medical records - Nine months later she decided to pursue grievance - Union denied her request based on legal opinion grievance unlikely to succeed for timeliness - Union actions not arbitrary, discriminatory or in bad faith worked - It worked diligently to have long term disability benefits reinstated and to explore ways to get her job back without filing formal grievance - Also Employee responsible for passage of time.**

The Employee resigned from her position. One month later she was hospitalized for stress related illness. During that time, she contacted the Union, seeking its assistance to get her job back and her long-term disability benefit reinstated. The Employee met with the Union Representative and counsel for the Union to determine what options were available to assist her in gaining re-entry to employment with the Employer. The Union Representative succeeded in having the long term disability benefits reinstated. During a second meeting, the Employee instructed the Union not to pursue the grievance to rescind her resignation, as she did not want to have her medical records disclosed. The Union continued to attempt to resolve the issue on behalf of the Employee without the filing of a formal grievance. Nine months later, the Employee was notified that her long-term disability was running out, at which time she informed the Union that she then wanted to pursue the grievance. The Union requested a legal opinion from counsel as the issue of timeliness was a concern. A draft opinion was prepared, and as a result of further medical information, an addition to the legal opinion was completed and forwarded to the Union. Counsel advised that the grievance was unlikely to succeed due to the issue of timeliness. The Union informed the Employee that it would not be proceeding to file a grievance. She appealed the decision, but her appeal was denied. The Employee filed an unfair labour practice application under section 20(a) and (b) of *The Labour Relations Act* alleging that the Union failed in its duty of fair representation.

**Held:** With regards to section 20(a), the Employee terminated her employment on her own accord and therefore there was no "dismissal", as contemplated by *The Labour Relations Act*. Therefore, her application alleging a contravention of Section 20(a) was dismissed. As to the allegations filed under Section 20(b), the evidence did not support a finding that the Union had acted in a manner that was arbitrary, discriminatory or in bad faith. The Union was responsive to the Employee's emotional state. She terminated her employment

without the knowledge of, or input from, the Union. In spite of this occurrence, the Union worked diligently on behalf of her interests and managed to have her long term disability benefits reinstated, as well as exploring the possibilities of having her return as an employee. Legal counsel was involved early on in the process in order to obtain medical opinions and other information that might assist them in successfully resolving the issue of reinstatement. The Board considered that the Employee instructed the Bargaining Agent not to pursue a grievance. Subsequent to her instructions, the Union continued in its attempts to have her re-employed. Some 8 to 9 months later, the Employee changed her mind and wanted the Union to proceed through the grievance/arbitration process on her behalf. Based on legal opinion that the matter would likely not succeed due to timeliness, the Bargaining Agent declined to file a grievance. The Board found that the Employee was clearly responsible for the passage of this time period. Even had the grievance been filed on a timely basis, it is entirely within the prerogative of the Union to determine whether to advance a grievance to arbitration. Accordingly, the Applicant failed to establish that a prima facie case existed and the application was dismissed.

Kitchen Craft Cabinetry - and - Giovanni Amizdah Garcia Alecio  
Case No. 390/04/LRA  
March 30, 2005

**UNFAIR LABOUR PRACTICE - Employee terminated for refusing light duties and failing to report to work for three consecutive days - Unfair labour practice application alleged termination violated Section 7 of *The Labour Relations Act* - Board had some difficulty with Employer's conduct, but decision to terminate not due to, or influenced by, any factors established under section 7 of the Act - While Board has jurisdiction to remedy unlawful conduct that it finds to be contrary to the Act, it may not interfere with lawful, yet seemingly unfair decisions or actions - Application dismissed.**

