



**Fourth Session — Thirty-First Legislature**  
of the  
**Legislative Assembly of Manitoba**  
**STANDING COMMITTEE**  
**ON**  
**INDUSTRIAL RELATIONS**

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**29 Elizabeth II**

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Speaker*



**FRIDAY, 27 JUNE, 1980, 2:00 p.m.**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty - First Legislature**

**Members, Constituencies and Political Affiliation**

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Name	Constituency	Party
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<b>ANDERSON, Bob</b>	Springfield	PC
<b>BANMAN, Hon. Robert (Bob)</b>	La Verendrye	PC
<b>BARROW, Tom</b>	Flin Flon	NDP
<b>BLAKE, David</b>	Minnedosa	PC
<b>BOSTROM, Harvey</b>	Rupertsland	NDP
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**LEGISLATIVE ASSEMBLY OF MANITOBA  
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS**

**Friday, 27 June, 1980**

**Time — 2:00 p.m.**

**CHAIRMAN — Mr. J. Wally McKenzie (Roblin)**

**MR. CHAIRMAN:** Committee come to order. We will deal with Bill No. 8. I guess there are no representations. Bill No. 8, An Act to amend The Fire Departments Arbitration Act. Are there any amendments?

**BILL NO. 8 — AN ACT TO AMEND  
THE FIRE DEPARTMENTS ARBITRATION  
ACT**

**MR. ALBERT DRIEDGER (Emerson):** Yes, one amendment.

**MR. CHAIRMAN:** Page by page or clause by clause, what is the wish of the committee?

**MR. PETER FOX (Kildonan):** Let's have the amendment first, the amendment is on the second page I think.

**MR. CHAIRMAN:** Mr. Driedger.

**MR. DRIEDGER:** Mr. Chairman, on the proposed amendment to Bill No. 8, I move that Bill No. 8 be amended by renumbering Sections 4 to 7 thereof as Sections 5 to 8 respectively, and by adding thereto immediately after Section 3 thereof the following Section, Subsection 5(1) replacing and substituting therefor 4. Subsection 5(1) of the Act is repealed and the following Subsection is substituted therefor: Application for arbitration board. 5(1) Where the municipality and the bargaining agent have not (a) by December 31 next following a notice given under subsection 4(1); or (b) within 3 months after giving notice under subsection 4(3), agreed upon terms of a renewed or revised agreement, or upon the terms of a 1st agreement, either or both of the parties may apply in writing to the minister to appoint an arbitration board.

**MR. CHAIRMAN:** Is it in order if I ask the Minister to explain the amendments to the committee? The Honourable Minister.

**HON. KENNETH MacMASTER (Thompson):** Yes, in reviewing the Act I found that there was a discrepancy, at least in my mind, as to the negotiating process and what really should in fact take place if a group of people are certified as a bargaining unit and under The Arbitration Act are compelled by legislation to go to arbitration, and there is no provision for the settlement of the first agreement by arbitration, and, of course, firefighters are not permitted the right to go on strike. It seemed to me, Mr. Chairman, that they could go on forever and a day and never come to any conclusion, there was really no way out for them to get themselves a

first agreement. I think this has been an oversight on governments for years in the past and I certainly support the amendment and think it should be put in place.

**MR. CHAIRMAN:** Questions? Mr. Cowan.

**MR. JAY COWAN (Churchill):** Just one question, Mr. Chairperson. We are repealing Subsection 5(1), I am wondering if it would be possible to have that section read out, if it is not a lengthy section, just so we are certain of what we are repealing. I don't have the Bill before me and that is why I ask the indulgence of the Committee.

**MR. MacMASTER:** I was supposed to have somebody from Mr. Tallin's office here with that and I see they are not here. We will get somebody to get that bill.

**MR. CHAIRMAN:** Mr. Jenkins.

**MR. JENKINS:** I wonder while we're getting that, I wonder if we could deal with Bill No. 73, set this aside and deal with Bill 73?

