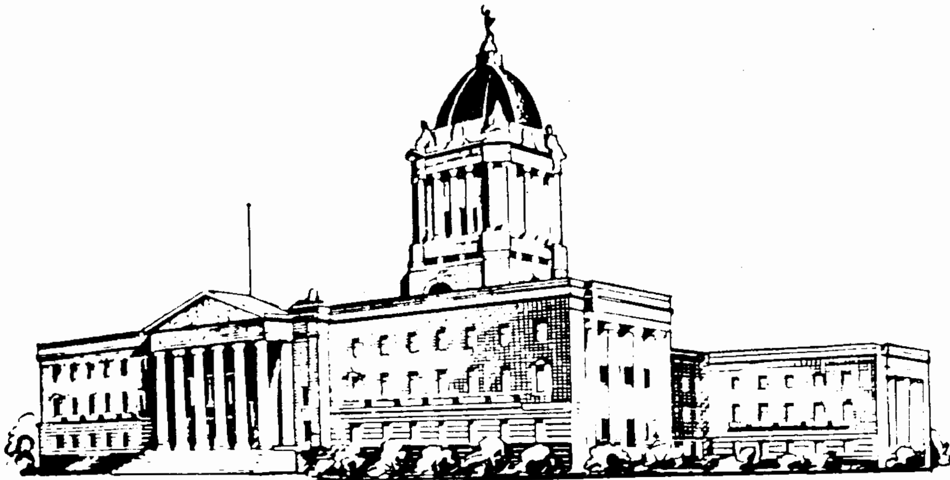
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

Chairman
William Jenkins, M.L.A.
Constituency of Logan



10:00 a.m., Monday, March 1, 1976.

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THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON INDUSTRIAL RELATIONS
10 a.m., Monday, March 1, 1976

CHAIRMAN: Mr. William Jenkins

MR. CLERK: And your first order of business, if you are ready to come to order, would be the election of your chairman. Are there any nominations? Mr. Jenkins has been nominated. Are there any further nominations? Nominations closed. I would ask Mr. Jenkins to take the chair, please.

MR. CHAIRMAN: I think the first order of business would be to set the amount of quorum for further meetings of the committee. The committee comprises of 12 members, a simple majority of seven or whatever the committee desires to set as a quorum.

MR. SHERMAN: I so move, Mr. Chairman.

MR. CHAIRMAN: Moved that the quorum for this committee be seven. (Agreed)

I have a list before me here of people who wish to appear before the Industrial Relations Committee:

The Manitoba Winnipeg Building Construction Trades Council;
Mr. John Huta, Injured Workmen's Association;
Mr. Morley Vinsky, private citizen;
Mr. William Ridgeway, Manitoba Government Employees' Association;
Mr. Bernard Christophe, Retail Clerks Union;
Mr. Leonard Krueger, private citizen;
Association of Professional Engineers;
C. R. Bouskill, President, Canadian Manufacturers Association;
Tony Swann, Manitoba Federation of Labour;
R. J. Henderson, Manitoba Health Organization;
Stephen Riley, Newspaper Guild of Manitoba;
Winnipeg Chamber of Commerce.

Are there any further people wishing to make representation? Would you come forward to the mike and give me your name, please?

MR. GEORGE AIKENS: George Aikens, representing the Labour Relations Council, Winnipeg Builders Exchange.

MR. JOHN HUTA: Mr. Chairman, we have a few individual cases who would like to present their own cases on Workers Compensation and these are Joe Cianflone who will be representing his dad who is unable to come today because he's flat on his back; Mr. Mike Mushumanski; Mrs. Nellie Galevich; Mr. Edmund Tice; Mr. Theodore Hudak; Mr. Peter Usiek; Mr. Nicholas Tanasai; Mr. Harry Zasitko; Mr. Colin McGregor . . .

MR. CHAIRMAN: Could you maybe just give me the list up here and I could call them out.

MR. HUTA: Well, there's just two more. Mr. Colin McGregor, John Huta and Mr. Richard Bishoff.

HON. RUSSELL PAULLEY: Mr. Chairman, might I ask, are these names appearing in connection with the Labour Relations Act? The meeting this morning is called for the purpose of hearing representations on the Labour Relations Act. I believe the gentleman indicated these are people who have a complaint under the Workers Compensation Act, and while I certainly would not take the stance that they should not be heard, if they have a grievance they should, but the call was issued for this meeting of the Industrial Relations Committee, Mr. Chairman, for the purpose of hearing representations on the Labour Relations Act. Now, of course, it is in the hands of the committee. There will be, as already announced by me through first reading of a bill dealing with the Workers Compensation and there will be a hearing, I presume, by the Industrial Relations Committee on legislation pertaining to workers compensation.

I want to reiterate what I said in my opening sentence or two, I have no objections at all to hearing representations on workers compensation from anyone, be they suggested amendments to the Compensation Act or objections to the methodology of

(MR. PAULLEY cont'd) . . . . . operation of the Compensation Act, but I merely want to point out, Mr. Chairman, the main purpose of this committee and the reason it was called is to deal with a proposal or a proposed number of amendments which I had suggested from the office of the Minister of Labour and given widespread publicity.

I again say the committee can take whatever stance it likes, I just want to make that suggestion.

MR. HUTA: Mr. Chairman, I believe that this is an Industrial Relations Committee and because it's an Industrial Relations Committee, these are industrial accidents, therefore they go under the Industrial Relations Committee to be treated as such and we wouldn't want them to be put aside. We were promised last year that we are going to have an Industrial Relations Committee sitting on the Workers Compensation Act last year, and there was nothing done. And I presume that this year it's going to happen the same thing and therefore these members are here, therefore, we want them heard. Right members?

MR. CHAIRMAN: Mr. Johannson.

MR. WALLY JOHANNSON: Mr. Chairman, the committee can only operate under the rules of the Legislature and it can only deal with what is referred to it. Now the Industrial Relations Committee will be meeting later this session to deal with amendments to the Workers Compensation Act and at that time anyone can be heard on this matter; there's no question that it will be sitting later to deal with the Workers Compensation Act and amendments to it.

MR. HUTA: Yes, but we were told the same thing last year, Mr. Chairman.

MR. CHAIRMAN: Order please. Mr. Sherman.

MR. L. R. (BUD) SHERMAN: Mr. Chairman, in view of the fact that the subject matter being brought forward by those who have expressed an interest in appearing here this morning relates to the Manitoba Labour Relations Act, I suggest it is legitimate and deserving of a hearing. You would have to rule, I suggest, Sir, on whether it relates specifically to the Workers Compensation Act. If it relates to the Manitoba Labour Relations Act, then the fact that either because there is protection or coverage related to the matters being brought forward contained within the Manitoba Labour Relations Act or missing from the Manitoba Labour Relations Act and it's the view of the plaintiffs or the people appearing that the Act should be corrected in that area, then I think it's legitimate information. If it's strictly a matter of appeal in the field of workers compensation then, Sir, I would think you would rule that that would come under another committee meeting called for a different purpose.

MR. CHAIRMAN: Any further discussion? Well it's my understanding that this morning's meeting was set up for the purpose of hearing briefs for the circulated proposed amendments to the Manitoba Labour Relations Act which in itself does not deal specifically with workers compensation. I have before me here a couple of copies of the announcement that appeared both in the Winnipeg Tribune and the Winnipeg Free Press. They are as follows: "Public meeting, labour legislation. The Standing Committee of the Legislature on Industrial Relations will meet on Monday, March 1, 1976 at 10 a.m. in Room 254 to hear public representations with respect to proposed changes in Manitoba's labour legislation. All interested citizens or organizations are cordially invited to attend. For further details contact the Secretary" - and there's a phone number.

I can quite appreciate the concern with respect to the workers compensation but we're dealing with industrial relations here right today, and I can assure you as Chairman that I will make sure that you people will be heard when legislation is brought forward, and if you leave me a phone number I will certainly get in contact with you when legislation dealing with workers compensation and at that time you may make representation to the committee on that.

MR. HUTA: Mr. Chairman, I understand that this is industrial and therefore these claimants have been injured through industrial accidents so therefore it stands to reason that they should be heard.

MR. PAULLEY: They will be heard, Mr. Huta.

MR. CHAIRMAN: Mr. McKenzie.

MR. J. WALLY McKENZIE: Mr. Chairman, it's a very thin line and I don't see how we can pass judgment on these briefs until we've heard them. One section, I

(MR. McKENZIE cont'd) . . . . . think, that we're preparing to deal with in the committee is the alterations of working conditions, I believe that's one of the sections that will be under discussion and I find it very difficult to rule these gentlemen out of order especially until we've heard their briefs.

MR. PAULLEY: Mr. Chairman, then may I suggest that the procedure be that we hear those briefs dealing with the Industrial Relations Committee in the order that you have them and then time permitting - well it will be time permitting in respect of any delegation. I have no qualms of conscience to hear anybody on workers compensation, I hear them every day, another few days won't make that much difference, so I would suggest, Mr. Chairman, we proceed to hear the delegations that you listed in the order that they came with just this suggestion that if there is anyone from out of town that desires to be heard this morning, we hear them first in relation to the industrial relations aspect of our hearing and get on with the job. (Agreed)

MR. HUTA: Mr. Chairman, we have one gentleman that's all the way from Grandview, Manitoba and his bus is leaving at six o'clock tonight and therefore he cannot afford to stay one day over because he's in deep financial difficulties.

MR. CHAIRMAN: Who is the gentleman?

MR. HUTA: Mr. Mike Mushumanski. And when do you think that these other delegations or members that would like to represent their own individual cases, when could they be heard?

MR. CHAIRMAN: I doubt very much that they will be heard today because the names that you gave me are going to have to come at the tail end after number twelve. We're going to hear Mr. Mushumanski because he's from out of town and also going to ask if there is anyone else dealing with industrial relations from out of town. These are the people we will hear first and then we will start in the order in which they have been listed here.

MR. HUTA: So will the committee be sitting tomorrow again?

MR. CHAIRMAN: That is in the will and pleasure of the committee.

MR. HUTA: Or will it continue in the afternoon?

MR. CHAIRMAN: No, it will not be continued this afternoon, the House is sitting, we're sitting here till 12:30.

MR. HUTA: So we presume that you will let us know at 12:30 when the committee will be sitting again.

MR. PAULLEY: Hopefully, if possible.

MR. HUTA: Thank you.

MR. KRUEGER: Mr. Chairman, I just have one page, the Honourable Minister has a copy already. Could I speak first, then?

