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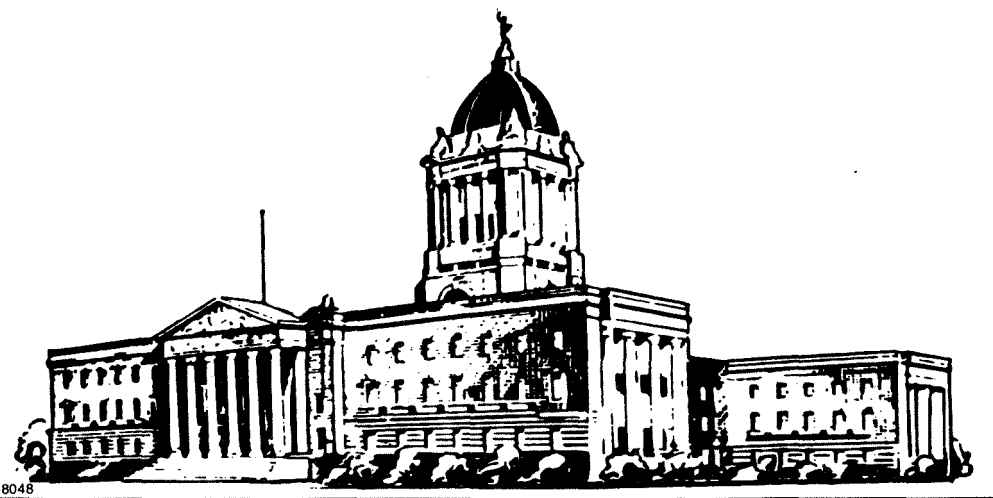
Legislative Assembly of Manitoba

STANDING COMMITTEE
on
INDUSTRIAL
RELATIONS

31 Elizabeth II

Chairman
Mr. J. Storie
Constituency of Flin Flon



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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS
Tuesday, 15 June, 1982

'ime — 10:00 a.m.

MR. ACTING CLERK, G. Mackintosh: I call the meeting to order. The first item of business is to elect a Chairman. Are there any nominations?

MS M. PHILLIPS: I nominate Jerry Storie.

MR. ACTING CLERK: Mr. Storie has been nominated. Any further nominations? Seeing none, will Mr. Storie take the Chair?

MR. CHAIRMAN, J. Storie: The first order of business would be to recommend a quorum. I would suggest six. Is it agreed? (Agreed)

There are a number of groups here to make representation to the committee. Is it the wish of the committee to receive all of the representations at once or shall we go bill by bill? All at once?

MR. G. MERCIER: All at once.

BILL NO. 29 - THE CIVIL SERVICE SUPERANNUATION ACT

MR. CHAIRMAN: The first presenter is Mr. Gary Doer from the Manitoba Government Employees Association. Have you distributed copies?

MR. G. DOER: Mr. Chairman, members of the committee, thank you very much for hearing our presentation. We'll be very brief.

Over the past several years, the area related to employee pension benefits has become a very serious concern to many MGA members. The reason for this increased level of concern and even apprehension in the pension benefit area is largely due to an ever increasing inflationary pressure on pensioners, coupled with public attacks on the fundamental concept of indexed retirement benefits.

The MGA supports government amendments to The Civil Service Superannuation Act embodied in Bill 29, since it increases benefits to those who need, is perhaps the greatest thing under existing inflationary conditions. Although the effects of changes to the Act in terms of increased level of indexation will not entirely match cost-of-living increases, it does lend recognition and support to the concept of indexing pension benefits.

Although agreement was reached on the issue of indexing between the employer and employee representatives, no legislative recognition is given to the Employee Superannuation Liaison Committee or the process of negotiations that took place. The MGA believes that it is time for the government to review and consider further amendments to this Act that would give statutory recognition to government employees in negotiating improvements to their pension plans and benefits.

These amendments would include a formal process of negotiations and dispute settlement. In addition to our concerns with regard to bargaining rights, the MGA believes that the current method of electing employee representatives to the Superannuation Board is not representative of the existing employee-employer relationship. In this regard, we would ask the government to consider initiating a complete review in an effort to restructure the board that would recognize employee representation through their bargaining agents.

In conclusion, the MGA certainly supports Bill 29. In our estimation, 3,700 qualified pensioners will benefit with taking the surplus of the $3.7 million and placing it towards the indexation of our pensioners. I think it's a very positive move in these times and we support Bill 29.

MR. CHAIRMAN: Thank you, Mr. Doer.

The Honourable Minister of Finance.

HON. V. SCHROEDER: Thank you, Mr. Doer. You indicate that the current method of electing employee representatives to the board is not satisfactory to you and although you're asking for a review, do you have a suggested alternative which would be satisfactory to you?

MR. G. DOER: Well, we would like an intensive review, but we find situations where different groups are coupled with other groups in the various Crown corporations. We find situations where personnel officers are mistakenly, we think, elected even though it's a democratic choice by employees to be on the board. We find situations where we have people that would be elected by our total unit that we would want to put on it or the most experienced in this area that we think could be placed on the board by the representatives of the various bargaining units. We think it's time for review; we think that the Superannuation Board and its structure over years has worked well, but we think it's time to take a look at the whole structure for the future and we're certainly willing to look at it in depth if the government is in the future.

HON. V. SCHROEDER: Thank you.

MR. CHAIRMAN: Are there any further questions of Mr. Doer?

MR. G. DOER: Thank you.

MR. CHAIRMAN: Thank you very much for your presentation and on behalf of the committee, I thank you.

BILLS NO. 38, 39, 40 AND 41

MR. CHAIRMAN: Bill No. 38 - Mr. Cerilli.

MR. A. CERILLI: Thank you, Mr. Chairman. Darlene Dziewit will present the first part of our brief and then she'll call on me to present the second part of our brief.

MISS. D. DZIEWIT: Thank you, Mr. Sirella and thank you, Mr. Chairperson. We would like to make some general comments on Bills 38 through 41 and in general, first of all we'd like to congratulate the Minister of

Labour and Manpower, and the Cabinet and all of their assistants are to be congratulated on their proposed amendments to The Labour Relations Act and other related Acts.

Bills 38 and 41, amending The Vacations With Pay Act and The Employment Standards Act to include domestic workers, are very progressive pieces of legislation. The amendments to The Employment Standards Act, Bill 41, to clarify the language in intent with respect to the definition of workplace as it applies to notice required. . .

MR. CHAIRMAN: Excuse me. Before you continue, Miss Dziewit, could you ask the committee for some clarification here. Would it be the will of the committee to have the presentation cover Bills 38 through 41 or would we proceed one at a time, allowing for comments and questions as we proceed through each one. If it's agreeable, we will allow her to proceed through all of the bills.

Proceed, thank you very much.

MISS D. DZIEWIT: Thank you. The amendment to The Employment Standards Act, Bill 41, to clarify the language in intent with respect to the definition of workplace as it applies to notice required for termination of employment are most welcome, particularly by our members of the mining industry.

Bill 39, An Act to amend The Department of Labour Act, contains important provisions enabling inspectors to give testimony in civil proceedings. The legislation will also protect inspectors from personal liability in the conduct of their duties. These changes are welcomed.

Finally, Bill 40, An Act to amend The Labour Relations Act, includes many important amendments in addition to first contract arbitration. We very much appreciate the intent to clarify and strengthen remedies for unfair labour practices, the criterion for good faith bargaining and compliance thereto, certification and decertification procedures and restrictions on changes of conditions after the termination of a collective agreement.

We would, however, like to make one major recommendation for amendment to the proposed legislation. We are particularly concerned with the proposed duration of the arbitrated first contract embodied in Section 75.1(6), the term of the first agreement.

I'd like to turn over the presentation at this time to Mr. Al Cerilli to explain to you what we mean on Bill 40.

MR. A. CERILLI: Thank you, Darlene. Mr. Chairman, committee members, it's certainly a pleasure to be here to give forward our reasons for the change that we request in the issue of the duration of the first contract.

First, collective agreement negotiations is often a continuation of the battle that ensued over the question of certification, particularly when an employee or a number of employees have been fired for their activity during the organization period. Charges of unfair labour practices are filed with the Labour Board and in most cases, the employees are reinstated at their job with the same employer with payment of wages and/or damages.

The employer opposes the organization and during negotiations does not want to legitimize the union by voluntarily coming to terms with it. In some cases, a paternal attitude of uncompromise, coupled with inexperience in the give and take of collective bargaining, leads some employers to deliberately obstruct progress in their first negotiations. Their purpose is often to rush a union into an untenable strike situation in which the support of its members largely depends on the successful negotiations for a first collective agreement.

The need for first contract legislation is to achieve a climate of some sense of employment stability by bringing the parties together under the terms of a collective agreement with a grievance procedure to work out their differences and involve a good working relationship to carry into the next set of negotiations. This involves becoming familiar with the ins and outs of the contract - learning to handle the grievances, process smoothly and developing a pattern of consultation as issues arise. Needless to say, this process takes time for both the employer and the employees.