**MR. CHAIRMAN:** Agreed? (Agreed). Okay.

**MR. MacMASTER:** Or, Mr. Chairman, if you wish, we could just go through the remainder parts of this bill.

**MR. CHAIRMAN:** Okay. Agreed. Proceed. So, Page 1—pass; Page 2 of course, is set aside; Page 3—pass; Preamble—pass; Title—pass. We'll not report it until we get the advice. Bill No. 73.

**BILL NO. 73 — AN ACT TO AMEND  
THE CIVIL SERVICE SUPERANNUATION  
ACT**

**MR. CHAIRMAN:** Are there any amendments to this legislation?

**MR. MacMASTER:** Not that I know of unless members of the opposition have some.

**MR. CHAIRMAN:** Page by page? (Pages 1 to 7 were read and passed.) Preamble—pass; Title—pass; Bill be reported—pass.

**BILL NO. 8 — AN ACT TO AMEND  
THE FIRE DEPARTMENTS ARBITRATION  
ACT**

**MR. CHAIRMAN:** The Honourable Minister.

**MR. MacMASTER:** Yes. I'm just trying to sort out, Mr. Chairman. Subsection 5(1) of this Act is repealed and the following subsection is submitted.

Subsection 5(1) read: "Where the municipality and the bargaining agent have not by the 31st day of December of the year in which the notice is given under Section 4, agreed upon the terms and

renewed or revised collective agreement, either party or both parties may apply to the Minister in writing to appoint an arbitration board." It refers to Section 4(1) and the problem was that in 4(1) it said: "Where a collective agreement exists between a municipality and a bargaining agent".

**MR. MEMBER:** It doesn't include first agreement.

**MR. MacMASTER:** That's right.

**MR. CHAIRMAN:** Any further questions of committee? Page 2—pass — the Honourable Member for Inkster.

**MR. GREEN:** Maybe there has been a discussion on 10(4)? Has there been any discussion?

**MR. CHAIRMAN:** No, there hasn't.

**MR. GREEN:** Can I be advised as to the intentions of 10(4)?

**MR. CHAIRMAN:** The Honourable Minister.

**MR. MacMASTER:** The explanation that I have, Mr. Chairman, is that there is no change in the intent of the provision. The amendment eliminates a cross reference to Section 35(2) of The Labour Relations Act which since 1973 has been renumbered and now, of course, is outdated, Mr. Chairman, and places the provision of this entirely within The Fire Departments Arbitration Act. What has happened in most of our revisions is that there's been so many changes to The Labour Relations Act that reference from The Fire Arbitrations Act back to The Labour Relations Act no longer made any sense.

**MR. GREEN:** Can you read then to me, and I'm sorry that I'm asking the Minister this, or can you pass me the existing Act so that I may look at 10(4) as it is now?

Mr. Chairman, I can see the Minister's difficulty because Section 35(2) of the principal Act probably relates to an Act that was in existence in 1954 and was probably not readily available to us to see Section 35(2) of the principal Act as it existed in 1965, which this refers to. Mr. Chairman, I'm interested particularly because of the difficulty that was experienced this year with the arbitration. There was an arbitration and it was decided upon and then the city asked that the award be set aside, and it went to court.

Now I don't know offhand what 35(2) of the principal Act says, but the way it reads now, there's no reference to any principal Act and we have what appears to me to be an anomalous situation only raised by the bringing of the new bill. An arbitration board has made an award. The Minister may direct it to reconsider and clarify or amplify the award. Has this ever arisen? Do you want to be in that position? Is there not a danger that after an arbitration award, and one of the parties is dissatisfied — let us assume that it was the city — approaches the Minister and you tell the arbitration board to reconsider it? Now it almost looks like it's two out of three. Perhaps the Legislative Counsel is here now. Perhaps he can tell us what were the circumstances under which they reconsider an award under 35(2) of

the principal Act, which I would think at that time was the Labour Relations Act.

**MR. TALLIN:** I'm afraid I don't have The Labour Relations Act here.

**MR. GREEN:** But I wonder if the Minister can see the problem that I am raising because an arbitration is supposed to be a settlement of the dispute. Why did the city, for instance, go to court, or could they have come, which is even more of a problem to me, to the Minister and say, look, we don't like this award, could you prevail upon the Arbitration Board to reconsider the award and even consider new matters added to the statement of matters referred to, so that after everything has been done and somebody is dissatisfied . . . I don't think, in my recollection, to the Minister, that this has ever been used. Frankly, the reason that I thought it was in the Act, and I thought it was a new section, is I thought it was trying to somehow ameliorate the situation that arose this year where the city took the firefighters award to court.