MR. CHAIRMAN: No, you're not from out of town are you Mr. Krueger?

MR. KRUEGER: My home town is Morden, Manitoba but . . .

MR. CHAIRMAN: Order please. We'll call on Mr. Mushumanski, please.

MR. TKACH: Mr. Chairman, I presented a bunch of briefs over there and I didn't hear my name called out. My name is Alex Tkach, and I represent the dissatisfied construction workers in the province, members of international unions.

MR. CHAIRMAN: How do you spell your name, sir?

MR. TKACH: T-k-a-c-h. It's on the brief, there's a batch of them behind.

MR. CHAIRMAN: Okay. Mr. Mushumanski.

MR. BUHLER: No, I represent the Prairie Implement Manufacturers Association. I don't imagine I'll get a chance to speak but I just wanted . . .

MR. PAULLEY: You will have a chance if you so desire.

MR. CHAIRMAN: Implement . . .?

MR. BUHLER: Prairie Implement Manufacturers Association, John Buhler of Morden.

MR. CHAIRMAN: Thank you. Mr. Mushumanski.

MR. MIKE MUSHUMANSKI: Mr. Chairman, I would like to read this brief that I have prepared and it goes as follows.

I was working for Sherritt Gordon Mines in Lynn Lake, Manitoba. I started employment in July, 1959; I was a miner first class. My duties were to operate all equipment underground and explosives. At the time of my injury I was a motor man and

(MR. MUSHUMANSKI cont'd). . . . . I was hauling muck from a shaft sinking at the Farleyshaft; a muck car derailed and I attempted to put it back on the rail. As I was lifting the car my left leg slipped and I was unable to hold the weight on one foot. The weight of the car pulled me backwards and to the left when I experienced a sharp pain in my lower back. The accident happened approximately 1:30 p.m. I remained on the job for the remainder of the shift, I reported the accident to the shift boss, Mr. Alec Neilson. The approximate weight of the car was 640 lbs., the height of the lift was approximately six inches. This accident happened on July 11, 1961. Placing derailed cars back on the track was a common occurrence. Due to derailment on a curve the derailers could not be used and manpower was the only solution for putting derailed cars back on the track.

I went to see the doctor the following day, Dr. McMann; he prescribed painkillers and diagnosed strained muscle. I was off work and received full compensation for approximately two weeks. Dr. McMann recommended I go back to work although the pain in my lower back was still very severe. Dr. McMann persisted that it was a strained muscle and it would gradually wear off but my condition became worse and Dr. McMann would not recommend any further treatment than to return to work. I continued to work off and on because of severe pain because Dr. McMann refused to administer any further treatment. I turned to a chiropractor in Flin Flon, Manitoba, Dr. Brad, where I received some temporary relief. I also visited Dr. Black, chiropractor in Swan River, Manitoba for two weeks, where I had received considerable relief and was advised not to work for one year. But the Workers Compensation Board did not recognize chiropractors.

After a further short work period in May of 1962, I was sent by Dr. McMann to Flin Flon, Manitoba for a myelogram. I had missed the team of x-ray technicians that came to Flin Flon approximately two or three days so Dr. Stevens sent me to Winnipeg to Dr. P. H. Decter. He took myelogram tests and recommended an operation. The myelogram tests revealed the L-3 disc was pressing on the nerve. I hesitated to have this surgery done on my back but he insisted that surgery was the only solution and told me I would be one hundred percent after the disc was removed.

I had my first back surgery on June 13, 1962. I was in the Winnipeg General Hospital for approximately two weeks. I was off work until the end of November '62 and received full compensation. Dr. P. H. Decter recommended light duties, but when I reported to work I was placed back on regular duties. My first job was to remove a bulkhead. The bulkhead was made of 8 x 8 square timber that was waterlogged and weighed approximately 200 lbs. per timber. There were approximately 10 or 12 timbers in each bulkhead. These were in arrays and I had to pry them loose and lift them on to the level. I was one shift on this job. After this, I experienced severe back pain. I continued as a timber man for a few more days. I went to see Dr. McMann and he sent me back to Dr. P. H. Decter in Winnipeg. I was put in hospital and had another myelogram. Dr. Decter told me that there was nothing wrong but I would have to give up mining. And then I approached the Workers Compensation Board to obtain a commercial pilot's licence. Dr. Decter told me that I would be able to do this type of work.

The Workers Compensation Board accepted my application for rehabilitation and I was enrolled at the Winnipeg Flying Club to go through for my commercial licence. I received my licence on July 3, 1963. This course was approximately 90 days. By the time I completed my training, I experienced severe pain in my lower back which prompted me to return to Dr. Decter. He told me that there was nothing wrong and that I would have to go to work and not to come back again. I was put on unemployment insurance until some time in November '63. I then went back to Dr. Decter and he told me that . . . I had laid around all summer and was unable to work. He then placed me back in the Winnipeg General Hospital and ordered another myelogram. He then told me he would have do a fusion since the x-rays showed that the previous fusion was not holding and it had worn the vertebrae crooked. I experienced severe pain. Dr. Decter performed the operation again, fused L-3. He told me approximately five months later after the operation that he had removed L-2 and L-4 and fused L-2, L-3 and 4.

I had one more back operation by Dr. Decter. At this point, I received permission from the WCB to change doctors. I went to Dr. W. B. MacKinnon at Medical Arts who performed two additional re-fusions but with no success. In 1966 I received $42.00 a month permanent disability pension. The WCB rated my disability as 40 percent partial

(MR. MUSHUMANSKI cont'd) . . . . . permanent disability as of November, 1969. I received $125 a month. Since, I have received increases and I now receive $164.06 a month. I'm still experiencing severe pain and my own family doctors recommend that I be sent to two independent specialists, one in England and one in the United States, but the Workers Compensation Board Medical Department stated on May 7, 1975: "The Board Medical Department are of the opinion you will continue to receive adequate and proper medical attention in Manitoba, there would be no justifiable reason for this proposed trip." Dr. John Ford in his progress report of January 9, 1975 states: "Despite multiple five operations, patient still has severe pain and states it is too severe for him to work even at light duties." Dr. W. B. MacKinnon, orthopedic specialist in his report of February 24, 1975 stated: "Mr. Mushumanski has a long history of back and leg pain following an injury to his back in 1961 in the Sherritt Gordon Mines in Lynn Lake, Manitoba. Prior to me seeing him he had three operation procedures; the first being the removal of the intervertebral disc by Dr. Decter in 1962, returning to work on the 7th of July, 1973. However, in November of 1963 he came back unable to work and on the 3rd of January, 1963 he had a fusion by Dr. Decter and the fusion was said to have broken. He had a fusion eventually around about January, 1964 and a refusion in March of 1965. He first came under my care on the 27th of June, 1966. There was evidence that the fusion had not taken and I undertook, following investigation, to do a refusion. Due to persistent pain and discomfort I performed an operation on the 13th of August, 1966. At this time I found that there had been a failure in the fusion extending from the fourth lumbar to the sacrum. Mr. Mushumanski had a Board hearing on September 24, 1975. He is still having quite a bit of discomfort and severe pain. He wants the Board to reconsider the possibility of having medical attention outside of Canada."

MR. CHAIRMAN: Thank you, Mr. Mushumanski. Mr. Sherman, I believe you had a question.

MR. SHERMAN: No, it's all right, Mr. Chairman, thank you.

MR. CHAIRMAN: Mr. Barrow.

MR. THOMAS BARROW: In both working places, the first time on the mucking machine, and the second place removing bulkheads, were you working alone?

MR. MUSHUMANSKI: The first time it was a three-man crew, two motormen and a mucking machine operator, we were alone after we left the face where we were loading. The second time where I was removing the bulkhead, yes, I was alone.

MR. BARROW: In the case of a derailed car don't you look for help to put it back on the rails again?

MR. MUSHUMANSKI: No, no, this is the responsibility of the motormen.

MR. BARROW: He doesn't have any one to assist him?

MR. MUSHUMANSKI: No.

MR. BARROW: Well you work on a different system than we do in Flin Flon. Sherritt Gordon at Lynn Lake and Leaf Rapids?

MR. MUSHUMANSKI: At that time it was only Lynn Lake, now I understand it is Fox Lake and Leaf Rapids.

MR. BARROW: Well in the case of a miner being injured and he is convalescing, don't they have light duty jobs till you get back on your . . .

MR. MUSHUMANSKI: This was my understanding, but I didn't get a light duty job, no.

MR. BARROW: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you, Mr. Mushumanski.

I now call on Mr. Desilets, representing the Manitoba-Winnipeg Building and Construction Trades Council.

MR. LEO DESILETS: Mr. Chairman, MLA's, members of the committee, ladies and gentlemen. Our brief is prepared, the contents of our brief are a rebuttal to the Premier's White Paper.

MR. CHAIRMAN: You have copies of the . . .

MR. DESILETS: I gave 15 copies to the gentleman in the back. Our brief will be read in two parts; I will read the first part and Mr. Iverson will read the second part.

MR. CHAIRMAN: Thank you. Would you proceed, please.

MR. DESILETS: 1. Unfair Labour Practices

(a) The consideration to bestow upon the Manitoba Labour Board broader powers in the area of unfair labour practice cases, which would require the Board to adjudicate rather than the courts is, in our qualified opinion, overdue. Caution should prevail in such a contemplation to ensure that the tribunal dealing with such matters is not only judicially but also industrially competent to mete and dole the necessary brand of justice.

We would suggest that some innovative method be applied in the selection and appointment of membership to the Manitoba Labour Board in order to produce a group tribunal which would have not only the respect but also the confidence of today's industrial society.

(b) The matter of interpreting certain acts by an employer such as "intimidation, coercion, threats or undue influence" as an unfair labour practice whenever a union is seeking certification is not adequate. By deeming certain acts to be unfair labour practices only when a union is "seeking" certification places a limited life on an employee's rights, for it merely advises an employer that he is required by law to conduct himself in a certain fashion today but tomorrow he will be free to do all those things which were illegal today.