Unfortunately, experience in other jurisdictions, notably B.C., has shown that the employers often continue their attempt to break the union. Even into the term of the first imposed contract, they continue to focus on maneuvering and pushing for decertifications. The B.C. Labour Relations Board, since the inception of first contract legislation in 1973, has imposed 12 contracts; 10 of them have failed, resulting only in a resumption of the original impasse in the form of a strike over the second contract and/or decertification.

We believe that these practices and consequences are encouraged by the fact that the contract imposed on the parties is too short - one year - that it is not taken seriously. Only a few months will pass before the posturing of negotiations will again resume. There is scarcely the time to think of developing a mature relationship towards industrial peace. For these reasons, we recommend that the Manitoba Labour Relations Board be given the option of settling a contract for two years when these conditions prevail. This is clearly an instance where Labour Board discretion is necessary to create the best possible conditions for industrial stability.

We recommend that Section 75.1(6) of Bill No. 40 be modelled on the Quebec legislation to read, "The collective agreement shall be effective for a period of not less than one year nor more than two years from the date on which the board settles the terms and conditions of the collective agreement."

Mr. Chairman, we're prepared to answer some questions, but briefly outlined in those reasons for industrial peace, if you like, we recommend to the Committee and the members to amend that duration section to one year and not more than two. Thank you very much.

MR. CHAIRMAN: Are there any questions or comments?

The Honourable Minister.

HON. V. SCHROEDER: Thank you, Mr. Chairman. Thank you, Mr. Cerilli, for your presentation. Al, being a neighbour of mine from just across the street, we've had the occasional discussion with respect to this very issue in the past. I've pointed out previously to Mr. Cerilli that it would be the intention in Manitoba to become involved in preventive conciliation the moment the first contract is settled and, of course, before that

we would hope that we could, like British Columbia, avoid settling very many first contracts. The fact that there have only been in the range of a dozen or so contracts settled in British Columbia in the past eight or nine years as a result of this kind of legislation there indicates that type of success has been achieved there with respect to the bulk of contracts.

We would hope that we could achieve similar success with the bulk of contracts here as well. Where we are unable to achieve that success, as I indicated, it will be our intention to be involved with preventive conciliation with the parties in order that both sides can have the advantage, if they choose to take that advantage, of individuals from our department who are experienced at conciliation and certainly there can be cases where both the union and management could use some guidance with respect to the new relationship they find themselves in. It may well be that such guidance can prevent the difficulties referred to in British Columbia. I'm not sure that an additional 12 months, or up to 12 months, would necessarily on its own make any difference in terms of what would happen with a second contract.

MR. A. CERILLI: Yes, Mr. Minister, I think we emphasized the unrest that is usually created during the organizing period. I think we focused on that particularly so because of the fact that these are some of my own personal experiences and I'm sure that many labour people and many employers have experienced the same thing in regard to that, that the employer all of a sudden, for example, finds himself - the employees in this day and age and in the past have been wanting to organize and they create a problem where there are firings and so on. I think that we emphasize that particularly, so that it's these attitudes that are carried on into the first contract negotiations which postures are being taken and their backs get up and the first thing you know, we're in a confrontation rather than a consultative approach.

It's these areas that concern us so that the industrial peace approach, the productivity approach, continue and not a waste of productivity is achieved rather than destruction of not only the product or the productivity but also in the long term is the experience in B.C. where 10 out of 12, for example, have finally wound up in the ash can. It's that type of caution so that we, in Manitoba, can create our own experience, if you like, of this and lead the way towards industrial peace.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Thank you, Mr. Chairman, I'm having some difficulty in understanding the Minister of Labour's comments with respect to the success of this kind of legislation when the brief before us indicates that out of the 12 times that this kind of legislation was actually used in another jurisdiction, namely, British Columbia, as the gentlemen before us just indicated, 10 out of 12 times it obviously failed. My question to the representative, Mr. Cerilli, is, do you have similar information or record of the number of imposed first contracts in the jurisdiction of Quebec under similar legislation? Is that available to you?

MR. A. CERILLI: We can make it available.

MR. H. ENNS: Secondly, I take it that the reference to British Columbia and Quebec would indicate that those are the two jurisdictions where first contract legislation is on the Statutes or are there other jurisdictions?

MR. CHAIRMAN: Mr. Cerilli, do you want to respond to that?

MR. A. CERILLI: Sure, there's federal Statutes of it. There's federal jurisdiction that has that and I think that the two named provinces that you have in addition. The Quebec experience, I guess, the number of requests has been 134; the number of agreements imposed is 36; the number of agreements still in effect is 20; the number of agreements not effective, 16.

MR. H. ENNS: Thank you, Mr. Chairman.

MR. A. CERILLI: Did you want the federal figures as well?

MR. H. ENNS: Yes, if they're available, Mr. Chairman.

MR. A. CERILLI: The number of requests, three; number of agreements imposed, one; number of agreements still in effect, one; number of agreements not effective, nil. That's the information up-to-date we have, Mr. Enns.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Cerilli, is there any other aspect of labour relations, collective bargaining, that you would recommend be resolved by compulsory arbitration?

MR. CHAIRMAN: Mr. Cerilli.

MR. A. CERILLI: Well, I don't think that the issue of compulsory arbitration at this stage is the area of our concern. What we are talking about here is a first contract piece of legislation, first collective agreement, as a result of some of the areas of organizing the employees or the employers that have been opposed to organizing. The question of compulsory arbitration I would imagine is another field and another issue altogether in my view anyway.

In my experience over the number of years, being a third generation railroader, for example, we've had that kind of legislation, ordered back to work and imposed on us by the Federal Government, so I'm sort of used to that kind of an approach, but at the same time we do have an opportunity of expressing our desires through a strike for a short period of time.

So it's a question that could be argued both ways. In my view, I don't think that the compulsory arbitration should have any type of influence on us regarding this piece of legislation because this is a first contract that we're going to approach to get the parties to live together, if you like, to experience their attitudes and work together.

MR. G. MERCIER: Mr. Cerilli, does the Manitoba Federation of Labour support an imposed contract in any other aspect of collective bargaining?

MR. A. CERILLI: No. Our policy is we don't want any particular part of the and the type of arbitration that you're talking about. This is a different field altogether in regard to industrial peace as I've termed it this morning, if you like, on behalf of the feds in regard to first contract legislation. I think that we're talking about two different things in my view.

MR. G. MERCIER: Mr. Cerilli, in view of the fact that according to the statistics that you have kindly given to the Committee that in B.C. only two of the 12 contracts were imposed have been followed through and in Quebec 16 of 36 are not still in effect, would you not agree that free collective bargaining would be the best method of resolving first contracts?

MR. A. CERILLI: I would answer you this way, in regard to that very important question, there is no doubt in our minds that the free collective bargaining process is the most suitable means of achieving a collective agreement.

However, in my own personal experience, personal I say, I've been involved in the labour movement since I've been 14 years old. I can remember when I went on strike for the 40-hour week in 1950. So these type of things, the free collective bargaining process, no doubt about it, the times are changing. We're looking at new means and ways of achieving a first collective agreement between two parties that in some cases the employer for whatever reason has maintained a paternal attitude towards the employees has not really met the '80s or the '70s and the challenges that lie ahead. Automation is a question that's going to come upon us that is going to be a tremendous situation to deal with in society as a whole, never mind the labour movement. We've been dealing with it in the railways since the mid'-60s.

However, there are organizations now and employers that are just facing up to this fact. Sure, it would be acceptable to deal with the free flow of collective bargaining, but we're talking about areas in these cases, we're talking about duration again, and that's why we feel strongly about the duration of one year versus two years is to give us the opportunity with the employer to prove a point that we haven't got horns, that we're sensible people to deal with and in fact in many instances we have creative productivity suggestions in regard to what can improve the operation. It takes time for us to get this message not only from the employees up to management but to the employer himself, the owner of the plant in many cases, never mind middle management.

So, yes, certainly, but I think we're talking about here, a new means of industrial peace in regard to this type of first contract legislation when many battles have been fought on the ground floor of organizing, where people have been fired for whatever reason and then charges have been laid on their behalf with the Labour Board, successfully won. I can name you some of those cases that I have been personally involved in. Then to negotiate a first contract with all this background and this animosity, it takes pretty good people to come to their senses and eventually come up with a first contract.

MR. MERCIER: Thank you, Sir.

MR. CHAIRMAN: Mr. Minister.

HON. V. SCHROEDER: Yes, Mr. Chairman, just back on British Columbia for a moment, the numbers of course we've known all along. Mr. Enns referred to them, the MFL brief referred to them and I think that there should be some additional information provided; that is, that it first of all acts as a deterrent with respect to both parties in terms of bad faith bargaining, in terms of trying to go into areas that probably they had best not get into. It has - that's one of the reasons that we are here today with this legislation - in all likelihood contributed to the peaceful entering into of many first contracts. Of course, there were 33 requests to the Minister to settle first contracts during this period of time. So when you look at it from that perspective, two-thirds of them got settled in between and didn't require the actual settled first contract.

This legislation, as well, provides for a 60-day period during which we will work with the parties to do whatever we can to ensure that they will enter into an agreement which they have entered into with our conciliation services help but not settled by us. That is what is being achieved in British Columbia, in Quebec and in Canada federally. For Manitoba employees, under federal jurisdiction, that is happening but it is not happening . . .