Now maybe if the city lawyers would have looked at this section, they would have bothered the Minister about replacing it. I don't know if the Legislative Counsel can help me at this point. What was this intended to do?

**MR. TALLIN:** The old Section 35 of The Labour Relations Act, I think, had this provision in.

**MR. GREEN:** You see, you don't know that either now. You're guessing, are you not?

**MR. TALLIN:** Yes, because what was intended with the new 10(4) was to provide in The Fire Departments Arbitration Act, the procedures which were adopted through reference to the old Labour Relations Act so that there would be less cross-reference between The Labour Relations Act and the . . .

**MR. GREEN:** The Minister has explained that and I . . .

**MR. TALLIN:** I don't think there is anything new here.

**MR. GREEN:** You know, you're quite right; it may be the case, and that's what the Minister read out. But I will admit it's new to me. It may not be new but suddenly something is highlighted for me. The reason it's highlighted, and I tell the Minister this, and sometimes when you're just carrying things over, you don't know whether you're here making a mistake. After an Arbitration Board has made an award, the Minister may direct it to reconsider and clarify. The Minister can tell him that he doesn't like that award. Now I don't think the Minister wants to be in that position. But when you look at the Act, it's really quite broad that he can ask it to reconsider, clarify or amplify and I think that those things are really quite wrong; that the meaning of the award should be considered only by a court or any part thereof or to consider and make an award in respect of any new matter added to the statement of matters referred to it. Now, who says that after there is an

award and the Arbitration Board has ruled that the Minister is going to say, well, now that you have done that I'd like to add some new matters, or the city says I'd like to add some new matters, or the union says I'd like to add some. Now I'm perfectly sympathetic with the Minister; he says he doesn't think he's making any change because he says all you are doing is wiping out a previous reference to 35(2). Wouldn't it be of some value for us to see what this 35(2) said?

**MR. CHAIRMAN:** I've asked the staff to bring us a copy.

**MR. GREEN:** They are bringing us a copy of it and even if it then does say what I think it says, it has to be, I'm sure it will be the 1954 statutes that we're looking at. This is 1965.

**MR. TALLIN:** I think it was the 1970 revised that we're looking at.

**MR. GREEN:** I'm looking now at the original Act, Mr. Tallin, and it's got 10(4), enacted 1965, Chapter 27.

**MR. TALLIN:** Yes.

**MR. GREEN:** So you were referring to a Labour Relations Act which was in existence in 1965.

**MR. TALLIN:** But presumably it was updated on the revision by Mr. Rutherford and the cross-references were changed.

**MR. GREEN:** Well, perhaps.

**MR. TALLIN:** Yes.

**MR. GREEN:** Can the Minister comment on the merits of it?

**MR. CHAIRMAN:** Just for clarification, we want the Labour Relations Act, that's the one we want.

**MR. GREEN:** That's right. That's the principal Act.

**MR. TALLIN:** Yes.

**MR. GREEN:** But it's an old one. It's the one that was in existence some time ago.

**MR. TALLIN:** In 1970, at the very latest.

**MR. GREEN:** The principal Act means the Labour Relations Act. Now, I think that the Minister should look at that and it's not as if I'm dealing with a small point. This provision enables the parties to completely get a revision of the Arbitration Board after the board has made its award. I don't know why, in the city's case — I would suspect they didn't know about it — why they didn't approach the Minister and say we would like this reconsidered instead of going to court? There is no similar provision with regard to arbitration and upsetting, undoing, clarifying or changing an Arbitration Board award that I am aware of. Perhaps the Minister will correct me, perhaps the Legislative Counsel will correct me, but I am completely unaware of any

similar provision and I will admit that I was unaware of this one and I don't know whether it's ever been used.