The Employee was injured at work when he drove a staple into his thumb. Prior to leaving work to receive treatment, he was provided with "Work Place Capabilities Forms" and confirmed that he understood the contents. The following day, he provided the Employer with a "Medical Restrictions" form that stated he was able to return to work in alternate duties provided that he did not use his left hand. He claimed to have also submitted a medical note which indicated that he ought to be absent for five days. The Employer denied receiving the medical note until the application was filed with the Board. The Lead Hand claimed that he offered the Employee "one-handed duties" as prescribed in the "Medical Restrictions" form. He also testified that the Employee indicated that he wished to go home in accordance with the doctor's instructions. The Lead Hand advised the Employee to meet with management as he was not sure that it was permissible to turn down an offer of light duties. The Employee left and he did not attend work until the next week. In accordance with the Employer's clear policy, the Employee was terminated following three consecutive days of "unexcused" absence. The Employee denied being offered light duties and filed an application seeking Remedy for an Alleged Unfair Labour Practice contrary to section 7 of *The Labour Relations Act*. The Employer submitted that the facts complained of by the Applicant could not lead the Board to reasonably conclude that Section 7 of the Act had been violated.

**Held:** The Employee could not recall whether or not light duties were offered. In contrast, the Lead Hand specifically recalled the conversation with the Employee during which he refused the offer of light duties. On the balance of probabilities, the Board accepted that the Employee was offered light duties. Further, he elected to remain at home despite being told he ought to discuss the matter with management. As well, on the balance of probabilities, the Board accepted that the Employer did not receive the medical note. The Employer terminated the Employee owing to his refusal of light duties and his resulting failure to report to work for three consecutive days. The Employer has clearly indicated to all employees, including the Employee, that failure to participate in the "Return to Work" program may result in termination. Moreover, employees are advised in the Employee Handbook, a copy of which the Employee acknowledged receiving that an unauthorized absence may result in "immediate termination". While the Board has jurisdiction to remedy unlawful conduct that it finds to be contrary to the Act, it may not interfere with lawful, yet seemingly unfair decisions or actions. While there were aspects of the Employer's conduct with which the Board had some difficulty, the Board was satisfied the Employer acted lawfully and has met the onus of satisfying the Board that its decision to terminate the Employee was not due to, or influenced by, any of the factors established under section 7. The application was dismissed.

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

3677746 Manitoba Ltd. - and - Dana Dyck  
Case No. 159/04/ESC  
June 28, 2004

**NOTICE - Exceptions - Dishonesty - Non-payment of alcohol consumed by Employee's boyfriend was dishonest act - Employer justified in terminating her employment pursuant to section 62(p) of *The Employment Standards Code*, which allows for termination without requirement for notice - Claim dismissed as letter from Employment Standards Division stated that Employee advised that she did not wish to pursue her claim for wages in lieu of notice and facts did not support alleged discrepancies in record of hours.**

The Employer decided to terminate the Employee's employment after her boyfriend had attended at the bar and had consumed alcohol without paying. This coincided with an incident whereby the manager noticed that the building alarm was not working. On further examination, she noticed that the wires had been cut, that the VLT change machine had been kicked in, resulting in some drywall damage and the exit door was left unlocked. When asked about the two incidents, the Employee denied any knowledge as to the damage and indicated that her boyfriend had intended to pay for the drinks at a later date. The Employee subsequently filed a claim with Employment Standards Division for wages, general holiday wages and wages in lieu of notice. Upon completion of their investigation, the Employment Standards Division dismissed the Employee's claim.

**Held:** The Employee, through a representative, provided the Board with a copy of a letter that Employment Standards Division had sent to her outlining information considered in reaching its decision. In that letter, Employment Standards Division stated that the Employee had agreed with the three hour's wages and general holiday pay and advised that she did not wish to pursue her claim for wages in lieu of notice. The Board was satisfied that the allegations of the Employee as to the discrepancies relating to the records of hours were not supported by any facts that would alter the finding of the Employment Standards Officer on the issue of wages owed. Accordingly, based on the testimony presented and the contents of the letter, the Board was satisfied that the wages and general holiday wages found to be owing to the Employee by Employment Standards Division was accurate. On the issue of wages in lieu of notice, the Board found the non-payment of the alcohol consumed by the Employee's boyfriend was a dishonest act. Therefore, the Employer was justified in terminating her employment pursuant to section 62(p) of *The Employment Standards Code*, which allows for the termination of an employee without the requirement for notice in the case where the employee acted in a manner which was dishonest in the course of the employment. Accordingly, the Board upheld the decision of the Employment Standards Division.