MR. CHAIRMAN: Order please. On a point of order? Mr. Enns.

MR. H. ENNS: Well, Mr. Chairman, I thought we had agreed at the outset of the Committee that we, as a committee, would hear the representations made by those who are making representation to this Committee. If we wish as a committee to change that rule and begin debating the merits of the bill, then we are quite prepared to do so, but I suggest what the Minister is doing now is entering into the debate that may well be reserved for Committee members to do so when we have the clauses of the bill before us. The standard method of operation is to solicit further questions from those appearing before us for clarification of their brief and so forth. I think the Minister is now entering the debate.

MR. CHAIRMAN: Mr. Minister, on the same point of order.

HON. V. SCHROEDER: Mr. Chairman, it's been more than six months now since I've had an opportunity to ask questions in the Legislature. I was just framing a preamble to ask the witness whether he wouldn't agree with my assessment of the British Columbia Act.

MR. CHAIRMAN: Mr. Cerilli.

MR. A. CERILLI: I think that the deterrent factor is very important. I think that from my understanding is that the good faith bargaining process prior to - the Minister may want to clarify this - that the intent and purposes are to ensure that the same procedure may be as the Ontario scene, allows this process to continue. To ask you a question then, is that your intent, Mr. Minister, in regard to good faith bargaining?

MR. CHAIRMAN: Ms Phillips.

MS M. PHILLIPS: Yes, Mr. Chairperson. Brother Cerilli, I'd just like to clarify something. It sounded when you were answering the questions that you wanted two years, yet your brief says you want the option; you want the Labour Board to have the option, somewhere between one and two years. I just wanted to make sure you weren't saying one thing in the paper and another thing to us in person.

MR. CHAIRMAN: Mr. Cerilli.

MR. A. CERILLI: Yes, our recommendation is exactly what we've proposed here as not less than one, not more than two at the option.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Just one more question, Mr. Chairman. Sir, do you support retroactive legislation?

MR. A. CERILLI: It depends on the possibility of what we are achieving or trying to achieve here. To answer that specifically, I guess if we're talking about a longer term for a contract, there's some good reasons why there should be retroactivity. However, if we're just talking about an imposition of a short period of time because of the elements of time to come up with a collective agreement, when it's going to be voted on and so on and ratified, if that's the date and there's only three or four months before you get into negotiations again, then we're certainly going to be barking up the wrong tree inasfar as stability and industrial peace.

So taking that question and answering it in this way, yes, providing there are other mechanisms available for a longer term if that's the case and it's possible that those areas can be worked out between the parties in their presentations to the Labour Board, for example, if that's where it's going to go.

MR. CHAIRMAN: No further comments. On behalf of the Committee, Mr. Cerilli, I'd like to thank both you and Ms Dziewit for your presentations on behalf of the Federation of Labour.

Presentations on Bill No. 39, An Act to amend The Department of Labour Act. Mr. Lemke. Not here? Is Mr. Lemke here? No.

BILL NO. 40
THE LABOUR RELATIONS ACT (Cont'd)

MR. CHAIRMAN: Continuing with Bill No. 40, An Act to amend The Labour Relations Act - Mr. Minister.

HON. V. SCHROEDER: Mr. Chairman, there are several amendments to Bill 40 which we are contemplating and I thought that it would be appropriate before we hear submissions on Bill 40 to indicate the approximate nature of those changes.

First of all, to 75.1(3)(b), added on to the last sentence would be - in order to make some sense of it, I think I should read this - the substitution would be, "advise the Minister and the parties, in writing, that it believes that a settlement will be arrived at between the parties within 30 days of the date of advising the Minister under this clause and therefor it does not consider it advisable to settle terms and conditions of a first collective agreement between the parties;

and, where the board has advised the Minister under clause (b), that a settlement will be arrived at between the parties within 30 days, and no such agreement is entered into between the parties, the board shall proceed to settle the terms and conditions of a first collective agreement between the parties within a further period of 30 days."

As well, Section 75.1(4)(b), we will later on be proposing an amendment to strike out the words "as work becomes available" in the 2nd and 3rd lines of that section. There will also be a motion made later on that Section 10 be amended by adding thereto, at the end thereof, the words and figures: "and any request to the Minister under Subsection 75.1(1) of The Labour Relations Act as enacted by Section 9 and any direction to the board by the Minister under that subsection, made between February 25, 1982 and August 1, 1982, shall be conclusively deemed to have been made on February 26, 1982."

MR. CHAIRMAN: Continuing with presentations of Bill No. 40 - Mr. Green.

MR. S. GREEN: Mr. Chairman, I appear on behalf of the Manitoba Progressive Party. I note that the listing had me as a private citizen. There are some people who wish to make listings on the basis of their wishful thinking but the fact is I appear on behalf of the Manitoba Progressive Party which was a party which sought to be elected in the last election and failed.

Mr. Chairman, I'm here to speak on this bill principally because I have participated in virtually every debate affecting The Labour Relations Act since 1962. In many cases I was involved in presenting resolutions to the Legislature of the Province of Manitoba and, of course, for a certain period I was very much involved in the amendments to the Act themselves. So I think, as I said on a previous occasion, that I've addressed people in this room and the public as a distinguished member of the Opposition. I've addressed members as a distinguished Minister of the Crown and I'm now addressing this group as a distinguished nobody. But nevertheless what is consistent is what I have been saying on all three occasions regardless of the characteristic by which I'm described.

Mr. Chairman, gentlemen and ladies, I have always asserted that the working people, the employees of the province or of any jurisdiction, have only two means of ultimately protecting their positions and those are: (1) the right to say that they will not perform a service; and (2) their right to appeal for public support. These two essentials are what gives ultimate strength to employees, that any trade-off of these essentials for some supposed state legislative arbitration board or court protection is a bad trade, has always been a bad trade and will always be a bad trade; and that from time to time people have sought to make this trade mostly because of weakness and mostly because they have lost sight of their objectives.

Mr. Chairman, I knew Bob Russell very well and I know that Bob Russell would roll over in his grave if he knew that the Manitoba Federation of Labour was asking for a provision whereby the state would dictate

terms and conditions of employment for one year, two years, six months or one day. That has been anathema to the people who have grown up in the trade union movement and I can say that I have some seniority in this regard. My friend, Mr. Cerilli, says he went on strike in 1950; I went on strike in 1945. I was satisfied that when I went on strike that the only thing that would cause us to win is if we stuck together, if we got the public to say that they would not support our employer because he was being unfair to us and that anything else led to the destruction of our position.

Now, you've been told various things about how labour relations grew. You've been told that The Wagner Act in the United States formed the basis of a wonderful series of labour legislation which subsequently became PC 1003 in Canada. Before PC 1003 was enacted, which is the origin of our present Labour Relations Act, approximately 26 percent of the labour force in Canada was organized. They did it without any state help. After PC 1003 was enacted between 1945 and 1975 the figures rose to approximately 32 or 33 percent. So 26 percent was obtained by freedom; 7 percent, if that, was conferred on employees, so-called, by the benevolence of politicians.

Mr. Chairman, you've been told that The United States Wagner Act was a trade-off between the right to strike during a collective agreement and the formal recognition of trade unions. Trade unions existed in the United States before The Wagner Act, and The Wagner Act never stopped strikes during collective agreements. One thing that they had not done in the States, at least up until 1964, was to do what we've done in Canada and said that people have no right to leave their employment because a grievance has been decided and they have been arbitrated insofar as their difference between their employers concerned. That did not exist in the United States.

I'm referring, Mr. Chairman, to a book "A Study of Union Power" which is a biography of James Hoffa actually in which one of the things that Mr. Hoffa protected by his union continuously is the right to say that we will leave work if we are dissatisfied with the arbitration board award and why not? Why does anybody require anybody to work even though an arbitration board says that you should? Reading from the book, it says: "To eliminate this state of affairs, the American Trucking Company has recommended legislation to make arbitration the compulsory final step in the grievance procedure and it wasn't accepted. Mr. Hoffa didn't accept it and the Teamsters never accepted it, but they did not thereby have a proliferation of strikes. By compiling a low-strike record Hoffa hopes to avoid punitive legislation that would make terminal arbitration of grievances compulsory." This is 1964 and it wasn't compulsory. It was not made compulsory.

"On the other hand, one might question whether such strong government infringement on labour management relations is justified, particularly given the time and money consuming dangers of legal entanglements and over reliance on outside tribunals." Now, Mr. Chairman, first of all, I want to say that unlike some who are very simplistic and say that if you are against something, whose side are you on? If I oppose this legislation, which I do, then I must be on the side of somebody else. You know, it's interesting.

At a political party convention, I got up and said that you cannot pass a law which says that if there is a police strike the municipality can't hire police during the existence of that strike. Another member who is now a Cabinet Minister in this government said, "Whose side are you on?"

Now the Attorney-General has indicated in this province that if there is a police strike, the RCMP will be available. I wonder if he's being asked, whose side are you on, because that was the question that was put. I'm telling the members of this Legislature that it's possible to be on the "right" side and still have the view that it is wrong, that it is an ultimate attack on the integrity of employees to say that their terms and conditions of employment will be dictated to by a third party.