**MR. TALLIN:** Will you excuse me, I'll go down and see if I can find one.

**MR. GREEN:** Thank you. Perhaps is there something else we're dealing with, Mr. Chairman, that we could set this aside or are we finished?

**MR. CHAIRMAN:** We finished the other one.

**MR. GREEN:** Sorry.

**MR. CHAIRMAN:** There was no amendments.

**MR. GREEN:** It's not a small point, is it?

**MR. CHAIRMAN:** It's a very valid point. The Honourable Minister.

**MR. MacMASTER:** Just for the sake of the record, I want to make it very abundantly clear that in my conversations with those that suggested this provision that it was simply a very straightforward reference to something that had always been in place. You know, I want that on the record. If, in fact, there had been a dramatic change of any new thoughts of myself or our government I would have made that clear to the opposition before we came in because in my notes I make no reference to anything new whatsoever.

**MR. GREEN:** Mr. Chairman, I accept that entirely in good faith. I am certain and I will plead, if the Minister wants, my association with him that I didn't know about this and that kind of thing where the department says there's no change here, it's just making legal what was happening or clearing up references that could slip by anybody. Now 35, you see, Mr. Chairman, it says 35(2), now 35(2) is completely inapplicable. We have got to find a statute . . .

**MR. CHAIRMAN:** Ray went to get one.

**MR. GREEN:** Yes, we've got to go find a statute that goes back to 1965 when this was enacted to see what the statute at that time said to find out what it means. I think, Mr. Chairman, I'm sorry if members of the committee feel I'm being picayune but I think that this is a drastic kind of statement and that we should find out — the Minister should, for his own purposes, want to know. I believe that if I was the lawyer for the city of Winnipeg last year I would not have gone to court. I would have looked at this section and say, first I'm going to see what I can get the Minister to do. Now perhaps the Minister would have not given me the time of day but, at least, there's an opening here, isn't there? — (Interjection)— That's right.

**A MEMBER:** It depends what it relates to originally.

**MR. GREEN:** Yes, I don't know what it related to. You can see 35(2) is not in the existing Act —

(Interjection)— I'm sure you're going to have to put the '54 revised statutes to find what 35(2) is.

**A MEMBER:** There is no 35(2) at all.

**MR. GREEN:** Mr. Chairman, may I suggest to you that you tell your staff that they should be more explicit to you when something like that is done. It can undo the whole thing, but either side could ask him to undo it. I think if the Minister wants to do that. I mean you have people come to the Arbitration Board for all kinds. Now they say that you have a power to ask the board to reconsider it. It's right there in black and white, that I'm sure of.

**MR. CHAIRMAN:** The Honourable Minister.

**MR. MacMASTER:** If both parties couldn't . . .

**MR. GREEN:** Mr. Chairman, the way this reads either party or not even on the application of either party. On arbitration, the Minister may direct, after an arbitration board has made an award, the Minister may direct it to reconsider and clarify or amplify the award or any part thereof, or to consider and make an award in respect to any new matter. Now seldom is legal language more clear than that. That he can ask, the Minister may direct it to reconsider and clarify or amplify the award or any part thereof.

**MR. CHAIRMAN:** The Honourable Minister.

**MR. MacMASTER:** I have difficulty with the word 'reconsider' and I certainly have difficulty with any new matters. Maybe in somebody's wisdom in history they felt there was a need for the word 'clarify'.

**MR. GREEN:** Amplify and clarify.

**MR. MacMASTER:** Yes, but the word, reconsider, or certainly the matter of new matters . . .

**MR. GREEN:** Now we have someone who has brought up 35(2). Now, Mr. Chairman, 'after a Conciliation Board has made its report, the Minister may direct it to reconsider and clarify or amplify the report.

**MR. GREEN:** Mr. Chairman, now I am satisfied this section should never have been there. This is an arbitration board award. This is a conciliation board award. I would strongly request, Mr. Chairman, strongly request — and I do this in as non-partisan a way as I can — that the Minister go back to the department with this bill; we'll meet again; we're going to be here for two weeks; and ask him whether this is a valuable section. Because this refers to conciliation. Conciliation is not binding. Conciliation is not an award, it's a recommendation. Whoever put this in in the first place, I'm satisfied did not have a full understanding of that and I would really request — and there's no rush, we're going to be here for some time — the Minister to go back and see whether he wants that; see whether it's useful.