Nygaard International Partnership Associates - and -Sharon Michalowski  
Case No. 735/03/ESC  
February 11, 2005

**WAGES - Overtime - Eligibility - Front Line Supervisor - Employer argued Store Manager/Regional Merchandising Supervisor was not entitled to overtime pay as she held a salaried management position - Held *The Employment Standards Code* does not expressly distinguish between hourly paid employees and those compensated by salary. - Further, Store Manager did not determine ultimate corporate response for employment issues and significant part of her position involved selling - Therefore she was an employee as defined in the *Code* - Claim for overtime wages allowed.**

**NOTICE - Unequal Notice Periods - Store Manager submitted one month's notice but Employer decided to terminate her employment immediately - Clause in employment agreement, which established notice period for both parties but conferred upon Employer right to accept Employee's resignation immediately without further remuneration contrary to the *Code* - Store Manager entitled to wages in lieu of notice.**

**WAGES - Deductions - Training and Orientation period - Employer not entitled to deduct two weeks' pay to cover cost of training and orientation period from wages owing as training was not completed**

during time frame set out in employment contract and was not transferable to other employers - Moreover, allowing deduction for training period contrary to most basic and fundamental principle set out in the *Code* that an employer is obligated to pay an employee wages earned.

**WAGES - Deductions - Equipment Loan - Employer ordered to pay Employee \$9,309.71 for wages owing but entitled to deduct balance of purchase price of laptop computer that Employee failed to return upon termination of employment.**

**WAGES - Employer's liability to pay \$9,309.71 wages owing cannot be offset by amount Employee received for a productivity bonus as bonus related to Employee's compliance with corporate policies and procedures and not for payment of overtime wages or wages in lieu of notice.**

After a year of consistently working considerable overtime, the Employee, a Store Manager/Regional Merchandising Supervisor, gave one month's notice as required in the employment contract. The Employer, pursuant to the contract, decided to terminate her employment immediately without further compensation. The Employee filed a claim with Employment Standards which issued an Order requiring the Employer to pay \$10,240.68 for overtime, vacation pay, and wages in lieu of notice. The Employer appealed the Order submitting that her salary was inclusive of all hours required to be worked to fulfill her employment duties, without limit, and further, being a manager she was not entitled to overtime. The Employee conceded that during pre-employment discussions, she was advised that "managers" were not entitled to overtime pay, however, she emphasized that her supervisor said she would be entitled to time off in lieu of pay for overtime worked.

**Held:** While the Employee supervised staff, she did not have the authority to unilaterally determine the ultimate corporate response for the employment of an employee as set out in the definition of "employer" in the *Code*. Moreover, a very significant part of her position involved selling. Also, her other important duties were not inherently managerial. The Board found she was "an individual who is employed by an employer to do work" and, therefore, an "employee" under the *Code* and entitled to the protection thereof. The *Code* does not expressly distinguish between hourly paid employees and those compensated by a salary. Accordingly, the fact that an employee is paid a salary does not necessarily result in that individual being exempted from the *Code*'s provisions. The term of the employment contract that provided for a salary "inclusive of all hours required to be worked" was inconsistent with the *Code*. Accordingly, the Employee was entitled to overtime. The Board weighed the Employer's argument that her salary was sufficiently large that it could be said to provide wages, including overtime wages, that exceeded the minimum wage. That interpretation effectively allows an employer to demand excessive amounts of overtime without any further compensation which was inconsistent with the *Code*'s fundamental purpose of preventing the exploitation of employees. The Board accepted the Employee's description of the pre-employment discussions that she was advised that longer hours would be required from time to time but she would be compensated with time off in lieu of pay. The Employer failed to keep and maintain records of her regular hours of work and overtime as expressly provided in the *Code*. In contrast, the records which she maintained were reliable and reflected the considerable overtime hours she worked. Accordingly, the Board was satisfied, on the balance of probabilities, that the Employee worked overtime for which she was not compensated as required by the *Code* and that the Employer authorized the working of such hours.