Let us expand this concept. In any given industry there are numerous employers. A union will embark on an extensive organizing campaign, but due to the large amount of unorganized employers, the organizing proceeds on a singular basis of one employer at a time. However, the employers whom the union has not yet had an opportunity to turn its attention to become aware of the organizing activity and commit all those actions which the Act would deem to be unfair labour practices if the union were seeking certification. Such employers would escape legal penalty merely by keeping an alert eye for some display of union activity and cease at that point with the full knowledge or at least the hope that the undermining has been achieved. The tragedy does not cease at that juncture, however, for even if the applicant union succeeds in obtaining a certification an employer would then become free to resume the undermining action which would jeopardize the bargaining agent's chances of achieving a collective agreement. Similar conduct could be engaged in during the life of a collective agreement for the purpose of ousting the certified bargaining agent or substituting that bargaining agent with one of the employer's liking.

In short, "negative conduct" by an employer should not be permitted by the statute at any time. Protective rights should not be permitted to sway from employee to employer.

This particular subject has been of extreme concern to our Council and we submit that adequate deterrents should be provided by the statute to discourage such "negative conduct". Our Council's considered opinion is that in addition to any monetary penalties which may be imposed upon an offending firm, a mandatory requirement to grant bargaining rights to the offended or applicant trade union regardless of what amount of worker support may have been recruited up to the time of the offence should be provided by the Labour Relations Act.

(c) We can find no valid reason to oppose any monetary award being made to any person who has been victimized by an unfair labour practice, except that such personal relief should be available in all successful cases and not only in cases where employment income has not been lost or lessened.

(d) Extensive comment cannot be provided on the considered amendment to declare as an unfair labour practice if a person becomes discriminated against with regard to admission to a union. We would require clarification of what practice would be deemed discriminatory prior to being in a position to rationally comment on this proposal.

(e) We request the record to indicate our full support for the constituting as an unfair labour practice of a person being abused when seeking those individual rights as may be conferred by any provincial or federal statute. We commend the originator of this thought, for all too often a citizen discovers that seeking of his legal rights does not result in the expected benefit.

(f) The matter of extending time limits to six months for the seeking of relief against unfair labour practices also receives our Council's endorsement, except that consideration should be given to extending the time limits up to one year in cases where

(MR. DESILETS cont'd) . . . . . the offence occurred to an employee who was employed in a remote or isolated area where early reporting would have been difficult, impractical or economically unjust.

2. Professional Strikebreakers

Our Council has no disfavour with the suggestion to incorporate into the Act, whereby the use of professional strikebreakers would become an unfair labour practice. Particular attention should be focused, however, upon the definition of what does and what does not constitute "industrial professionalism". The employing or importing of the "goon squad" type of strikebreakers is easily definable and should pose no problem of recognition. We suggest that the real problem occurs when an employee becomes a professional strikebreaker by virtue of the terms of his employment. In this regard our Council suggests that any final definition of this term include:

(a) Any person who is employed under terms and conditions which are superior to the terms existing or last offered prior to the commencement of a legal strike.

(b) Any person who is employed by an employer who was not engaged in performing work at the time of or prior to the commencement of a legal strike.

(c) Any person who is self employed and who was not engaged in performing the work either at the time of or prior to the commencement of a legal strike.

(d) Any person who does not possess the necessary qualifications to perform the work as may be required by any legal statute and/or regulation.

3. Exceptions to Employer Interference

Our Council holds no disagreement with having the privileged exceptions currently outlined in Section 7(2) of the Labour Relations Act applying only after certification has been granted. However, the statute should stipulate that the privileges outlined therein could be made available only to the certified bargaining agent or to the bargaining agent who has been voluntarily recognized. If the Act were to allow such privileges to be made available unilaterally on the sole proviso that a Certification is in existence, without having any regard as to what the beneficiaries of such privileges are to be, then it would be of extreme ease for an employer to facilitate a substitution of an existing bargaining agent with one of his preference, merely by affording the aspiring bargaining agent the privileges which can be realized through such exceptions as the statute may allow, yet at the same time denying such privileges to the existing agent.

4. Alterations of Working Conditions

We support the consideration of removing the 90 day limit from Section 18(2) of the Labour Relations Act. We cannot, however, support an amendment which would or at least could cause an arbitrary surrender of a certified bargaining agent's right of representation to the Manitoba Labour Board.

We submit that the Manitoba Labour Board is not a bargaining agent and should not be empowered by law to subtract from the effectiveness of the same agency upon which it confers legal representation status. It is of no consolation to the bargaining agent to make a distinction between who commits the action to undermine its position, be it the employer or the Labour Board. The crucial realization is that "undermining" has occurred regardless of the source. We recommend that in that regard, Section 18(2) of the Labour Relations Act not be amended as proposed, but that the bargaining agent should remain the sole entity to provide any required consent prior to any employment conditions being altered.

We would also recommend that any restrictions imposed by Section 18(2) be made applicable to any minimum wage rates and employment conditions which may exist at the expiry of a collective agreement whether the bargaining agent is certified or not. A provision of this type would produce a uniform and equitable application of this rule in any given industry. Employers in today's industries are increasingly banding together, thereby creating common industry-wide bargaining. One can visualize the resulting chaotic situations which would develop where certain employers, by virtue of the certified status of a bargaining agent, would be required to comply with statutory requirements while the remaining employers, by virtue of a voluntary recognition of the same bargaining agent, would be permitted to be guided by their independent choices. Such eventualities can occur whether the collective agreement being sought is a "first" agreement or a subsequent agreement.

(MR. DESILETS cont'd).

We realize that any amendments to Section 18(2) would in all likelihood require amendments to Section 18(1). Here again, we would register our opposition to permitting the Manitoba Labour Board to function as a bargaining agent by allowing it to decrease wage rates and/or reduce employment conditions, or increase wage rates and/or improve employment conditions. Our Council views this particular subsection as being discriminatory for the following reasons:

(a) The position of the potential bargaining agent runs the risk of being undermined.

(b) It permits the employer to apply for a consent to institute a change.

(c) It does not allow employees to apply for an order to institute a change.

(d) The granting of such consent could result in the destruction or at least reduction of the applicant bargaining agent's chances for success prior to the disposal of the application, thereby causing the Board to be an instrument of jeopardy to the applicant union.

Rather than allowing an impartial Board to be jockeyed into such an untenable position, emphasis should be placed upon the Board to require a speedy disposal of the application. Early attention would negate any need for the Board to adjudicate on those matters which through a certification order it assigns to the bargaining table.

We also suggest that a careful review of the word "granted" in the final line of Section 18(1) be undertaken. The existence of that term implies that an employer may perform immediately upon the granting of a certification all those things which that particular subsection prevents him from arbitrarily doing while the application is pending. This, of course, would come into conflict with Section 18(2) which continues the staying of like actions and in our interpretation requires some modification.

Particular attention should be given to eliminate any confusion between Section 18(1) and 18(2) and the regulations made under the Construction Industry Wages Act. Those regulations create schedules governing minimum wage rates and maximum hours for the construction industry and a strict interpretation of the two above subsections will reveal them to be in conflict with the construction schedules.

5. Certification

We cannot concur with the suggested elimination of the 35 percent to 50 percent support factor creating a representation vote opportunity. We believe that because of the short time period that this condition has existed in the Act ample opportunity to gauge its merit has not been afforded. We suggest that a further test of time be allowed prior to any consideration being made to remove it from the Statute. Furthermore, if it has caused no undue hardships to date, then its continued existence should be justified.

We are more deeply concerned with the manner in which applications receiving majority support are treated. At times it would appear that the Manitoba Labour Board exercises its discretionary powers too loosely and the Act should be amended to avert such exercises.

Seemingly, the Board requires, through its rules, tests which are not to be found in the Act. It would at times appear that an applicant bargaining agent whose support is represented by a slim majority is more apt to be subjected to a representation vote than an applicant whose support is demonstrated in substantial majority form. We suggest that the Act be extremely emphatic in that where there is a single applicant bargaining agent and a majority support regardless of size has been established to the satisfaction of the Board, then certification should result without the Board holding any option to declare any further test.

We are also concerned that rules governing representation votes are not consistent. Presently if the Board requires the taking of a representation vote in cases where a single applicant bargaining agent is involved, the ballot affords the voter the choice of demonstrating whether he desires a bargaining agent or not. The same is not true when a representation vote is ordered in those cases where rival bargaining agents are seeking the bargaining rights for a unit of employees. In such representation votes the voters are arbitrarily required by the Board to choose one of the competing Unions as their bargaining agent or refrain from casting ballots. If it is the choice of any voters not to have a bargaining agent, they are powerless to exercise their franchise, for a "negative ballot" is impossible as a result of this undemocratic rule whenever multiple applicants are involved. We submit that the role of the Labour Board should be one of determining

(MR. DESILETS cont'd) . . . . .whether the employees in a unit desire a bargaining agent, and not one of compelling employees to accept a bargaining agent if the available choices are not of their desire.

6. Decertification Votes

The proposed amendment in this matter receives our Council's approval and support insofar as substituting the 35 percent minimum limit with one of 50 percent. Notwithstanding our support to this point, we submit that whenever an application is substantiated by majority support, the issue should require final resolvement by a vote of the employees in the unit. One must bear in mind that the Act provides an application for decertification to be less burdensome and less costly than an application for certification. The required test is also substantially stricter in certification cases. An applicant bargaining agent cannot successfully apply for bargaining status merely by displaying some form of signed support. Proof of application for membership from each supporting employee in the unit must be submitted as well as the applicant agent being required by the Statute to collect a prescribed minimum payment from each supporting applicant. An employee seeking cancellation of a certification order or the termination of bargaining rights is required to comply with less severe and less complex regulations. Consequently, the concluding test should be somewhat stricter to help balance the equation.

MR. W. IVERSON: 7. Representation Votes

Our Council would welcome an improvement in the determination of a voting constituency. In this respect we feel that the only employees to be allowed voting rights should be those who were in the unit at the date of application. To provide otherwise would be defeating the principles of "right of organizing" and make a mockery of all formal requirements imposed upon an applicant bargaining agent prior to the filing of an application for certification.

In pursuing a formula which would enact impartiality and equity we strongly urge that consideration be undertaken in the area of conducting "pre-hearing" votes. Such votes being conducted within an extremely immediate period following the filing of an application would ensure the availability of the voters and eliminate costly time consuming exercises in the future. The ballots could be individually sealed in coded envelopes, deposited in a secure ballot box and entrusted to some security agency for retention until required. If in the course of adjudication on an application the Board concludes that the matter should be settled by the employees in the affected unit, the Board then could merely require the counting of the ballots. The coding of envelopes would allow identification in disputes concerning the eligibility rights of the voters and such ballots could be removed and destroyed without any disclosure of the voters preference. If any challenge is registered to the Board's ruling then the ballots would remain secured until a court of competent jurisdiction resolves any such challenge.