I can tell the Minister, and Legislative Counsel will agree with me, that no Judge can be asked to do that because the award and the judgment has to be

interpreted by the Court of Appeal. This type of thing leads to all kinds of attempts to catch up with trying to correct things.

Mr. Chairman, you can go ahead and pass this if you like, you'll have the votes for it no doubt, and maybe the future will be like the past, that it will be ignored. I believe that it may be a problem for you. It would certainly be a problem for me if I was ministering the Act and I don't think that you have to do it today. You can do it the next time we come round, say that you think it's perfectly all right and there may be some debate on it. I don't know whether the firefighters have ever thought about this or the municipalities.

But the principal act refers to a conciliation board award, which is not binding and it really doesn't matter, but this award is binding and is intended to resolve the dispute. After a conciliation board made award, either party could go on strike. When this award is made, the parties are bound to the award.

**MR. MacMASTER:** Mr. Chairman, if you'll take my word for what it is, and I think it's good, I'm wondering if we could pass this to third reading in the House — and I look to the Member for Kildonan for his thoughts on my suggestion — which won't get in there for a day or two or three or four, whatever, give me time to talk with the Firefighters Association and find out why, in their history, why they thought it was valid to be there.

**MR. GREEN:** Okay, which should give us an opportunity . . .

**MR. MacMASTER:** And if, in fact, them and the city and others, whatever the case is, have some history as to why . . . would like to believe that it came about because of mutual agreement some time in the past for possibly valid reason in those days. It's on record that I have trouble with the words, certainly reconsider. Certainly I have trouble with the new statements. It's just nothing I've experienced. And if in fact the Firefighters Association and municipalities understand my position and my uncomfot with those words, then I'd propose they have amendments brought forward in the House to strike at least those words out. Clarify is the only word that — I think there might be a case one time where the Minister may ask an arbitrator to clarify if both parties were in some confusion. Somebody someplace rather than the two of them getting lawyers and fight it out, all due respect to lawyers, that one word might be of some value in the future.

**MR. GREEN:** Mr. Chairman, I would merely ask if the Minister would undertake to give — I don't object to what he's going to do but I may disagree with the firefighters and the city and if he doesn't want to amend, will he give the members of the committee notice that he's going to leave it the Bill the way it is and if an amendment is to be put that we'd be given an opportunity to make the amendment in the House in the usual way.

**MR. MacMASTER:** Yes. My word as of now is I'd like to review it with the Firefighters Association, with certainly some major municipalities and if I feel amendments are needed at that time, I will ask

probably somebody in the House to move those amendments and if I decide, for whatever reason, that no amendments are necessary, I say here today I'll let the opposition, the Member for Kildonan, the Member for Inkster, particularly both of you, know.

**MR. GREEN:** And give us an opportunity.

**MR. MacMASTER:** And give you time to move your amendments and speak yourself and at that particular time if I have chosen not to, I would think it would be for some valid reason.

**MR. CHAIRMAN:** Mr. Fox, the Member for Kildonan.

**MR. PETER FOX:** Yes, I'm prepared to accept the Minister's word on the procedure. I would just like to indicate that to me it seems as if what occurred, that originally this clause referred to conciliation, as the Honourable Member for Inkster found in the principal Act, and in transposing it from one Act to another the thought that it was for conciliation was lost. So therefore it may be amended a number of ways, either to delete this section or to clarify it in another form or else to refer it to the conciliation procedure, which it was originally intended for, and that would correct the particular area that we have before us today.

**MR. MacMASTER:** Thank you.

**MR. CHAIRMAN:** Can we go back then to Page 2 then, as amended from the other amendment and we pass, with the agreement that is made today between the committee and the Minister? Agreed? (Agreed)

Bill be reported—pass. The Honourable Minister.

**MR. MacMASTER:** I'll talk to Gerry how we hold that.

**MR. CHAIRMAN:** Yes, okay. Committee rise. — (Interjection)— As amended, yes.

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