The clause in the employment agreement, which established a notice period for both parties but conferred upon the Employer the right to accept the Employee's resignation immediately without further remuneration, was contrary to the provisions of the *Code*. The *Code* did not permit unequal notice periods. Accordingly, the Board determined that the Employee was entitled to 30 days wages in lieu of notice less the wages earned for the 18 hours she was permitted to work before the Employer terminated her.

The Employer contested that it was entitled to make deductions for two weeks pay to cover the cost of the training period and for the balance of the purchase price of the laptop computer which the Employee did not return. Even if the Board were prepared to permit a deduction to be made on the basis of language set out in the employment agreement, all of the prerequisites for making the deduction had not been satisfied. The bulk of the orientation and training did not take place in the first four weeks of employment. Even when training was provided, she was not given the complete program. Furthermore, what training she did receive was of no substantial or real benefit to her and was not transferable to other positions which she might seek. More fundamentally, the Board concluded allowing the deduction was contrary to the most basic and fundamental principle set out in the *Code*: that being an employer is obligated to pay to an employee wages earned. The



clause was put into the employment agreement to penalize her for leaving her position within the first 24 months. The Board does not have the jurisdiction to award damages. Therefore, the Board determined that the Employer was not permitted to deduct the "training expense" from the Employee's earned wages. However, the Board concluded that the Employer was entitled to deduct the balance of the purchase price of the laptop. The Employee did not return the computer and it was not unreasonable for the Employer to insist upon the deduction for the remaining portion of the loan which it provided. The Employer also argued that any of its liability ought to be offset by the amount paid as a P3QC Bonus, a productivity bonus related exclusively to an employee's compliance with corporate policies and procedures. The Board concluded that the productivity bonus was not payment of overtime wages or wages in lieu of notice so it may not reduce the liability of the Employer to wages owing.

## **SUMMARIES OF SIGNIFICANT COURT DECISIONS**

Sperling Industries - and - United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 254 - and - Guillerm Hildebrandt, Frank Roe and Warren Nordquist

Court of Queen's Bench of Manitoba

Manitoba Labour Board Case Nos.732/01/LRA, 631/03/LRA, 373/03/LRA & 506/03/LRA

Docket Nos. CI 03-01-34712 and CI 03-01-35990

Heard by Justice Kaufman

Delivered January 20, 2005

The Manitoba Labour Board certified the Union as the bargaining agent for the Employer. Around the time when the Union gave notice to begin bargaining, the sole employee in the certified bargaining unit resigned from his employment. The Employer took the position that, as there were no longer employees in the bargaining unit, they did not want to commence the negotiations. The Board granted the Union's application seeking imposition of a first collective agreement. The Employer then filed an application in the Court of Queen's Bench to quash the certificate and the first collective agreement. A second application was filed by the Employer, joined by three employees, asking for the same remedies and raising a Charter issue. When the matter first came up for argument, counsel for the Union advised the court that his instructions were not to participate in the matter because the imposed agreement was due to expire shortly, there were no members left in the bargaining unit, and the Union was not enforcing its rights under the certificate. The Employer stated that it would continue to attempt to have the court quash the certification, indicating that it was concerned with the precedents established by the certification order and the process followed. Two preliminary motions were raised, one dealing with mootness and the other seeking to expunge certain portions from affidavits submitted by the Union.

**Held:** Justice Kaufman concluded that only one paragraph from the affidavits ought to be struck as it was substantially an opinion of a business manager of a union who was not, however, qualified as an expert. Any flaws contained in the other paragraphs could be considered when assessing weight. The complaints of the employees which were very sparsely set out in their affidavits in a generalized way did not arise until the agreement was imposed. As a result, there was no factual basis for a Charter argument set out at the hearing and the factual basis was not assisted very much by the affidavits of the employees. The additional peculiarity of the Charter argument was that in the notice of constitutional question, the grounds were set out in a generalized description but it was clear from the submission that the real dispute was with the *Act*. The employees said their Charter rights were infringed when the agreement was imposed. As the agreement had expired, any live controversy between the employees and the respondents was moot. As to the motion dealing with the moot issue, the general principle of the doctrine of mootness applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. Justice Kaufman did not believe there was any serious issue as the controversy between the parties as the specific grievance was no longer in existence. Having decided that the issues were moot, the discretionary issue remained. Justice Kaufman declined to exercise his discretion and hear the matter. The case was not about a judicially elusive issue. This was not a precedent setting case as similar cases would likely be coming before the court as they have in the past in a fully adversarial context. Furthermore, once the constitutional issue was removed, the points of law advanced were neither novel nor were their appearance before the courts rare.