Our Council is also appalled at what we consider to be a rather illogical rule applying to representation votes. We know of no other example where a voting constituency is revealed to the participating principals in an election, but not the voters complete identification. We suggest that the time is long overdue whereby such unfairness should have been eliminated. Presently the Board obtains a voters list complete with identification from the employer's records with disclosure of that information being denied to the applicant bargaining agent. It is our contention that once a voters list is obtained by the Board, that such record becomes the property of the Board. The voters list should then be made available to all parties who have a vested interest in the election. Picture the ridiculousness of a provincial election whereby a voting constituency would be publicly disclosed but the aspiring candidates being required to discover for themselves the eligible voters locations. Surely our industrial society has evolved sufficiently to allow for a clear, open contest in the area of representation votes.

8. Timeliness of Certification and Decertification Applications

We would register our concurrence with the proposed amendment of eliminating or preventing applications for certification during the first year of a collective agreement whose life term exceeds a 12-month period. We also support having similar conditions prevail on decertification applications. Such changes would lend themselves to improving labour management relations which should produce as a by-product further industrial stability.

(MR. IVERSON cont'd)

9. Professional Employees

While the subject matter of professional employees does not normally introduce itself in the construction industry, we would wish to express our favour with the suggestion of amending the definition of "professional employee" to include persons who are actually engaged in practicing their professional skills during the normal course of their employment.

In respect to the suggested amendment to Section 29(3) of the Labour Relations Act, we are of the opinion that the statute, if rewritten, should be explicit in providing that:

(a) The professional employees are compatible with the existing employees in the unit.

(b) The employees in the existing unit favour the inclusion of professional employees.

If these two factors are taken into consideration then we can see no hardship being engineered by the Board in exercising its powers under Section 29(1) which provides for the Board to make the final determination as to whether a unit is appropriate for collective bargaining or not.

10. Dependent Contractors

We would not favour an extension of the term "dependent contractors" to apply to other than that which is presently indicated by the Labour Relations Act. Our experience is that even the present definition has caused some hardships with respect to the effectiveness of collective agreements in those units where dependent contractors are employed. We are of the opinion that the extension of that term would tend to further weaken other bargaining units, and rather than seeing the term being made applicable to other workers we would prefer to see the term stricken from the Labour Relations Act.

11. Transfer of Business: Effect on Certification and Collective Agreements

We can find no disagreement with the intended changes to Section 65 of the Labour Relations Act which would provide for the continuance of bargaining relationships in such cases where a business or businesses are leased, transferred or otherwise disposed of. However, here again we would request that the Act be very explicit in describing or defining the term "otherwise disposed of". We suggest that in this area the statute be very clear so as not to allow, through the exercising of legal loop-holes, whereby a business or a portion of a business could be sold, phased out, placed into bankruptcy, etc., for a short period of time, following which the premises could be re-opened and the enterprise commence functioning under a new or different corporate identity.

12. Union Mergers

We can register our support for an amendment which would clarify two or more merging unions' positions with respect to any existing certification and/or collective agreements, provided that the Act read clearly to avoid confusion between the term "merging unions" and "merging units". It is very likely that two or more units of employees employed by the same employer may merge without there resulting any change in the identity of their bargaining agent, or on the other hand multiple units, each represented by a different bargaining agent may merge for the purpose of creating a common unit under a common bargaining agent who may be comprised or more than one union. Therefore, in view of the possible complexities in terms of conditions, the Statute should be completely explicit in regards to this intention.

13. Review of Arbitration Board Awards

We are in agreement that the Act begs for some time limit being applicable with respect to review by the courts of Arbitration Board awards and we have no disagreement with the 30 days time limit suggested. We favour the time limit to be of short duration, for to provide otherwise would merely result in reducing the effectiveness of any arbitration award. We have only one reservation in this regard; that being one of whether a court review would be consistent with the intended principles of providing the Manitoba Labour Board with broader powers to deal with unfair labour practice cases. In the event that this would not be in conflict, then we suggest that further consideration be given on this matter to perhaps allow reviewal powers to the Board prior to an application being made to the courts.

14. Parties to Confer with Conciliation Officer

We welcome the suggested amendment which would require parties to a dispute to

(MR. IVERSON cont'd) . . . . . meet with and not merely confer with a Conciliation Officer, a Conciliation Board or mediator. In this regard we have often stated for the record that the statute does not afford a conciliation officer or any other related body sufficient authority which could be utilized to compel logical and effective bargaining prior to the parties being permitted to exercise their right of economic action against one another. It has been our hope for many years to have our Labour Relations Act provide a conciliation officer with the authority to require representatives of the parties to appear before him, fully prepared and fully vested with the necessary authority which would allow them to render decisions which would culminate in either a collective agreement or in the knowledge that everything humanly possible had been done to create one.

15. Compulsory Check-off of Union Dues

We appreciate the consideration being given to amending Section 68(1) of the Act in such fashion as to eliminate any vagueness or ambiguity as to what constitutes union dues which an employer is required to deduct and remit to the bargaining agent. We question whether the deletion of the word "monthly" from this section would specify the intention, and in this regard we submit that consideration should be undertaken to also delete the word "regular" which precedes the word "monthly". It is our opinion that the deletion of these two words would totally eliminate any confusion or ambiguity which may presently exist.

16. Voluntary Agreements to Delay the Right to Strike or Lock-out

Our Council is opposed to any amendment in the Labour Relations Act which would extend or allow the parties to a collective agreement, or the parties to collective bargaining, to extend the time limit stipulated by the Act prior to their exercising their right to strike or lock-out. We are of the considered opinion that the Act should proclaim the time limit and that its application be imperative upon the parties. We are curious as to why the suggested amendment would allow the parties to extend but not reduce the 90-day time limit. Our view is that permissive legislation of this type would tend to weaken the position of a bargaining agent, especially in the case of a "first" agreement, whereby an employer could insist on an extension prior to any serious collective bargaining occurring. The type of amendment being proposed would put an additional bargaining lever into the hands of the employer, making any given situation more unfair to the bargaining agent.

We cannot see such a provision benefiting the parties to a collective agreement. Generally speaking, a collective agreement runs for a minimum period of one year and, therefore, the parties are free to allow themselves as much time as they wish to arrive at a new collective agreement prior to the expiry date of an existing agreement. Therefore, we can see no necessity for the Act to spell out a privilege which already exists by virtue of an established bargaining relationship. Furthermore, the employers in the construction industry have in recent years taken the view that the industry should be opposed to lengthy negotiations with the present day objective being on speedy negotiations towards a new collective agreement. Therefore, the suggested permissiveness to extend the time limits is somewhat contrary to the view of our industry.

Finally, one must remember at all times that the conclusion of the 90-day period does not require or command either of the parties to institute any economic sanctions against one another. It merely allows the parties to avail themselves of that right if they wish to exercise it. The parties at that point are free to agree amongst themselves as to an extension of time, or create an extension arbitrarily. In effect, the permissiveness to extend the 90 day limit already exists in the Labour Relations Act in the best form possible, for the manner in which it can be achieved jeopardizes the position of neither party.

17. Technical Irregularities in Grievance and Arbitration Procedures

We would endorse most emphatically and without any reservation to have our Labour Relations Act allowing our courts to uphold arbitration awards where such awards had been arrived at in spite of technical irregularities existing either at the time of the hearing or in prior grievance proceedings. We suspect that some opposition may be received from certain employer elements which might feel that the Labour Relations Act should not disturb those terms as may have been negotiated by the parties into a private covenant such as a collective agreement. Normally we would subscribe to such a position. However, practical experience in these matters causes the record to show that many employers

(MR. IVERSON cont'd) . . . . .demonstrate total disrespect towards any grievance or arbitration procedures which they so heartily negotiate into collective agreements, by refusing to recognize those same terms for final settlement of a dispute whenever an employer feels that he may have a grievance against the bargaining agent. It is common knowledge as to the numerous court remedies which have been sought by employers, without having submitted any grievance through the "domestic tribunal" required by their own collective agreement. Therefore, unless the Labour Relations Act were to be amended in such a fashion as to bar any application for relief through the courts prior to the total exhausting of the issue through the remedies prescribed within the collective agreement, we cannot oppose and suggest that our legislators not view any opposition to this particular amendment with any degree of seriousness.

18. Declaratory Orders

We would have no objection to providing the Manitoba Labour Board with powers to issue declaratory and cease and desist orders. However, we would recommend that the Statute provide for the responsible continuation of action whenever a cease and desist order would be issued by the Board. In this regard we suggest that the Board would retain similar responsibilities in those cases such as the Workers Compensation Board holds in cases where it may require employers to adhere to certain safety regulations, etc. Our intention is that if a cease and desist order is ignored then it should become an absolute responsibility of the Manitoba Labour Board to pursue enforcement through whatever other legal channels may be available. Presently, in some cases our experience has been that whenever a Board ruling is challenged in the courts, and while the Board is technically named as the defendant, it has become incumbent upon a Union to argue the case, with the Board merely serving in the capacity of an observer or an almost "silent party" to the proceedings. Therefore, provided the Board were prevented from abandoning its responsibilities after having issued an order, we would give this recommendation our unqualified support.

19. Court Review of Board Decisions

Our views on this matter are similar to those we have already expressed in Item 13 in this presentation. We agree that the Statute should contain some form of time limit regarding review of Board decisions by the courts. We would recommend that consideration be given to setting the time limit at 30 days as we have suggested in the case of a review of an Arbitration Board decision and the matter of requiring prompt decisions from the courts would certainly enhance the chances of establishing compatible labour management relationships.

20. Panel of Mediators-Arbitrators

We would not oppose an amendment for the Act containing a panel of mediators-arbitrators to serve in labour management disputes, provided that the use of those specific individuals would not be made mandatory upon the parties to a dispute, whereby such provision would be in conflict with the terms of a collective agreement. One must bear in mind that when a grievance which has progressed to the arbitration stage, many collective agreements require a multiple person board with one member of that board serving as its chairman. The respective parties appoint equal number of the remaining members who understand the issue in dispute and, therefore, provide rational representation for their appointers. Therefore, it has become customary for the "domestic tribunal" to reflect the respective positions of the disputing parties with the hope that the impartial member would have the confidence of not only the parties but the other board members. If these principles were to apply in the proposed amendment, then no resistance to it should exist.