Therefore, when you talk about The Wagner Act and PC 1003, let us all recall that those things were done not to help the Trade Union Movement, not to help employees, but to sap their strength and impair their bargaining position while they were waiting to see what the boards and tribunals were going to do with respect to their terms and conditions of employment.

Again, whose side was he on? Jimmy Hoffa said he has argued emotionally and we think sincerely that he wishes he could turn the clock back to The pre-Wagner Act - Norris LaGuardia days - when unions lacked government protection but were correspondingly uninhibited in their choice of weapons for openly pursuing their own self-interests. Whose side was he on?

Mr. Chairman, the effect of The Labour Relations Act was not intended to remove the strike weapon and most people didn't know that it did. They only found out after running into courts who began interpreting The Labour Relations Act in a way which was never intended. It was always the situation with the craft unions in particular that they didn't apply for certification; they didn't grow through applications of certification. A group of tradesmen got together and said that we will work only under certain conditions and if someone else works under conditions less satisfactory, we will appeal to the public for support; and they would walk to the place where these people were working and they would stand with a sign saying "Nonunion People Working Here." It was a legitimate, and in my opinion, a very healthy form of obtaining "certification" and I use that in quotes because there was no certificate issued.

The Labour Relations Act came up and they didn't say that's not the way it's done, because nobody ever thought it would change it. They said that you can file a membership, you can pay a dollar and it'll be gone over by a board; the employer will have a lawyer there, you'll have a lawyer there and you will fight it out and in the meantime the job will be finished, but you may get certified, you may get a document. The craft union said, we still don't like this, and they went and did the same thing as they did before, not thinking that The Labour Relations Act had affected their rights.

In the case of Smith Brothers versus Jones, the advent of this wonderful legislation, the court enjoined those people from standing in front of a premises saying "Nonunion People Work Here." The court said, that's true, you can't do that; it's illegal. Since the government and the politicians have provided you with this wonderful system of signing cards and going to a Labour Board, having a lawyer, having it argued out and then having the decision removed to a court, you can't do that anymore. Suddenly, the ability to withdraw

labour and to seek public support was impaired by the existence of that statute.

In another case, there were a group of people who were working for a manufacturer and the manufacturer hired scab labour. The people who were working went to the stores that were selling the merchandise and they said, merchandise produced here made by scab labour. You would think that is a normal citizen's right, but the court said no, now that you've got a Labour Relations Act, you can't do that.

In the case of Hersey's of Woodstock in Ontario - I believe it was the International Ladies Garment Workers Union or the Amalgamated Clothing Workers and they were represented by eminent counsel, Mr. David Lewis, deceased - the court said you can't do that because we've passed The Labour Relations Act and that deals with the way in which you handle your disputes.

In a case in Alberta where a group of people were on a lawful strike and when you're on a lawful strike, apparently you can walk down the street with signs; that's what The Labour Relations Act said. Until that time, you didn't have to worry about a Labour Relations Act when you walked down the street with signs, but The Labour Relations Act was put in and then you couldn't do it anymore. These people went on a lawful strike. They voted; they went through all the rules; they had a government supervised vote and then they walked in front of this building, but there was a catch to it. The building was at a fork. In other words, there were two businesses located and one road leading to them. They walked in front of the road. The court said you can't do that because one of those places is not on strike and you're standing in front of the road that leads to both of them. The Labour Relations Act says you can't do that.

So, those people who have taken the position that The Labour Relations Act has created rights, actually they are similar to those who say that a Charter of Rights creates rights, that the Legislature confers rights. At least, it is arguable that they are wrong. For the most part, those people who grew up in the Trade Union Movement and grew up when free collective bargaining was known as free collective bargaining and in particular in Britain, which has a history of labour relations which predates anything that has happened in Canada, they have avoided such legislation like a plague.

The Labour Relations Act in the Province of Manitoba, as confirmed by the trade unionists, used to provide for compulsory conciliation. What did compulsory conciliation mean? It meant that while it was being conciliated, you were prohibited from striking and there were suspicions. At that time, the Deputy Minister of Labour was the head of the Labour Board and he said whether conciliation continued or didn't continue, and there were suggestions that if a union was getting the upper hand, conciliation would continue, but if the employer was getting the upper hand and they were going to be beaten, conciliation would end. Now, they used to call him - the Trade Union Movement - the "Deputy Minister of Anti-Labour." Maybe they were right, maybe they were wrong; but the point is that he had the discretion of doing it.

I would think that if Mr. Sterling Lyon brought forward a statute and the statute said that if the Minister sees that the union is winning, he is able to stop the strike and send it to the Labour Board and the Labour Board will impose an agreement; but if he sees that the company is winning, that if the union asks for something, they would be refused that right and the company would be permitted to continue and defeat the union. Now, if Sterling Lyon brought in that piece of legislation, you would call it correctly - fascist legislation - would you not? Is there anybody here who would not call it fascist legislation? No, there is nobody here who would not call it fascist legislation.

MR. CHAIRMAN: Mr. Enns on a point of order.

MR. H. ENNS: Mr. Green is well experienced in the affairs of this committee to know that it's out of order for a witness making representations to ask questions of the committee members.

A MEMBER: Mr. Enns is quite correct.

MR. S. GREEN: Mr. Chairman, I have no doubt, because I've seen it before because I know what the unions have done, that if the government - if Sterling Lyon's government or the Member for Charleswood's government - came in and said, we're going to pass a bill; we're going to say that the Minister, if he thinks the union is winning a strike, can impose an agreement through a Labour Board; but if he thinks that the union is losing, he can refuse to impose an agreement and let the company beat them. That would be fascist legislation.

Mr. Chairman, that's the legislation that's before you. That is the legislation that is before this committee and I will read it out to you chapter and verse. I am not opposing this legislation, Mr. Chairman, because it is anti-employer. I am opposing this legislation because it's anti-employee; that it says to a group of employees, if you are winning a strike the employer can ask the Minister to send it to the Labour Board and the Labour Board can impose terms and conditions of employment on you, which would defeat what you were going to get if you were successful, that you are likely going to get 20 percent because the employer was on his hands and knees; but the employer asked us to, we sent it to the Labour Board and the Labour Board gave you 13 percent or 10 percent. That's what the legislation says.

It says - and I am reading the Act and I will leave out the options - "Where an employer. . .by notice given under section 51. . .to commence collective bargaining. . .and no such collective agreement has been concluded"; and the guys are on strike and they're winning. He's dying. He can't sell anything, he can't get any employees and nobody will ship to him. "The minister may, on the written request of either party. . ." So the employer requests it. He says, these guys are hammering me into the dirt, give me a settled agreement; they're asking for 25 percent and I'm going to have to give it to them. "On the written request of either party and after such investigation as the minister deems advisable. . ." - this is very important, Mr. Chairman - ". . .direct the board to inquire into the matter. . .and, if it considers it advisable, to settle terms and conditions of. . ." - employment - so where have I read something wrong? The employer can ask them to send in the Minister to look at the circumstances and the Minister will say, it's unfair that these employees are going to get so much money. We've got to help out this poor employer. We've

got to ask the board to settle terms and conditions of employment. The board then settles it and they could settle it for the government.

The Premier of this province has said that Quebec is right in asking for a rollback. Quebec is right in asking for a rollback of wages; they have an agreement. They're going to legislate that agreement to death and ask for a rollback. He says Quebec is right. Under this legislation, if it were a first agreement and I'll deal with that eventually because this is not first agreement legislation - this is first agreement legislation, second agreement legislation, third agreement legislation, fourth agreement legislation, et seqq. - and then Mr. Pawley says, if I were in the financial problem that they had in Quebec, I would do the same thing. One year from now, the Province of Manitoba will be in a worse financial position than the Province of Quebec. So one year from now, the Prime Minister is going to ask for a rollback of employees' wages that he's just given them. He says he would do it. He's given them 13 percent plus 1.5 percent in the next agreement - 14.5 percent - but he's got a $350 million deficit this year; he's already used up $110 million in tax elbow room, which he's not going to get $110 million from, so he's going to be in a worse position. Next year, the deficit on the basis of a straight line will be a half-a-billion dollars and he says he won't increase taxes, so he'll be in a worse position; so he's got to do what he said he'll do. He's given the notice - "I am going to do what Quebec did if I'm in a similar position."

If this legislation applies and the employees were going on strike for a first agreement and there are some who could - my friend, the Minister of Labour, is smiling but there are some who could - somebody could get the MGEA decertified in a particular situation, ask for certification, get certification, apply for first agreement or go on strike; maybe it's a strong group and go on strike. The Minister asks for the Labour Board to set an agreement and the agreement is a rollback of wages and it becomes binding on the parties. Now, what have I said that is contrary to the fact? There are several lawyers in this room and I suggest to you that's what the Act says. Why would this government, this so-called workers' government enact such a piece of legislation? It's a curious question. It's a curious thing to do.