Convergys Customer Management Inc. - and - Randy Luba  
Court of Appeal of Manitoba  
Manitoba Labour Board Case No. 211/03/ESC  
Docket No. AI 03-30-05635  
Heard by Justice Philp  
Delivered March 7, 2005

The Employee's employment was terminated without notice pursuant to Section 62(h) of *The Employment Standards Code* due to numerous incidents of lateness. The Employee filed a claim for wages in lieu of notice. The Manitoba Labour 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. The Employee appealed the Board's decision to the Court of Appeal. Justice Freedman granted leave to appeal on the question: "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?"

**Held:** The *Code* provides statutory minimum notice periods for termination of employment in section 61. Subsection 62(h) provides that the notice requirement in Section 61 does not apply in circumstances where "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 Board stated that it was "satisfied that the Employer had 'just cause' to terminate the employment of the Employee without notice". In consideration of the standards of misconduct that are found in subsections 62(h) of the *Code*, the Board's finding of just cause in its factual context cannot be equated with a finding of wilful misconduct or disobedience or wilful neglect of duty under the *Code*. Justice Philp noted that the evidence of the Employee's attendance problems and the warnings he had received amounted to conduct that was perhaps indifferent and persistently careless and neglectful of his duties. It may well have amounted to a breach of his employment contract that would support a defence of just cause in a wrongful dismissal suit. However, Justice Philp was unable to conclude from the Board's reasons whether the Board addressed if the behaviour was "wilful" so as to justify the termination of his employment without the minimum standard of notice that the statute provides. He quoted from Justice Freedman's Reasons that the Board "must explain its reasons in such a fashion that one can, without straining unduly, relate the reasons to the legislation". The Board's finding that there was just cause for termination was not a finding that the statutory requirement for termination without notice was satisfied. The appeal was allowed and the matter was remitted to the Board.

TABLE 1

**Statistics Relating to the Administration of *The Labour Relations Act* by the Manitoba Labour Board  
(April 1, 2004 – March 31, 2005)**

	Cases Carried Over	Cases Filed	Total	Disposition of Cases			Number of Cases Disposed of	Number of Cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	9	56	65	35	8	2	45	20
Application for Revocation	1	16	17	6	5	1	12	5
Application for Amended Certificate	6	28	34	22	0	3	25	9
Application for Unfair Labour Practice	17	60	77	4	18	28	50	27
Application for Board Ruling	46	28	74	23	1	7	31	43
Application for Review and Reconsideration	4	12	16	1	9	0	10	6
Application for Successor Rights	0	1	1	0	0	0	0	1
Application for Termination of Barg. Rights	1	0	1	0	0	0	0	1
Application pursuant to Section 10(1) <sup>1</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 10(3) <sup>2</sup>	1	12	13	11	1	0	12	1
Application pursuant to Section 20 <sup>3</sup>	2	28	30	0	18	3	21	9
Application pursuant to Section 22 <sup>4</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 58.1 <sup>5</sup>	1	0	1	0	0	0	0	1
Application pursuant to Section 69, 70 <sup>6</sup>	0	2	2	0	2	0	2	0
Application pursuant to Section 76(3) <sup>7</sup>	0	4	4	2	2	0	4	0
Application pursuant to Section 87(1) <sup>8</sup>	1	4	5	2	0	3	5	0
Application pursuant to Section 87.1(1) <sup>9</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 115(5) <sup>10</sup>	1	8	9	4	0	4	8	1
Application pursuant to Section 130(10.1) <sup>11</sup>	0	11	11	11	0	0	11	0
Application pursuant to Section 132.1 <sup>12</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 146(1) <sup>13</sup>	0	0	0	0	0	0	0	0
Referral for Expedited Arbitration **	9	50	59	-	-	-	49	10
<b>Totals</b>	<b>99</b>	<b>320</b>	<b>419</b>	<b>121</b>	<b>64</b>	<b>51</b>	<b>285</b>	<b>134</b>

<sup>1</sup> 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.