21. Penalties

We support the proposal to review the level of fines set out in the pertinent sections of the Labour Relations Act. We are of the opinion that, as in any other law, effective deterrents can only be created through the existence of substantial penalties, to discourage any disrespect for the law, which would result in abuse of those rights conferred by the Act.

Vacations with Pay Act

The normal practice in the construction industry by virtue of collective agreements as well as requirements in the Vacations with Pay Act provides for vacation credits to

(MR. IVERSON cont'd) . . . . .be accumulated on a percentage basis relevant to an employee's annual earnings. Consequently, the matter of time qualification rarely, if ever, determines an employee's eligible vacation period. In view of this practice we are taking the position that the contemplated changes should be left for final determination to those industries who are required to comply with that portion of the Statute.

All of which is respectfully submitted by the Manitoba-Winnipeg Building and Construction Trades Council.

MR. CHAIRMAN: Thank you, Mr. Iverson. There are several members of the committee that may want to ask you or Mr. Desilets some questions. Mr. Green.

HON. SIDNEY GREEN: Mr. Iverson, your group would be part of those groups of unions that would commonly have been referred to as the crafts unions, would that be correct?

MR. IVERSON: That's right.

MR. GREEN: I would assume, and I would want your confirmation, that prior to PC-1003, prior to the first version of the Labour Relations Act that we had enacted during the war, that there were many collective bargaining arrangements between unions represented by yourself today and employers in the Province of Manitoba?

MR. IVERSON: Yes.

MR. GREEN: And all of those collective bargaining arrangements existed notwithstanding the complete absence of a labour relations act?

MR. IVERSON: That's right.

MR. GREEN: Can you tell me the percentage of employees engaged as journeymen craftsmen that were organized prior to the existence of a labour relations act?

MR. IVERSON: Percentage?

MR. GREEN: Yes.

MR. IVERSON: Well, Mr. Green, I can only speak on behalf of my own trade and I would imagine it would be just about the same as it is now.

MR. GREEN: So what you are telling me is that despite the existence of all of these lawyers, judges, labour boards, legislative committees, the percentage of employees represented by yourself has not increased at all despite the existence of a labour relations act?

MR. IVERSON: Did you say the percentage of employers . . . ?

MR. GREEN: Of employees.

MR. IVERSON: Of employees.

MR. GREEN: Organized by . . .

MR. IVERSON: On a pro rata basis, that is correct.

MR. GREEN: Right. And can you tell me that you have less industrial relations difficulties now than you had prior to PC-1003 having been enacted - or do you have more?

MR. IVERSON: I would say we have more.

MR. GREEN: At that time you didn't have to hire lawyers . . . ?

MR. IVERSON: No.

MR. GREEN: You didn't have to appear before legislative committees?

MR. IVERSON: No.

MR. GREEN: You didn't have to satisfy labour boards?

MR. IVERSON: No, it was all voluntary recognition.

MR. GREEN: What happened if an employer in your industry decided that he didn't want to recognize the Bricklayers Union, that's a good one, I represented that union. -- (Interjection) -- Yes, I think I represented Mr. Iverson. What would happen if an employer in the bricklayers business or construction business didn't wish to bargain with you, what happened?

MR. IVERSON: Nobody worked for him.

MR. GREEN: You persuaded him that if he didn't want to recognize you then he would have difficulty getting employed?

MR. IVERSON: Right.

MR. GREEN: Wasn't that a good system?

MR. IVERSON: In those days, yes, it was a good system.

MR. GREEN: Do you know whether it would be a good system today?

MR. IVERSON: It would be a good system today, Mr. Green, but there's many problems created, we have different laws today.

MR. GREEN: Wouldn't most of the problems be the creation of the law themselves?

MR. IVERSON: Probably.

MR. GREEN: Why aren't you asking for the elimination of some of these laws rather than the compounding of these laws?

MR. IVERSON: In the first place, we've got a different type of employer today than we had 30 or 40 years ago.

MR. CHAIRMAN: Order please. Let Mr. Iverson complete his statement.

MR. GREEN: I'm sorry. I admit that I'm being a bit pushy but I thought he had finished.

MR. IVERSON: No, 30 or 40 years ago - and I'm speaking again just for my trade, I'm not speaking on behalf of the industry or other trades - our trade and the contractors that were involved in our trade had a very good relationship in the fact that we didn't have to have laws to tell us that we had to get together in order to survive.

MR. GREEN: Don't you think that maybe the laws screwed up the relationship a little bit?

MR. IVERSON: It possibly has but they're there, Mr. Green, and we have to live by them.

MR. GREEN: Or, you have to try to make things better, not worse.

MR. IVERSON: The attitudes of both parties, I might add today, certainly are not the same as they were 30 or 40 years ago.

MR. GREEN: Mr. Iverson, in those days you did not have a statutory check-off.

MR. IVERSON: No.

MR. GREEN: Did you get your dues?

MR. IVERSON: Yes.

MR. GREEN: How did you get your dues?

MR. IVERSON: Voluntarily.

MR. GREEN: The fellow who didn't pay dues, what happened to him?

MR. IVERSON: He was gone, that's all, he wasn't a member of the union.

MR. GREEN: He didn't work?

MR. IVERSON: Right.

MR. GREEN: If he said, "I don't believe in paying dues," he didn't work either. You didn't have any laws, no governments to help you. Isn't that right?

MR. IVERSON: Right.

MR. GREEN: Now, Mr. Iverson, in your brief you deal with professional strikebreakers. Now isn't the end result of what you say here, that if there was a strike which was sanctioned by our new spirit court lawyer board-oriented labour laws, that when such a strike occurred, really what you're saying is the employer couldn't hire anybody.

MR. IVERSON: No, I beg your pardon, we're not saying that.

MR. GREEN: What are you saying?

MR. IVERSON: We're saying that he could hire people at the last offer that he made to the union.

MR. GREEN: All right. Are you saying then . . .

MR. IVERSON: . . . from people who were originally on his work force.

MR. GREEN: What if none of those would work?

MR. IVERSON: I have to look at that section, I'm not sure exactly.

MR. PAULLEY: On Page 3 . . .

MR. GREEN: I have never been an advocate of seeking, you know, work for lawyers. I'm trying to eliminate work for lawyers, you know, I think they should spend more time in the sun.

MR. IVERSON: No, all that we're saying in there, Mr. Green, is that we want status quo. If I as a union go out on strike that employer has a very good reason for us being out on strike, so if we're going to go out on strike and our members are going to walk the streets, that employer should not work unless he can take some of those employees who are members of that craft and offer to them the wages that we had refused when we went out on strike, to go to do our work.

MR. GREEN: Mr. Iverson, aren't you telling me that the only people he can hire are the ones that are members of your union who have really pledged themselves not to work?

MR. IVERSON: Probably.

MR. GREEN: So what it comes down to, if we use the bottom line, which is a term that accountants and everybody else use, the bottom line is that while there is a strike an employer would not be able to hire anybody. -- (Interjection) -- No, I'm by no means finished, Mr. Chairman. Let's leave it at that and get down to something practical.

MR. IVERSON: There's nothing more practical than that as far as I'm concerned, Mr. Green.

MR. GREEN: Are you suggesting that the employee not be able to seek other employment while the strike is on?

MR. IVERSON: By seeking other employment you mean . . .

MR. GREEN: Taking a job as a taxi driver.

MR. IVERSON: Right. No, I'm not.

MR. GREEN: The employee should be able to seek other employment while the strike is on?

MR. IVERSON: Right. And I'm not suggesting either that the employer shouldn't be able, if he's got a corporation, or if he belongs to a corporation that does many things, that they shouldn't be able to continue doing other things in their corporation also.

MR. GREEN: But you would agree that if his other employees are organized they should have the right to support those who have gone out on strike if they feel so inclined?

MR. IVERSON: Yes.

MR. GREEN: You wouldn't object to that, would you?

MR. IVERSON: No.

MR. GREEN: I now want to say that I am running hospitals, I and others, the people of the Province of Manitoba. I can envisage a perfectly legitimate dispute between people who are working with me, such as stationary engineers and the employer, perfectly legitimate, you do concede that there are sometimes disputes where the people have a right to disagree?

MR. IVERSON: Right.

MR. GREEN: Do you say that during the existing of a time when the engineers say that they do not wish to work - and I give them that right and I for one have no intention of ever taking it away from them - that I am not permitted to operate those hospitals?

MR. IVERSON: You mean with supervisory staff?

MR. GREEN: Anybody I can get.

MR. IVERSON: Well, you know, you put anybody you can get in the position of a professional stationary engineer . . .

MR. GREEN: Mr. Iverson, . . . anybody who can do the job, I have to qualify that.

MR. IVERSON: Well that's what we're saying, anybody that can do the job.

MR. GREEN: But you would not deny me the right to go anywhere in the world, and I'm not saying to not continue to bargain with those employees and try and tell them that the work will always be available to them and that we're going to continue to discuss, but while we are discussing I have to do something for the people in the hospital. Do you deny me the right to do that?

MR. IVERSON: Yes, under the submission we would be.

MR. GREEN: Well I tell you, sir, that I cannot accept that denial and be responsible to you and to the rest of the public of the Province of Manitoba. I won't force those people to work but I am going to try to look after the patients in the province, and if this is what this professional strikebreaker means, then I have to tell you that you are pushing me into an impossible position if I try to accept this submission; and I am trying to look at your position but I am merely telling you that the position is impossible.

MR. CHAIRMAN: Order please. The intent here is to ask questions, not have a debate with the witness, please.

MR. IVERSON: I would just like to say, Mr. Chairman, that we took a look at the White Paper given to us by Mr. Paulley from the point of view of construction workers not hospital workers, but I have to recognize the fact that any changes in that Act not only affect the construction people but also any other person in the work force, Mr. Green.

MR. GREEN: Well you would concede at least that we have some problems?

MR. IVERSON: Yes.

MR. GREEN: Thank you. Now when you talk about, Page 11, Voters List, I just want to make sure I understand what you are saying. The Labour Board gets a voters list which would have the name and address of every employee, that list is now not available to you - or is it? You indicate that it's not available to you. --(Interjection)-- Well at least, that's what . . .

MR. IVERSON: It's available to both parties, in my understanding, at the Planning Meeting prior to the vote being taken.

MR. GREEN: Well what is then the problem here on Page 11? Sorry, Bill, I can't see what the problem is. --(Interjection)-- Up to the time of the vote.

MR. PAULLEY: Up to the time of the vote. At the present time it could be say, 12 months, a year prior to that.