Well, it reminds me, Mr. Chairman, of a story about this man who's sitting in a restaurant in New York. He orders a steak and when the steak comes - he's sitting with his partner across the table - he takes the knife and cuts off a little corner and puts it in his pocket. The waiter looks at this and feels it's really none of his business, he shouldn't bother the customers, but his curiosity overcomes him and when the guy goes to the washroom, he walks over to him. He says, "Mister, I noticed this peculiar thing, this curious thing. Why did you cut off a little piece of steak and put it in your pocket?" He says, "Shh, don't say anything. See that little guy who's sitting with me? That's my partner. He's hoping I should choke on the first bite. I fooled him; I've got it in my pocket."

The reason that this government is enacting this legislation is they feel that they've got the Labour Board in their pocket, that it won't work the way I say, that's only what the Act says. The real situation will be, if an employer is getting beat by the union, they will refuse to impose a first agreement. They will say, we have investigated the matter and we don't consider it advisable to refer this matter to the Labour Board, because the union is winning and referring it to the Labour Board will result in a reduction. If the employer is winning and the union can't make any miles, they will go to the Minister and he will say, we've investigated the matter and we deem it advisable to direct the board to inquire into it and the board will consider it advisable to impose an agreement.

Mr. Chairman, depending on whose foot the shoe is on, this is potentially the most fascistic piece of legislation that has ever become before a group of members and it will be used, because much as my friends think that they are there forever, from now on that kind of conduct will have been stamped "kosher" by the Manitoba Federation of Labour and by the New Democratic Party. They will say that this is fair game and the Manitoba Federation of Labour is now in a little bit of a honeymoon with the government so they say, Okay; but ultimately, no matter how you word it and who uses it for who, I repeat - and Mr. Chairman, gentlemen and ladies, I have said this without a word of change for over 20 years when I was hired by the Manitoba Federation of Labour to represent it in court, when I was the spokesman for the New Democratic Party on labour question, when I was in the Manitoba Legislative Assembly - and it was the policy of those people, who now for reasons which are very peculiar have decided they have to change it merely from the point of view of saying they have to, because the Minister has said that he hopes it will never be used or hopes that it will be seldom used. When the statistics are given, they say that 20 are still in agreement. How many of those are in the first year that are still in existence - 20 out of 36 still in existence - but how many of them are in the first year? I don't even know and frankly I don't care because to me, what is the problem is that you cannot be a little bit pregnant and that once you encroach on the freedom of the employees with respect to their terms and conditions of employment, they may get - as Faust did - a temporary advantage, but they will pay the price because the price is the loss of freedom to those people to see to it that their terms and conditions of employment are not imposed by a state regardless of the complexion of the government in power because no government in power will help them.

There was a love affair between Mr. Levesque and the Trade Union Movement in that province. They were sure that he was prolabour. He enacted - and it is almost ludicrous to refer to it in those terms - anti-scab legislation. He enacted first agreement legislation. His government has forced more people back to work than any other government in Canada and if you force people back to work, you can pass whatever first agreement legislation or anti-scab legislation you want.

I was in debate on this question with a Minister of this government and I said that if you enact anti-scab legislation, you must enact essential service legislation. You cannot have one without the other. You cannot say that the police can go on strike and you cannot hire people to replace them. If there was so-called anti-scab legislation enacted in this province, is there any doubt that there would also be essential service legislation enacted immediately or back-to-work legislation with respect to the police?

Now Mr. Cerilli says that he has lived with back-to-

work legislation. I can't live with it. I was a Minister in the government for eight years with the power to deal with it, Mr. Chairman. —(Interjection)— Somebody's hurting over here. Manitoba was the only province virtually that never passed an Act saying that a person will go to work or go to jail. If you ask the people within the group, they will say that I had something to do with that, because Mr. Pawley got up in the House one day and said he was going to do it, I got up immediately sitting on the same Treasury Bench to say it wouldn't be done. And it wasn't done.

Now, Mr. Chairman, that's what this legislation does and if industrial peace is achieved and it won't be, then why not for second agreements? I don't know, don't you want peace at the second stage? Maybe by the time the second stage has come, the fellow who used to be intelligent with regard to labour relations has become a fool. Isn't it then just as necessary that second agreement legislation be passed? Well, Mr. Chairman, the beginnings of second agreement legislation are in this Act because the present Act said that you must make every reasonable effort to conclude an agreement. I thought those words are kind of explicit. You must make every reasonable effort to conclude an agreement, but the Minister says that to make every reasonable effort to conclude an agreement is not enough; that if a group of employees go on strike and they ask for 20 cents an hour or 20 percent, the company doesn't want to pay it, they go on strike. We have, up until now, assumed that they have made every reasonable effort to secure an agreement, but the Minister says that's not enough. The government says that's not enough. You have to add that they must bargain in good faith to make every reasonable effort to conclude an agreement. How those words add anything to the section, I would have thought if you are making a reasonable effort, you are bargaining in good faith. But they have added those words and then they say, Mr. Chairman, we used to say that the board can do such things as is necessary, order them to do such things as is necessary to comply. Those were always dangerous words; they were always dangerous words. I didn't like them when I saw them the first time, but they've gone much further now, Mr. Chairman. They can order any party to a collective agreement to refrain from doing or to cease and desist from doing anything which in the opinion of the board constitutes a failure. There are two stages, one when you're not a party, one when you are a party, but they can now order them to do something. Now what can they order them to do? If a union is on strike, and the board is of the opinion that they are asking for too much, can they order them to cease being on strike because that is bargaining in bad faith? Well, apparently that's what the Act says. That's not what the Act means, Mr. Chairman. What they mean is that the employer can be ordered to do things, not the employees, but they leave a discretion because they got somebody in their pocket or at least they think they have or if they don't, they'll change them.

That has been the situation with regard to when the Manitoba Federation of Labour screamed that the Minister was conducting too many votes and they should get rid of him, votes stopped being conducted. Is it any wonder, Mr. Chairman? And how are they going to behave? If Shirley Carr can come and say in the Province of Manitoba, we got Allan Blakeney, you watch out. Then how, Mr. Chairman, is this government supposed to react when they say that the Minister of Labour or the Chairman of the Labour Board is not behaving properly? So they expect him to behave properly; they expect that he will be in their pocket. That's the only basis, Mr. Chairman, the only basis upon which they can justify this legislation, because if they don't have him in his pocket, then he can order employees back to work when they're winning and he can order them to stay out when they're losing and he can say, to hell with you. That's what this legislation permits and there can be no argument about that.

Now when they say that they can order him to do things, I'm aware, Mr. Chairman, of a strike where the employer was ready to sign an agreement but did not agree to take certain people back to work for reasons which he thought were justified, the employees thought were not justified. Now it can go to a Labour Board who says that you are to stop refusing to take those people back to work and if you don't it's a crime. Not only is it a crime, but it's a crime that you did it on February 25, 1982, when you didn't know you had to do it. These are people who speak about a Charter of Rights which says that you cannot be punished for an offence that didn't exist at the time that you committed it. And they make this and we don't know what it means. February 25, 1982, all of the relations between employers and employees between that time and the present time will become law. So, if an employer and there are some or employees did something at that time which was within the law, they can now go to jail for having committed an offence which took place on February 25, 1982, which didn't exist as an offence when they did it. That's people who agree with the Charter of Rights.

Well, I happen to think that particular section is against the Charter of Rights and much as I have been opposed to the enactment of a Charter of Rights, if my clients are affected by that section, I will be able to go and get it passed. Eventually, Mr. Chairman, this government will say that notwithstanding section "blank" of the Charter of Rights, we are passing a law that the courts have held to be ultra vires, but we think it should be a law and we're going to pass it. I will applaud them and at that moment they should applaud Sterling Lyon because he's the one who protected them, not they. But they will invent, Mr. Chairman, some falsification that they were for it all the time and it wasn't Sterling who brought this about, it was they who brought it about.

I don't happen to agree with Mr. Lyon, but on that question Mr. Lyon has preserved democracy in this country where it was attempted to be taken away by other people. Because if rent control offends the Charter, some people say it does, and the government is telling me that they are committed to those words rather than committed to telling people that they're going to control rents, then I would have even less respect for this government than I already have and that's pretty low. But that's what they're saying, they're saying that they would have rent controls ruled out and that they would not enact a notwithstanding clause or Autopac or any of their other declared programs that they would let the Charter of Rights hold those programs invalid and they would not enact a notwithstanding clause. They will have gone to hundreds of citizens in the province, thousands of citizens, asking them for 50 cents or a dollar in their votes to do certain things

and then they will say, well, we can't do them because there's a Charter of Rights, the law has declared it to be ultra vires.

Maybe that's a way out of doing what you should be doing maybe that's what they're seeking but this bill, Mr. Chairman, I repeat, when I said it and asked the question, there wasn't a demur. Wouldn't those people say if Sterling Lyon brought in a bill saying that you could order people to work when they are winning, impose an agreement on them and let the employer strangle them if they are losing, wouldn't that be fascist legislation? That's what this bill says, you can't get out of it. The only way you can get out of it is say don't worry we've got the Labour Board in our pocket and that's even more corrupt than fascism.

Those are my remarks, Mr. Chairman.

MR. CHAIRMAN: Are there any comments or questions?

Mr. Enns.