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

<sup>3</sup> Duty of Fair Representation

<sup>4</sup> Access Agreements

<sup>5</sup> Business coming under provincial law is bound by collective agreement

<sup>6</sup> Complaint re ratification vote

<sup>7</sup> Religious Objector

<sup>8</sup> First Collective Agreement

<sup>9</sup> Subsequent agreement to first collective agreement

<sup>10</sup> Request for the Board to appoint arbitrators

<sup>11</sup> Extension of Time Limit for expedited decisions

<sup>12</sup> Disclosure of information by unions

<sup>13</sup> Prosecution of employer's organization or union

\*\* See Table 3

TABLE 2

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES  
(April 1st, 2004- March 31st, 2005)**

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	16	658	9	5	0	2	3*
Revocation	7	547	5	1	0	1	0
Termination of Bargaining Rights	0	0	0	0	0	0	0
Board Ruling	4	1278	4	0	0	0	0

\* - Of the 3 votes conducted but not counted, two resulted in automatic certification and one resulted in dismissal of the application.

TABLE 3

**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION  
(April 1st, 2004- March 31st, 2005)**

Cases Carried Over	Number of Referrals		Number of Cases Mediator Appointed	Disposition of Cases				Number of Cases Disposed	Number of Cases Pending	
	Filed	TOTAL		Settled by Mediation	Settled by Parties	Settled by Arbitration	Declined to Review			Withdrawn
9	50	59	28	21	19	3	0	6	49	10

TABLE 4

**STATISTICS RELATING TO HOURS OF WORK EXEMPTION REQUESTS PURSUANT TO *THE EMPLOYMENT STANDARDS CODE*  
(April 1st, 2004- March 31st, 2005)**

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
13	319	332	300	0	17	317	15

TABLE 5  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE PAYMENT OF WAGES ACT***  
**(April 1st, 2004- March 31st, 2005)**

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	0	0	0	1

TABLE 6  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE***  
**(April 1st, 2004- March 31st, 2005)**

Type of Case	Cases Carried Over	Number of Referrals Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed	Number of Cases Pending
Applications pursuant to Section 96(1)	26	49	75	47	11	0	58	17
Applications pursuant to Section 111(2) <sup>1</sup>	0	0	0	0	0	0	0	0

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

TABLE 7  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE VACATIONS WITH PAY ACT***  
**(April 1st, 2004- March 31st, 2005)**

Type of Case	Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
Plant Vacation Shutdown	1	0	1	1	0	1	0



TABLE 11  
**FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED**  
**(April 1st, 2004 - March 31st, 2005)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31, 2005
Pending from Previous Reporting Period:				
Public Service Alliance of Canada	Avion Services (4030915 Canada T/A)	February 23, 2004	Board imposed first collective agreement	Expiry April 22, 2005
New Applications this Reporting Period:				
United Food and Commercial Workers Union, Local No. 832	Theo C. Limited t/a Hampton Inn & Suites	April 13, 2004	Board imposed first collective agreement	Expiry June 14, 2005
United Food and Commercial Workers Union, Local No. 832	Krown Produce	December 1, 2004	Parties voluntarily entered into collective agreement	Expiry May 31, 2006
International Union of Operating Engineers, Local 987	Rural Municipality of Alonsa	December 20, 2004	Withdrawn	
International Union of Operating Engineers, Local 987	Rural Municipality of Alonsa	February 14, 2005	Parties voluntarily entered into collective agreement	Expiry June 30, 2008



## 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>.