MR. GREEN: Mr. Paulley is suggesting, too, that the problem may be that the list that you have is not brought up to date at the time of the vote. Is that the problem?

MR. IVERSON: Mr. Green, I'll give you a very good example. I was entailed in the hearings before the board last week for three days on the Assiniboia Downs. The application on the Downs was put in some time late in August - August 26th, right. The vote wasn't taken on that particular case until some time in November. From August till November the union had no knowledge of the names of the employees on that voters list or their identification. So at the Planning Meeting it came out that several people who the employer had listed as employees on his original list at the time of application were in fact not employees and the union had a prima facie case.

MR. GREEN: All right, I have an understanding of it now. Mr. Iverson, all of these suggestions with regard to appeals by the board, time limits, reviews by the board, the court enforcement of the orders, etc., they are sort of brought forward in the perspective of the present legislation and the rules that are there, none of these things were particularly required until the legislation came into existence? You've been in the movement for some time. You don't remember these problems in the old days? Thank you.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. Mr. Iverson, if I might just pick up on an exchange that you had with Mr. Green a moment or two ago and you suggested that when the brief was prepared, that you presented this morning, in response to the White Paper issued by the Minister that you approached many of the subjects and much of the subject material from the point of view of the construction industry and your perspective was pretty much confined to that industry's perspective. I'd like to ask you then with respect to the exchange you had with Mr. Green on the question of professional strikebreakers and the right of an employer to hire other employees who could do the job in specific strike situations, would you suggest that there might be good reason then to build into the Act, to build into the legislation stated exceptions to the kind of strikebreaking strictures that you recommend in your brief?

MR. IVERSON: There could very well be in the case of essential services such as hospitals that Mr. Green was talking about.

MR. SHERMAN: That's what I had in mind. You think that there might be good reason to look at certain essential or vital services in which some of these proposals or positions that you take would not by statute necessarily apply, or should not by statute necessarily apply? In any event you would be willing to give that consideration?

MR. IVERSON: Only in the definition of a strikebreaker.

MR. SHERMAN: In the definition of a strikebreaker. Mr. Iverson, let me ask you, or Mr. Desilets because this was the part of the brief that he presented, I have to infer from paragraph 2 of your brief that your council, sir, is not satisfied either with the composition or the performance or the potential of the Manitoba Labour Board. I say I have to infer that because I see no other reason for writing paragraph 2 in the manner in which it's written in which you point out that it's necessary to produce a group tribunal which would have not only the respect but also the confidence of today's industrial society. I suggest to you that the natural inference from that is that your council doesn't believe that the board has the respect or the confidence of today's industrial society. Is that a fair conclusion to draw?

MR. IVERSON: As a member of the board, I shouldn't answer that, I might be one they want off. Not being the author of this . . .

MR. SHERMAN: I did preface my question, Mr. Chairman, by saying perhaps I should put it to Mr. Desilets. I agree. But it intrigues me that the suggestion should be phrased in this manner and that it should be presented in a fairly prominent position in terms of continuity in the brief.

MR. IVERSON: Well, Mr. Chairman, I think one of the big reasons - and I am speaking as a member of the board - one of the big reasons for dissension among both parties, labour or management, in decisions of the board is because, that the parties entailed do not receive enough information on a case from the board after it has been heard by the board. In other words they don't know whether their people who are representing them on the board are doing a job for them or not. Now I never take this attitude as a board member, I make my decisions by whatever is shown through the evidence submitted before me. And if I happen to make a decision against labour, right away the labour people are on me. They don't know why the hell I made that decision but they say you're not doing a damn job for me. And that, you know, works both ways and that's creating this problem right here. I've had labour people come to me and say what the hell are you doing on that bloody board, you know, you're voting for the employer. Well I don't necessarily vote for the employer or the employee, I vote for whatever the evidence tells me to vote for. I would imagine, and not being the author I say I really don't know, but I would imagine that that is the reason behind that paragraph in this submission. If the situation applied where that when the board reached a decision, the parties to that decision both received a fairly comprehensive reason why the board arrived at that decision, whether it was a unanimous vote, whether there was dissenting voters or not, this would go a lot to clarify that. You know, Jimmy and I sat on that same case last week and I will bet you a dollar whenever the parties to that dispute gets the board's decision on it they are going to be wondering what the hell went on. But if they went through what we had gone through for three days last week and they received a little bit of information, at least, and told how the votes went on the board, they would know. This they don't receive. And this is one of the big reasons for that paragraph, because many of the parties don't realize exactly what goes on before the board and why the decision is made.

MR. SHERMAN: So the decision, in effect, comes down out of a clear blue sky as far as the parties are concerned, you're suggesting that there would be more confidence and trust and satisfaction if the decisions were handed down in writing and in detail?

MR. IVERSON: Right.

MR. SHERMAN: Are there other ideas you have - you refer to some innovative method, do you have some concrete suggestions that you intend to put forward formally or informally to the Minister of Labour with respect to the strengthening of the board or are you prepared to have the board's powers broadened as proposed under the White Paper proposal without some strengthening of the board's operation? Would you suggest that the board in its operation should be strengthened and made more satisfactory along some of the lines that we've referred to here, before any broadening of its jurisdiction in terms of hearing, certification and unfair labour practice cases, etc. is considered?

MR. IVERSON: Before?

MR. SHERMAN: Before.

MR. IVERSON: I think broadening of the board's powers as far as unfair labour practices and any other problem that comes before it,pretty well, is a must.

MR. SHERMAN: Before the board itself is made more competent or capable to handle it?

MR. IVERSON: I think in most cases it would be found that the board is quite competent and able to handle it right now, and the fact of the matter is that in the last couple of years especially, many many decisions of the board have gone right across the street to the courts, whether the board is right or wrong. But, you know, it was said before at board hearings, and I'll say it again, we are not a court of law, we are five people with a chairman sitting in judgment on a case, and we may take some time making up our minds as to our decision, but when some party doesn't like our decision all they have to do is trot cross the way and in some cases have our decisions upset by a judge who probably doesn't understand the situation as we do, and a judge who is bound by law.

(MR. IVERSON cont'd) . . . . .And, you know, we adhere to the law as much as we can, but there are certain times when you've got to use a little bit of common sense in there, too. But as it is now, as a member of the board I'm God damn afraid to make any decision that doesn't live right up to the letter of the law because I know bloody well that some judge somewhere down the road is going to just reverse the decision. So I feel that the board has to have these powers in order to operate correctly.

MR. SHERMAN: One more question, Mr. Chairman. Mr. Iverson, with respect to subsection (b) of Unfair Labour Practices, at the bottom of Page 2, you are dealing with the negative conduct of an employer and your council is asking that in addition to monetary penalties which might be imposed upon an offending firm in these situations - and here I quote from your brief - "a mandatory requirement to grant bargaining rights to the offended or applicant trade union regardless of what amount of worker support may have been recruited up to the time of the offence, should be provided by the Labour Relations Act." Do I understand from that - this really is a supplementary question to my one more question, Mr. Chairman, - do I understand from that, Mr. Iverson, that you would waive a 35 percent or 50 percent support condition for certification in cases where the bargaining unit, or the trade union, could prove to the board's satisfaction that there had been negative conduct on the part of the employer?

MR. IVERSON: Well, sir, in the first place, you couldn't waive the 35 percent because you have to have 35 percent to apply. In the second place, there must have been employer interference otherwise there would not have been a monetary penalty.

MR. SHERMAN: But could this not lead to offences the other way around, on the other side of the question, that could a bargaining agent not engineer a situation without having the necessary support, without having the necessary percentage beyond that which is necessary to apply for certification?

MR. IVERSON: I don't believe that was the intention as it's spelled out, and as I said, you have to have the 35 percent to apply, and you've applied, and there has been employer interference either by offering increased wages or whatever, but he's received a penalty from the board, a monetary penalty, eh? Maybe he had been laying off all the union people and he has got an order from the board to reinstate them at no loss in wages.

MR. SHERMAN: Well I understand the clarification; in other words the phrase "regardless of what amount of worker support may have been recruited" actually is unnecessary then in that - obviously the 35 percent is necessary to apply so any waiving of the amount of worker support stipulation is academic, it doesn't exist, and therefore I would suggest it shouldn't be in that part of the submission, because it isn't regardless of what amount of worker support may have been recruited, you had to recruit 35 percent to get to the point where you brought action for consideration of negative conduct.

MR. IVERSON: I think that mainly deals with an applicant union that has the required numbers of support at the time when they are making application and then through employer influence or employer action those numbers have been deleted and the employer interference has been recognized by the board at a hearing and then there is a penalty put on the employer. Now we say at that stage there should not only be a monetary penalty but there should be automatic certification. And I don't believe this is completely foreign, if I recall correctly, I think other provinces have this.

MR. SHERMAN: Well the mandatory provisions would make it necessary that that certification, or that application was granted regardless of the opinion of the members of the bargaining unit at that time, the way the proposal is written. What I'm getting at is there would be no opportunity - perhaps in the view of the bargaining agent there might have been negative conduct on the part of the employer, but the employer might have been conveying information to employees which interpreted by the bargaining agent was negative but interpreted by the employer was informational and helpful, it might have changed the minds or the opinions of some of the employees who would in the normal course of events be part of that bargaining agent. You might not have as many people, you might not have the 35 percent, you might have a minimal percentage of people at that point in time who wanted to proceed in that direction, but the proposal here makes the certification, the recognition mandatory regardless of what's happened to the mathematics.

MR. IVERSON: Yes, but only after application to the board on unfair labour practices.

(MR. IVERSON cont'd) . . . . . If the unfair labour practices is granted, then we say that there should be certifications going from that.

MR. SHERMAN: But with no review of the two presentations, it's mandatory?

MR. IVERSON: What would there be to review? Are you going to review the unit as it exists now or the unit as it existed at the time of application? That was reviewed at the original hearing.

MR. SHERMAN: I'm going to review the degree of support for the unit.

MR. IVERSON: Yes, but supposing that support has deteriorated from the time of application to the time of the hearing.

MR. SHERMAN: Yes.

MR. IVERSON: Now which review are you going to recognize, those at the date of application or those at the date of the hearing?

MR. SHERMAN: Well I think you review the whole situation. You review the whole situation if that kind of conduct has been carried . . .

MR. IVERSON: The situation exists, remains in existence as of the date of the application and because of employer influence or employer interference that union support has decreased after that time is no reason not to certify.