MR. H. ENNS: Mr. Green, if I were to take a position identifying myself as being an anti-labour legislator and I, for the record, want to make it very clear that I am not, but if I wish to, would you advise me to vote for this bill?

MR. S. GREEN: Yes sir, because then when you come to power, you will have a weapon against the Trade Union Movement which is the most potent, strongest weapon that has ever been created, one which you would not be able to create for yourself, sir. You could only do this on the basis that the New Democrats passed it and that they are the party of labour, but then when a union was losing a strike and they asked you to appoint somebody, you would look at it and you would say in my opinion it is not necessary to do this. Let free collective bargaining take its way and when an employer was losing a strike, you would say, oh, I think that it's probable that we should have an investigation and impose an agreement. You couldn't pass this bill but you could use it if you were anti-labour, yes.

MR. H. ENNS: Mr. Green, you have with humour and more directly talked about having somebody in your pocket or government having somebody in their pocket. Your position is well known with respect to your views as a legislator, as a former Minister, that the elected people, Ministers, Governments of the Day, make no bones about the fact that appointed boards, indeed, departmental policy should reflect those of the Government of the Day, of the Minister of the Day. Are you suggesting that the legislation before us in the hands of a government that may not always be viewed as being as friendly, disposed to organized labour as this government likes to purport itself to be, would quite naturally at that time appoint members to the Labour Board that reflect the views and opinions of that particular government and in such way would continue to use this legislation in a way detrimental to labour?

MR. S. GREEN: Mr. Chairman, I have never had any objection to that I always laugh when I hear people talking, that they will not discriminate on the grounds of political opinion. Somebody started a suit because he was dismissed for political opinion. I have toyed humourously with suing on behalf of Ben Hanuschak and Bud Boyce on the basis that they are the only former Cabinet Ministers who have not put on the pork barrel of the Government of the Province of Manitoba because of their political opinion. What I object to is not the government doing that, I object to myself as a citizen having the rights of labour or employees taken away from them because freedom is indivisible. If it's taken away from them, it is taken away from me. I would have the Labour Board still doing less and less and as you know this is completely consistent with my position. I said that the more of The Labour Relations Act we could get rid of the better, rather than advancing it. When they say whose side are you on? Apparently on the same side as Jimmy Hoffa was on. Now, Jimmy Hoffa was accused of a lot of things but not of being anti-labour, except maybe by some of the nouveau Neo-Democrats, which consider that if you don't agree with them, you are anti-labour.

What I would say is I do not want to put the workers' rights in the hands of a board or lawyers or politicians and I would let them appoint their board, but I wouldn't let the board say what their terms and conditions of employment should be because that is the ultimate, fatal blow to collective bargaining. The reason that it's wanted now, Mr. Chairman, is very very subtle. Some organizers can't bear to tell their workers that you're not going to get 18 percent; they can't bear to tell them that, so they say let's continue to ask for 18 percent and then we'll let a board tell them that. Then, Mr. Chairman, they'll say the God damn Labour Board did that, not us and they'll say the God damn government, they will. They did say that, not us. There's another thing, Mr. Chairman, and this I share responsibility for, there is now a compulsory checkoff. There is a danger that they don't care what the workers get from the board as long as they get their checkoff.

We have business unionism in this country quite distinct from solidarity in Britain and if they got their agreement, they got their checkoff; what the employees get, they could blame on the Labour Board and therefore it's of no consequence.

MR. H. ENNS: One final question, again alluding to comments made by Mr. Green. There would appear to be, certainly from the news stories that we're getting from Ottawa, indications from other jurisdictions in other provinces, that it is very likely that in the next period of time, unspecified, 12-18 months, 2 years, that governments of different political colorations will find themselves interjecting themselves as government more significantly than perhaps ever before in this country or in this province under the pressure of the economy of the time. We are led to believe that the Prime Minister is back from his sojourns abroad with the idea of resurrecting the proposal that he made to the First Ministers' Conference back in February about imposing wage controls specifically on the public sector as a leadership role, if you like, in attempting to deflate the inflation rate in the country.

Again, I ask the question, with this kind of legislation in place, will this particular piece of legislation in your judgment as a person of some long labour experience be helpful to a government to bring that about?

MR. S. GREEN: Mr. Chairman, it will be seen to be.

Australia has compulsory arbitration; Poland has tyranny. They always think that this is going to work. It doesn't work. freedom is still the best answer, always has been the best answer and provides for the best and most stable industrial relations. You would think that in Poland things would be stable because the laws are you can't do it, but there are things that are stronger than a politician's enacted law and although it would seem to be and although governments will resort to it, it won't work.

This has been resorted to this bill. Who has asked for this bill? I mean your MLAs, other than a hearing from the Manitoba Federation of Labour, who are being betrayed with this bill. The anomalous thing is that it's held out as an election promise. Actually, it's an election betrayal. For three years running at conventions of the New Democratic Party, there was blood all over the floor and the convention said that they will pass a law that will prevent an employer from hiring anybody during a strike. They passed it in February of 1981 during the three or four months before the talk of the election came. They passed it at their most recent convention and then they said, we are forced to betray you, so we'll do this; so a betrayal becomes the honouring of a promise. I mean in the euphemism, the language, the lexicon that now is prevalent within the government party, they make a betrayal, a promise. They never changed that to their conventions. Mr. Howard Pawley and another Minister of the government, when they were seeking the leadership of the party, went into the Labour Session and they said, we will pursue this type of legislation and I said you can't do it. You cannot operate with this type of legislation.

They now say I am right and they are wrong, but that's what they did. They went and now they are betraying those people. I sort of feel that they have come some way to their senses, but they are betraying those people. This is not an election promise. The election promise is surely the policy that was passed at the convention by all of their delegates, but there is always a danger to seize one particular thing and think that if you can correct that, you should pass a law.

I'll give you an example, Mr. Chairman. It talked about this first agreement. Second agreements have been just as bitterly disputed as first. Brandon Packers was a second agreement; Griffin Steel was a second agreement and giving Griffin Steel, there were people within the government party who said that what the government did with Griffin Steel was a terrible thing. Issues of the New Democrats were devoted to denouncing the government on Griffin Steel. They didn't pass any law undoing what was done. They said that they would pass a law making a 40-hour week compulsory and that you cannot ask people to work more than 40 hours, that it would be a violation of the law.

There are Cabinet Ministers in this government that walked up and down the streets with signs saying "1, 2, 3 - I, 2, 3 - We've been screwed by the NDP" on that issue. They didn't pass the bill on it; they've been screwed. Now, I suppose they're doing the screwing. They didn't pass the law on it; that's on Griffin Steel. That's one of the things on which the previous government was condemned by the party, not by people in the party. So if you think that you passed a law on the moment of hysteria, that's usually a bad law and this law is being passed on the moment of hysteria.

MR. CHAIRMAN: If there are no further questions, on behalf of the committee I'd like to thank you, Mr. Green.

MR. S. GREEN: Gentlemen, I have a copy of a pamphlet I did on this subject which I think is perhaps more relevant with age, so I will leave it with you.

MR. CHAIRMAN: Thank you, Mr. Green.

Continuing with presentation of Bill No. 40 - Mr. Dyck.

MR. H. DYCK: Mr. Chairman, members of the committee, I wish to address myself to Bill No. 40 and Bill No. 41 in my presentation.

I would like to point out, first of all, I'm here as a representative of the Communist Party of Manitoba, an organization with many members in Manitoba's work force and most of them actively involved in trade unions.

I'm also here as an employee of Boeing of Canada Limited, now on layoff for seven months, and one who played a prominent role in organizing this company's Winnipeg facility, conducting a strike held there last fall and in negotiating a first contract. The experiences of the members of my party on the job in direct day-to-day contact with working people and my own experiences has made us painfully aware of the shortcomings in Manitoba's labour legislation. It is our hope that in addressing this committee, our criticisms and suggestions will assist in strengthening these laws in the interests of Manitoba's working people.

At the start, we would like to point out that it is our belief that our legal system is based on property rights and the rights of corporate power to determine the fate of our economy with little responsibility to anyone but themselves. Existent legislation proceeds from this basis and the tendency of labour legislation has been little more than to ease the consequences of this premise for working people.

We proceed from the premise that the rights of working people to employment, better living standards and social conditions in a full democratic control over all aspects of their lives must serve as the basis of our legal system.

Now, as limited as they are, we welcome in the main the changes to labour legislation introduced by the New Democratic Party Government so far in this Session as positive initial steps in the right direction. However, we would like to draw your attention to shortcomings in some of the amendments already introduced. If there is no objection, I would like to start by drawing your attention to Bill 41 first instead of Bill 40 and specifically to Section 7. This section refers to Section 35.1 of The Employment Standards Act which deals with notice for group termination of employment.

We are basically opposed to this amendment because we feel all it accomplishes is to strengthen a potential escape clause whereby an employer is not required to meet his or her obligations under this section. What we feel is required instead in this section is a whole series of other changes that protect the rights of employees. We must proceed from the fact that in these times of deepening economic crisis, group terminations of employment are becoming an increasingly common occurrence. Ways must be established to protect working people from this.