MR. SHERMAN: Well, that's one opinion, Mr. Iverson. Thanks, Mr. Chairman.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I'm interested in the remarks made in connection with the selection and appointment of membership to the Manitoba Labour Board. I'm sure, Mr. Iverson, you are aware that we have been commended for our choice of chairman of the board, at the same time being condemned because he happens to belong to a certain political party, so we got it double-barrelled in this particular case, and you made an expression a moment or two ago, "You're damned if you do and you're damned if you don't" and I received that type of criticism just recently, commendation for the expertise, condemnation because he happened to be somebody who takes an interest in politics. I don't know how the hell I would ever find somebody who wasn't interested in the affairs of state to make an appointment, but that really is an aside.

You don't, however, make any suggestion in your brief - and I want to say, Mr. Iverson, to you and to Mr. Desilets, I would be more than pleased if you will elaborate on your suggestions here of some innovated method, because I think - would you not agree - that the method we use at the present time has been the method invoked for some considerable period of time of equal representation from management and labour and then a, presumably, impartial appointment by the Lieutenant-Governor-in-Council. That is the way, am I not correct, that the board is constituted at the present time?

Now then, reference has been made, Mr. Iverson, to the matter of the conduct of the board and its decisions either being made public or otherwise. My question, Mr. Iverson, is it not a fact that the by-laws and rules of conduct of the board are the by-laws and rules established by the board under regulation subject to approval by the Lieutenant-Governor-in-Council. Is that correct?

MR. IVERSON: Yes.

MR. PAULLEY: Then, Mr. Iverson, would I not be proper then in suggesting that there is no barrier, there is no barrier in legislation placed upon the board other than possibly through their by-laws - and I want to say that I will take a close look at them - there is no barrier that I'm aware of contained where a decision of the board cannot be made public. Is that correct?

MR. IVERSON: That's right.

MR. PAULLEY: Well what's the problem then - at the present time apparently that it is inference - I may be attributing something to you, Mr. Iverson, that isn't absolutely true, but I got the inference that the decisions of the board cannot be made public.

MR. IVERSON: Well, when I say they cannot be made public, or I inferred that they could not be made public, is the decision of the board by their own rules, I agree; and when I spoke before on the parties applying for any action before the board receiving fairly detailed reports on the board's decision on any question that comes before it, that is my own opinion, Mr. Paulley, as a board member.

MR. PAULLEY: Yes, but my point, Mr. Iverson, is there's no prohibition . . .

MR. IVERSON: There is none whatever, no.

MR. PAULLEY: . . . in accordance with legislation, other than if that prohibition is decided upon in the first instance by the board itself and approved by the Lieutenant-Governor-in-Council.

MR. IVERSON: Right.

MR. PAULLEY: And then the right to be heard, which is contained in our legislation, precisely is a directive to the labour board. Section 11(19) The Board shall in every enquiry or hearing give an opportunity to all interested parties to be heard, to present evidence and to make representations.

MR. IVERSON: Well, that's public.

MR. PAULLEY: They have to do it. Does the board make its decisions in camera in accordance with the rules? -- (Interjection) -- Oh, its deliberations, but its decisions in camera. Then again, we may have to take a look at the decisions, because I believe one remark made was that if the reasons behind the decisions were made public then it would give further information to the courts who may have the power to appeal a decision of the board, it would give them more ammunition on which to base their findings. Is that not normal in the process of justice, that here we have the right of appeal from decisions of the board to the courts, which isn't too often used or too frequently used, but that is a right, is it not?

MR. GREEN: Theoretically . . .

MR. PAULLEY: Yes, well theoretically it is.

MR. IVERSON: You know, it boils down to the stage of the board being just a jumping off place to the courts. That if a party before any proceedings before the board isn't completely satisfied with the decision of the board then he just proceeds on to the court.

MR. PAULLEY: Oh, well of course we have that in a roundabout with lots of courts, don't we?

MR. IVERSON: So, in effect, I, for one, take a very damn, dim view of sitting two or three days in hearings and making a judgment on the evidence that is submitted in front of me, because I'm not a lawyer or a judge, because the decision that I make on that particular case isn't to the liking of one of the parties or both of the parties even, they just go to the court.

MR. PAULLEY: Well isn't that a right of an individual. Hell's bells, over the weekend I was asked to resign as Minister of Labour because somebody didn't agree with a decision that I made. And I may exercise that right, Mr. Iverson. Have you not the same right as a member of a board, because of the peculiar situation that you find yourself in at times, to ask to be relieved of that responsibility?

MR. IVERSON: Yes.

MR. PAULLEY: All right. We won't pursue that.

MR. IVERSON: I want to pursue that just a little bit further, Mr. Paulley. You liken the Labour Board, which in my opinion has a broader expanse of responsibility than the Compensation Board. Now when an action is brought down by the Compensation Board, does the person that action is taken against have the right to say, no, Mr. Compensation Board, we're not going to deal with your decision, we're going to take it into court? No. But with the Labour Board they do.

MR. PAULLEY: On a state of law, yes; stated case of law they can.

MR. IVERSON: How often has that happened? -- (Interjection) --

MR. GREEN: I'm sorry. Mr. Chairman, just on a point of order because it's a legal question. Theoretically they are the same but they have more often said that the Labour Board has exceeded its jurisdiction than they have said that the Compensation Board has exceeded. But whenever the courts, and I'm talking in sort of blunt terms, when they don't like a decision of the Labour Board and they find that they can say that it exceeds their jurisdiction or was arrived at by virtue of not allowing natural processes, they have more often done so than they have done with compensation boards. But the rules permitting them to do it are the same.

MR. PAULLEY: In law. But anyway, Mr. Iverson, you were going to pursue that point, or did you, with the workers compensation? And, of course, just as an aside, I've had no real representations made that further appeals to the courts on cases, precise

(MR. PAULLEY cont'd) . . . . . cases dealing with compensation should be allowable. As a matter of fact, there is united opposition to the labour movement to any further extension on the benefits aspect of workers compensation.

I have one other question, Mr. Iverson. Did I understand you correctly in answer to a question directed to you by Mr. Sherman dealing with the use of professional strikebreakers, and Mr. Green had just prior to that mentioned the case of the operating engineers in the health service industry - did I understand you in reply to Mr. Sherman to indicate that you would be prepared to have different laws applied under the Labour Relations Act, a different application of the laws to the essential services such as hospitals?

MR. IVERSON: As I said, Mr. Paulley, only in the definition.

MR. PAULLEY: I want that clear now, only in the definition, but not . . . Then I was wrong in inferring your reply to Mr. Sherman meant further than just a question of definition?

MR. IVERSON: My answer to Mr. Sherman was that I would agree only in the definition of a professional strikebreaker that there could be . . .

MR. PAULLEY: Just a strikebreaker?

MR. IVERSON: Yes.

MR. PAULLEY: In the essential industries? You didn't indicate that you would have a different application of the Labour Relations Act insofar as the health services industry or the so-called, whatever they are, essential industries?

MR. IVERSON: No.

MR. PAULLEY: Because if you mean that, I would like to have from you, and I am not trying to put you on the spot as an individual, but as a representative of a responsible group of trade unionists I would like to have a clear-cut definition of what is meant by an essential service, I haven't been able to get one yet. So I would appreciate, Mr. Iverson, if you and your colleagues, maybe in concert with some of the other management groups with you, I would like to try and be advised as to what is an essential industry. And I have a licence, I believe, Mr. Chairman, for raising that question because of the statement made that in essential industries a different interpretation would be made; and I think that is vital, very vital to all of our labour legislation not only here in Manitoba but elsewhere as well. Thank you, Mr. Chairman.

MR. GREEN: Mr. Chairman, I want to make it plain that I believe that the same laws should apply to everybody in every service and I don't want there to be any misunderstanding about that.

Now I want to ask Mr. Iverson with respect to the courts. You seem to be a little bit modest or self-effacing by suggesting that maybe your decisions aren't as good or sound legally as the courts decisions. Is that what you were trying to convey? I happen to think that on the labour questions that the Labour Board's decisions when they are in conflict with the court decisions generally, that I find that the Labour Board decisions are more in keeping with what I understand to be the law than the court decision.

MR. IVERSON: I agree, that's just what I'm saying.

MR. GREEN: So you're withdrawing your modesty now, that you are not a lawyer, etc., you think that your decisions were right in the first place.

MR. IVERSON: That's right. Because we had all of the evidence put before us and I don't feel, and I may be wrong in this, but I don't feel in reading over two or three of the court decisions in the last few months that have flowed from the Labour Board to the court, I don't feel that the same type of evidence is put before the judge when he is making his decision on the case.

MR. GREEN: It's also possible that the judge has a different view of the question.

MR. IVERSON: It's possible, definitely.

MR. GREEN: Now do you believe that it's conducive to the respect of boards, etc., for a court at the highest level in the Province of Manitoba to put the following statement into its judgment: "I do not see how any Labour Board in its right senses could come to this conclusion."

MR. IVERSON: No way.

MR. GREEN: So you do not believe that that is conducive to the respect for boards in the Province of Manitoba?

(MR. GREEN cont'd)

I want to carry it forward. I understand that the Labour Board made a decision on a vote and that the vote was almost 50-50 and it was as between two unions; that the Labour Board counted two votes, one of which where a man voted but the name on the voters list was his son's but that he was actually employed for the company and he voted, and another man voted who was on workmen's compensation at the time; that the Labour Board counted these two votes, because regardless as to whether they were properly on the voters list they were both employees of the company, and that there was a selection as between two unions. That the result of the Labour Board's decision is that one union had one vote more than the other union and it was certified. That the court subsequently said that these two votes should not be counted and that no union should be certified. Is that correct? Well if it's of any comfort to you, sir, I tell you that the Labour Board's ruling, in my opinion, made far more sense than the Court of Appeals ruling.

MR. IVERSON: I agree.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: I have a couple of questions, Mr. Chairman. Mr. Iverson, you mentioned the strikes unsolved due to voting procedures. Has that been a problem this year more than any other year where there is some problem in the voting procedures. . . that strikes are delayed and things . . .

MR. IVERSON: Are you referring to voting procedures within a union at the time of a full strike?

MR. McKENZIE: Yes.

MR. IVERSON: I don't think so.

MR. McKENZIE: No? That's fine.

The other one that I've always hit on, accreditation and certification, I always have a problem differentiating between the one and the other. Could you give me some idea of the difference that you see it as vice-president of the council.

MR. IVERSON: Well certification applies to mainly one union or a group of associated unions and one employer. Accreditation applies to an association of employers or an association of unions.

MR. McKENZIE: Well then should the simple majority rule apply in both cases?

MR. IVERSON: Yes.

MR. McKENZIE: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman, I do have one final question. I want to go back, Mr. Iverson, just for one moment to paragraph 2 again dealing with the Manitoba Labour Board itself. There's one point that I am not clear on and I'm sorry that I missed it at the time.

The paragraph in question which was referred to and discussed earlier emphasizes the selection and appointment of membership to the Manitoba Labour Board and you have said to me in recent moments that if there were a different method of handing down decisions or a different method of explaining it, describing the reasoning in decisions, that this would solve some of the problems that you see as existing under the present setup. But your brief doesn't say that. Your brief says that we would suggest some innovative method be applied in the selection and appointment of membership to the Manitoba Labour Board in order to produce a group tribunal which would have respect, etc., etc. I wonder if you would elaborate on that point, what your feelings are with respect to the selection and appointment and membership on the board at the present time, what is wrong with it, what can be done to strengthen it?

MR. CHAIRMAN: . . . maybe that can be addressed to Mr. Desilets because I think he may be the author of that paragraph. Perhaps Mr. Desilets would like to. . .

MR. SHERMAN: That's fine, Mr. Chairman.

MR. KAM GADJOSIK: Mr. Chairman, the author appears.

MR. CHAIRMAN: Could we have your name, please, for the . . .

MR. GADJOSIK: I didn't think that was important. Kam Gadjosik, Past President of the Building Trades Council.

MR. PAULLEY: We think it's important, Kam, that we know your name.

MR. GADJOSIK: Thank you. I wonder if Mr. Sherman might re-ask that question. I'll attempt to answer it.

MR. SHERMAN: Mr. Chairman, through you, sir, to Mr. Gadjosik. I'm disturbed by your reference in paragraph 2 of your brief, or at least the inference I draw from it, that the Labour Board as presently constituted is not a group tribunal which has the greatest respect and greatest confidence in today's industrial society that we all and your council would wish it to have, and your brief points out that you have some innovative method that you'd like to see applied, or you would like to see somebody's innovative method applied in the selection and appointment of membership to the Manitoba Labour Board to produce this respect. In other words, I take it your basic grievance with the Manitoba Labour Board is in some things that are wrong with the selection and appointment of the membership of the board. I wonder if you could enlighten the committee on that and also advise us whether you have any innovative suggestions of your own?

MR. GADJOSIK: Mr. Sherman, first of all I would like to apologize for any disturbance that we may have caused you in this brief. I'll attempt to explain. That the paragraph that you're referring to, the second paragraph of the brief flows directly from the first paragraph of the brief which refers to the subject matter which was contained in the Minister's White Paper in broadening the powers of the Labour Board to deal with unfair labour practices, a power which I understand it presently does not hold, it does not have that under the legislation. And what we are merely saying here is that if you are going to broaden the powers of the board, it may be that perhaps the present method of selecting board members may not be adequate in order for them to be able to deal satisfactorily, completely, rationally with cases of unfair labour practices. If you are going to be giving the board powers to deal with unfair labour practices then I suggest you are coming rather close to creating a labour court rather than a labour board; and if that is going to be the outcome, then I think and I would hope that the industries in this province think that some test should prevail prior to a person being appointed to the Labour Board in order that he will be capable of dealing with any such cases which may bring the board close to acting as a labour court. And that is the purpose of the existence of paragraph 2 on that particular page.

MR. SHERMAN: In other words, Mr. Chairman, through you to Mr. Gadjosik, Mr. Gadjosik you do not agree with Mr. Iverson who said a few moments ago that he felt the powers of the board should be broadened and widened first, we'll worry about strengthening the board afterwards. You've said essentially the opposite.

MR. GADJOSIK: Perhaps that may be able to be achieved simultaneously, I don't know, I'm not responsible for the appointment of people to this particular tribunal, at least I'm not responsible for that yet.

MR. PAULLEY: Would you like the job, Kam?

MR. GADJOSIK: No thanks, you're welcome to it, Mr. Paulley. I'd like to clarify that there is nothing intended in this particular paragraph to indicate that the fashion and the manner in which the present board or the members of the board as it's constituted presently conduct themselves as being wrong or being unacceptable to our council. We are just merely saying here that if you are going to give them more power, then make sure they can do the job, whoever they may be.

Now in so far as any innovative method, I imagine perhaps some form of legal training might be required, if you are going to give the board powers to act as a labour court you may have to consider specifying the term of appointment being a five year term, a ten year term, a lifetime term, you may want to continue with the board acting as a part-time board with a full-time chairman, or you may decide to have a full-time board or full-time panels of the board dealing primarily with unfair labour practices with the remaining panels dealing with industrial relations cases, I don't know. There is all kinds of ways to view this particular problem and to resolve it.

MR. SHERMAN: But short of such innovative suggestions as those and possibly others, you would not be in favour of extending the jurisdictional powers of the board at the present time?

MR. GADJOSIK: Well my personal reply to that question would be no, not unless it can be deemed that they are competent in terms of dealing with any particular problems which can be brought to them from an expansion of their powers. Thank you, Mr. Chairman.

MR. CHAIRMAN: Any further questions? Mr. McKenzie.

MR. McKENZIE: Mr. Chairman, just one question. On Page 14 of your brief, Section 13, Review of Arbitration Board Awards, it's mentioned in there that added powers are asked for the board, reviewal powers in dealing with these matters. Could you explain what's the intent of, "then we suggested further consideration be given on this matter to perhaps allow reviewal powers to the board prior to an application."

MR. GADJOSIK: Of course that comment is preceded by a thought or a question which we have stated. We have stated that - let me read you the sentence, "We have only one reservation in this regard, that being one of whether a court review would be consistent with the intended principles of providing the Manitoba Labour Board with broader powers to deal with unfair labour practice cases." The thought there was that it may perhaps come in time or simultaneous at this particular juncture where you are contemplating expanding the powers of the board to deal with unfair labour practices that you may want to give them additional powers, I don't know, to deal with other cases besides unfair labour practice cases. Again the thought comes back to whether or not the intention is to create a formal labour court, and if that is the principle or a latent principle in this particular suggestion, then we are merely asking or suggesting that consideration be given to perhaps also allowing the board to review arbitration decisions. We don't know how far you wish to go.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I would like to ask the delegate one or two questions as to his stand. Is the stand that you took so far as your personal approach the stand of the Allied Trades Council in the suggestion that I should not - I say "I" arbitrarily - that legislation should not proceed to strengthen those aspects contained or not contained in the Labour Relations Act dealing with unfair labour practices until we have considered and adopted a whole new approach to the selection of the labour board or, to use your term, a labour court.

MR. GADJOSIK: I believe the position of our council is clearly reflected in our brief, Mr. Minister.

MR. PAULLEY: But, Mr. Gadjosik, you gave the committee your personal opinion that we should not proceed until the establishment. Now is that the position of the group that you are representing?

MR. GADJOSIK: As I interpret our brief, and as I have already admitted as being the author of it, I would say yes to your question, Mr. Minister, that that is the official position of our council.

MR. PAULLEY: May I be unfair in suggesting then that if I, as Minister, and the government and the Legislature decided that ineffective as those provisions contained in the Labour Relations Act dealing with unfair labour practices, suggested by you, sir, that I should not pursue and try and strengthen that aspect of industrial management, labour-management relations. Is that what you are saying?

MR. GADJOSIK: If I understand your question correctly, what I am saying is that the powers should not be broadened until we can be certain that the tribunal dealing with any cases arising from a broadening of those powers is capable of dealing with them. And it may be that the present tribunal is capable but I don't think they have ever been tested. We are breaking new ground here and I think that some test will have to result before you could determine that. I think it would be unfair, at least I would consider it unfair if I was a member of the Labour Board, to have my powers broadened without my being able to determine whether I'm capable of grasping with those particular problems.

MR. PAULLEY: So you are basically then, I interpret your remarks as saying that as far as the unfair labour practices under the Labour Relations Act at the present time they're there and the Minister or the board can have prosecutions to the courts as a result of an unfair labour practice and that we should continue in that instead of giving to the Labour Board the right to determine in respect of unfair labour practices. Is that your point?

MR. GADJOSIK: Well, not completely.

MR. PAULLEY: Not completely?

MR. GADJOSIK: Not completely, no.

MR. PAULLEY: Well would you qualify then, Mr. Gadjosik, for my information what you mean by "not completely" because I may say, and without any attempt at

(MR. PAULLEY cont'd) . . . . . braggadocio, I'm trying to bring about a reasonably and fair labour relations act. Now what do you mean by "not exactly"?

MR. GADJOSIK: I apologize if I may sound repetitious, Mr. Minister, but all I can say is what I have said already on two or three occasions in the last few minutes is that we, our council has no objection, and our brief says so for the record, of granting these powers to the board, but I think that's only one-half of the answer to, of course, solving any dilemma. I think that the other half of the answer will have to come in the area of perhaps yourself. I, you know, I use that very -- (Interjection) --No, just the opposite rather, very respectfully, that someone is going to have to ascertain that the people dealing with these particular powers are capable of dealing with those cases which can come to them. That's the answer. I think the answer comes in two areas.

MR. PAULLEY: Then, Mr. Chairman, would I be fair and reasonable if I interpreted the last remarks of the delegate as saying that in his opinion and in the board, the opinion of the Trades Labour Council, the board is incompetent to deal with unfair labour practices?

MR. GADJOSIK: No, I didn't say that, Mr. Minister, I didn't say that the present board as it is constituted is incompetent. What I have said is that no one knows whether the present board is competent to deal with unfair labour practices because this is new ground.

MR. PAULLEY: Isn't it worth a whirl to find out whether they are competent or not with the present personnel or the present method of selection?

MR. GADJOSIK: Perhaps it may be, there may be some merit in that.

MR. CHAIRMAN: Further questions? Thank you very much, Mr. Gadjosik.

The hour being 12:20, I am in the hands of the committee. It is my understanding . . .

MR. PAULLEY: If I may, Mr. Chairman. May I suggest that we don't start on another presentation, I understand it would be another major one as indeed this one was, and that we meet tomorrow morning at ten o'clock.

MR. CHAIRMAN: Is that agreeable with the committee? (Agreed) Committee rise, and delegations that are here, would you please take note, tomorrow morning 10 a.m. Thank you.