The first sub-four lines of Section 35.1, Subsection (1), require employers to give advance notice to the Provincial Government when 50 or more employees are to be laid off within a four-week period. The problem here is that employers can evade this provision and terminate the large number of people by spacing the terminations four weeks apart at 49 a shot.

The Boeing Corporation, for example, has over the past few months been laying off people in groups of 24 spaced two weeks apart. Since last November, this corporation has put well over 200 people on layoff and has done so without having to refer to this section.

We propose that this period be expanded to six months from the present four weeks and that the number be reduced to 25. This kind of provision would compel a greater degree of corporate responsibility in planning workloads, production schedules and short and long-term manpower requirements. This is much more in line with practices common in European countries. It would also help to undermine the attitude that working people are commodities that can be taken in and discarded at will without regard to the consequences.

The section goes on to provide periods of notice that employers are required to give the government and employees during group terminations. We propose extending these periods of notice or the appropriate pay in lieu of notice when the terminations are immediate, as is also provided for in Section 35.1 of The Employment Standards Act, to a period of 8 weeks where 25 to 50 employees are involved; 12 weeks for 50 to 100 employees; 12 to 16 weeks for 100 to 200 employees and a notice of 20 weeks where there are 200 or more employees laid off. As well, there should be provisions for additional pay for employees with five years or more seniority at a rate of one week for each additional year of service. Lesser amounts of severance pay should be permitted only when there is a guaranteed recall date that would shorten a layoff period to less than the notice period. We feel it's important to have these kind of provisions because with the increasing number of layoffs, there is also an increase, a sharp increase in the length of many of these layoffs.

As well, means should be established to obtain corporate financing of retraining programs for terminated employees when the layoff is long term or permanent. Again, such measures would help ensure greater corporate responsibility in employment practices.

We further propose a special provincial government administered fund that would guarantee fulfillment of these provisions in cases where business is not financially able to meet these obligations or where the group termination is the result of bankruptcy. Such a fund could be financed either through the government's proposed payroll tax or through a new assessment on businesses employing 25 or more people and amounts determined appropriate by provincial economists. We feel this is a far preferable alternative than the amendment that is currently being proposed in that section. Once notice of a group termination is given, there should be also a monitoring of working hours within the particular workplace and the prohibition on excessive overtime during the notice period and for one year after the layoff takes place. It is preferable to have more people working regular hours than a few working long hours while many are attempting to survive on Unemployment Insurance. Again, I speak on this from direct experiences of what is happening at the Boeing Corporation in Winnipeg.

It is also important to further establish corporate responsibility and accountability to the public in conducting group terminations through the establishment of layoff review boards. Under such a provision, it should be the right of the union, the workers, or the affected community to call for the convening of such a review board. Where such a board is established, there should be the authority to examine corporate documents, question officials and receive public submissions in order to determine the reasons for a necessity of a large layoff. Quite simply, business should justify its actions to employees and the community within which it functions. Remedial measures should be provided for where such an action is found to be unjustified.

We next draw your attention to Section 35(1) of The Employment Standards Act, subsection (2) which provides exceptions for the first part of Section 35(1), in particular, to Item (h). It here, in effect, states that, "an employer does not need to provide notice or severance pay on a group termination when the employees are on strike or locked out." This provision serves a potential tool for intimidation of striking employees by an employer. The Boeing Corporation, as an example, last November used this section to terminate 99 striking employees, one of whom was myself, under the guise that it was a good business decision. That decision just happened to have the side effect of breaking the strike and nearly breaking our union. We see no useful purpose in retaining this provision and call for its elimination. All labour legislation be clear in agreement that an employer cannot terminate striking employees.

We would like now to turn your attention to Bill 40, An Act to amend The Labour Relations Act. I would refer first to Section 1, calling for the addition of a new section preventing employers from altering wages and working conditions for six months after a collective agreement expires. We are supportive of this section except for the time provision. We must place the question, why the time limitation? Frequently, negotiations, second, third, no matter how many contracts, do take longer than six months. If negotiations continue for a longer period and none of the exceptions otherwise provided for in this section intervene, why should the employer have the authority at any time to alter wages and conditions? This often takes place in order to undermine the union and the collective bargaining process. This kind of loophole should be completely eliminated through the removal of any time provision.

Beyond this, we would also like to draw your attention to one additional weakness in Section 10 generally where this amendment is proposed to be added. This section prevents any alteration of wages during application for certification, after certification, and now with the new amendment, after a contract expires. It seems this also applies to wage increases that an employee would normally have been entitled to. Again, I refer to the Boeing example, after we had achieved certification where the corporation denied, froze promotional and merit pay increases that the employees would have normally been entitled to and which should have been considered a condition of employment. They continue to do so even when the union indicated that they had no objection to those increases being placed through.

This was a clear attempt to create hostility towards the union as being responsible for lost wages of certain employees. The freeze on wages, as provided, should not include we propose a freeze on increases that would have otherwise normally been paid and the wording of the Act should reflect this in that it is in fact a condition of employment.

We now draw your attention to Section 9 of Bill 40, the long-awaited first contract legislation. I must say, I was not on strike in the 1940s or the 1950s. I can't speak of that kind of experience, but as I have already pointed out, I had been on strike in the 1980s. It's my experience and I'm sure it is shared by my fellow union members at Boeing with the kind of experience, a two-year long struggle that we have been through, that there is a crying need for this kind of legislation to guarantee the bargaining rights of workers. The emphasis is on protecting the right to organize, the right to strike and the emphasis has to be that this kind of legislation is only a last resort, but a resort that is made available to workers in order to protect those other rights.

Our sole concern here, however, is the question of the ministerial discretion where it's stated in the first section of this proposed amendment, the Minister may on the written request of either party, etc., refer to the first contract process. We stress the problem of the word "may," which in effect leaves the whole question of proceeding with the legislation to the discretion of the Minister. The Minister of Labour has elaborated this in his remarks in introducing this bill in the House. Unfortunately, we would like to point out that what may be discreet for an NDP Labour Minister may not be discreet for a Conservative Labour Minister.

MR. H. ENNS: Or for a Communist.

MR. H. DYCK: Very true. We suggest changing this word to "will" and that in the process leaving it to the board to decide if bargaining has been conducted in good faith or bad faith. In other words, leave it to the board in terms of making a decision whether or not unfair labour practices have been committed and whether the first contract process should continue to be proceeded with beyond that first step.

Further, we suggest that if the board determines that there has not been good faith bargaining and no good prospect of settlement through negotiations, the board shall direct the setting up of a special first contract board with an employer appointed and a union appointed rep to be chaired by a board appointed representative. We consider this preferable to a further workload imposed on an already overburdened Labour Board. The Labour Board should confine itself to determining and resolving the questions of unfair labour practices. These alterations, we feel, would ensure greater consistency in the application of this legislation although I stress again we share the view that this should be seen only as a last resort measure. Beyond this, we agree with the legislation in general pending, and how it works in practice is something that will have to be monitored and in the course of its practice the need for any additional changes will become evident.

It is our observation that this legislation was made necessary in order to prevent some employers from obstructing the legitimate rights of workers to obtain union representation and a first contract. But what happens after the first year? Far too often these kinds of attitudes by employers continue. Union busting is a well-known phenomenon reaching a very high professional level these days that is certainly not devised by the union movement.

In the final analysis what is necessary is the anti-scab legislation, a measure endorsed by the Manitoba Federation of Labour and the New Democratic Party at conventions. Such legislation would establish clearly that a labour dispute is a matter to be settled by a particular employer and a group of employees without outside interference. It prohibits the hire of new employees or the use of outside parties to break a strike, the use of intimidation and coercion by employers to encourage scabbing and reduces the requirements for police to control picket lines or escort strikebreakers into a workplace and so on. The simple fact is that generally bad faith bargaining that result in strikes and strikebreaking tactics are an employer practice to weaken or break the union.

Indeed, most of the uglier sides of labour disputes could be eliminated with such legislation and the possibility of strikes themselves reduced and their length shortened. Governments tend to be elected on the promise of what they will do and rarely deliver. This government on this issue has placed an unusual emphasis on the fact that it promised not to do something without ever seriously clarifying what it is it would not do; that is, explaining exactly what anti-scab legislation is and why it cannot be brought in. We suggest a properly prepared and presented piece of anti-strike breaking or anti-union busting legislation, which is simply a less objectionable term for the same thing, would receive widespread support. So we join the NDP and the MFL in urging the government to reconsider its position on this piece of legislation.

We've presented here our positions concerning only the currently proposed amendments before the House. There is a significant number of other major problems in this province's labour legislation that we hope to address you on at some future point. I apologize that I was not able to get copies of my presentation run off in time to give to the members today. I will have it ready this afternoon and can ensure that members receive it in the course of the next day or two. Respectfully submitted.

MR. CHAIRMAN: Thank you very much, Mr. Dyck. Are there any questions?

Mr. Enns.

MR. H. ENNS: Mr. Dyck, you've indicated a number of amendments, changes to the bills before us, but is it your position that by and large you support the labour legislation currently before this Committee, hopefully of course, with some of the amendments that you alluded to as being considered by the Committee?

MR. H. DYCK: Yes, as I said, we don't think it's complete. We don't think it covers all the angles and we don't think it solves all the problems that are faced in The Labour Relations Acts, the various legislation that workers must deal with in the province, but there are positive improvements.

MR. H. ENNS: So it would not be out of context to say that the Communist Party of Manitoba supports the NDP labour legislation.

MR. H. DYCK: You can give it whatever context you wish.

MR. H. ENNS: Thank you.

MR. CHAIRMAN: If there are no further questions, on behalf of the Committee I'd like to thank you, Mr. Dyck, for your presentation on behalf of the Communist Party of Canada.

MR. H. DYCK: Thank you.

MR. CHAIRMAN: Is Mr. Lemke here to make his presentation at this time? Are there any other presentations to the Committee?

The Honourable Minister.

HON. V. SCHROEDER: Mr. Chairman, I would presume that would complete the public hearings other than that I just received a message which was phoned into my office at 11:42 this morning from the Chamber of Commerce. I don't know whether they wish to present a brief or not, but if the members are agreeable, I would ask that public hearings be terminated at this point, other than for the Chamber which could come back at, say, 8 o'clock this evening. It might be the most convenient way of handling it, depending on what others wish.

MR. CHAIRMAN: What is the wish of the Committee?

Mr. Enns.

MR. H. ENNS: Mr. Chairman, I assume that appropriate notices have been sent to those interested. We're dealing with the bills now and I would suggest that we carry on dealing with the bills.

MR. CHAIRMAN: Is there any further comment?

HON. V. SCHROEDER: I have no difficulty with that. My assumption, quite frankly, is that the Chamber would be here on Bill No. 40, so we might be able to get through some of the other bills before them.

MR. CHAIRMAN: Shall we proceed bill by bill?

BILL NO. 29 - THE CIVIL SERVICE SUPERANNUATION ACT (Cont'd)

MR. CHAIRMAN: Bill 29. Shall we proceed clause by clause? Page by page? Page 1, there are no comments. There is an amendment to be introduced. Is there an amendment to be read at this time?

MS M. PHILLIPS: Mr. Chairperson, I'd like to move an amendment that Bill 29 be amended by renumbering Sections 2, 3 and 4, thereof as Sections 3, 4 and 5 respectively and by adding thereto, immediately after Section 1 thereof the following section, Subsection 22(6) added, Section 22 of the Act, as amended, by adding thereto at the end thereof the following subsections: Arrangements in Respect of Double Benefits, 22(6), "Where an employee or retired employee is or will become entitled to be granted an annual superannuation allowance or annuity under this Act in respect of a period of recognized service and the board becomes aware that the employee or retired employee is or will become entitled to receive a pension benefit in respect of the same period of service under a plan or a scheme established by a reciprocating Manitoba employer. As that expression is defined in Section 49(1), the board shall (a) in a manner approved by the member of the Executive Council charged with the administration of this Act reduce the amount of the annual superannuation allowance or annuity which the employee or retired employee is or will become entitled to receive under this Act to an amount based on his service, but not including that period of service in respect of which he is or will become entitled to receive a pension benefit under the plan or scheme established by the reciprocating Manitoba employer, or make adjustments in its records of service of the employee or retired employee to exclude that period of service and to be refunded to the employee or retired employee, or transfer on his written instructions to another payee any contribution he has made to the fund for that period of service in respect of which he is or will become entitled to receive a pension benefit from the plan or scheme established by the reciprocating Manitoba employer, together with interest thereon calculated at the rate and in the manner provided under Subsection 41.

MR. CHAIRMAN: Thank you. Mr. Minister.

HON. V. SCHROEDER: Yes, Mr. Chairman, this amendment is with respect to a situation to provide for a refund to a pensioner contributions in respect of a period for which he is receiving a pension under The Teachers Pension Act.

There's a specific case that had been drawn to our attention. There was an employee who was a teacher both before and after some two years of war service. As a result, The Teachers Pension Act provides he is entitled to his war service as though it was teaching service without any additional contributions to be made by him. The employee made contributions to The Civil Service Superannuation Fund in respect of the same period of war service for which he is credited under The Teachers Pension Act. Under both Acts, the government is required to pay half the total pension. If this employee's war service were used in the calculation of his pension under both The Teachers Pension Act and The Civil Service Superannuation Act, the government would be paying half a pension with respect to the same period of service under both Acts or a double period of service for the employee's time in the armed services.

The intent of the amendment is to provide that the Civil Service Superannuation Board would deduct the war service period in respect of which he is entitled to receive a pension under The Teachers Pension Act and to refund to him or to transfer to some other pension fund, which can accept monies for retirement pension benefits, so that the employee would not incur additional expense in the particular instance that has arisen. The amount can be paid to the Teachers' Pension Fund because they have a system of voluntary additional contributions which persons covered under their fund

can make to enhance their pension under the other Act.

MR. CHAIRMAN: Any questions, Mr. Mercier?

MR. G. MERCIER: Mr. Chairman, I want to say firstly that I object to this kind of amendment being brought in at this stage. This would appear to be a very significant amendment of which no notice has been given and before speaking further on it, I would ask the Minister if he would consider withdrawing this proposed amendment because of the lack of notice to any member of the public who hasn't had an opportunity to be aware that this amendment was coming forward.

HON. V. SCHROEDER: Well, Mr. Chairman, could I suggest that we possibly hold this one over until 8:00 o'clock. I sympathize with the concerns raised by the member. I do understand and I recognize as well that it's difficult to legislate with respect to a specific employee, which is practically what we're doing. I don't know whether we have any other employees who fit within that particular guide line.

This particular individual, as I understand it, is retiring this coming August. Certainly, we weren't aware of the problem until several days ago and I, quite frankly, really wasn't specifically aware of it until this morning, other than that I had agreed that if there was some minor amendment which could be made to accommodate the situation, that I would be prepared to recommend it. Could we pull it till 8:00 o'clock and see whether there's. . .

MR. G. MERCIER: Mr. Chairman, I wonder if the Minister could indicate whether the MGEA are aware of this amendment or if the specific employee is aware of this amendment?

HON. V. SCHROEDER: That's an excellent point. I will ask that the motion be withdrawn and we will proceed with the bill as it stands.

MR. CHAIRMAN: With the understanding that the proposed amendment has been withdrawn, we will proceed with Page 1—pass; Page 2—pass; Preamble—pass; Title—pass. Bill be reported.

Bill No. 38. Clause by clause or page by page? Page by page. Page 1—pass; Preamble—pass; Title—pass. Bill be Reported.

Bill No. 39. Page 1—pass; Page 2—pass; Preamble—pass; Title—pass. Bill be Reported.

Bill No. 40. Page 1. There are some amendments to Bill 40 that have been outlined by the Minister in his previous statement. Three amendments, I believe. There are no amendments on Page 1. Page 1—pass. There are no amendments on Page 2.

Mr. Mercier.

MR. G. MERCIER: Just if I may say, Mr. Chairman; it probably doesn't need to be said. I think our party is on record on second reading of the bill as opposing it in principle and I don't want to take up the time of the committee in repeating the arguments that were made on second reading.

On Page 2, this is a rewriting of Section 22(6) in which there are added to the bills some new sections and there are some changes. I wonder if the Minister could just briefly explain the rationale for adding Section (b) I believe, which is new; for making some changes in Section (d); for the amount of the increase in fines in (e); and I believe (f), (g) and (h) are new.

HON. V. SCHROEDER: Yes, Mr. Chairman, the amendments are intended primarily to update and enhance the remedial powers of the Labour Board in adjudicating unfair labour practice complaints. Clause (a) represents no change and as indicated by the member, Clause (b) is new. It empowers the board to order an employer to hire a person who had been refused employment contrary to the Act; that is, for example, refusal to employ a person because the person was a union member and if you refer to Section 7 of the Act that is covered there. That's the reason for clause (b). Clause (c) represents no change.

Clause (d) is partly new. It empowers the board to order the payment of compensation to a person not only for loss of income, but also for a loss in employment benefits or any other loss, for example, loss of opportunity.

Clause (e) has been updated. It empowers the board to order the payment of a person of up to $2,000 rather than the present $500 where an unfair practice constitutes an interference with the person's rights but no loss of income is involved. That basically is on the basis - I don't have the exact date of the $500 figure, but it's a long time ago and to put it into context with the inflation that we have experienced over the years.

Clause (f) is new. It empowers the board to order a party to pay a union up to $2,000 where the unfair practice constitutes an interference with the union's rights. The intent is to reimburse a union for some of the costs it has had to incur because of the unfair practice; also, it was added so as to be consistent with clause (e) under which an employee or an employer may be paid up to that same $2,000 figure. Clause (g) represents no change.

Clause (h) is new. At present, the board may order what a party shall not do, but it may not order what a party shall do to correct a situation. This new provision will enable the board to make a positive order directing what a party must do to rectify a situation. I should add that the clause is similar to the Ontario legislation with respect to rectification. Clause (i) does not represent any change.

MR. CHAIRMAN: No further comments? Page 2—pass; Page 3, there are no amendments to Page 3? Page 3—pass.

Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, could the Minister explain the rationale behind the change in Section 5 to 44(3)?

Mr. Minister.

HON. V. SCHROEDER: Yes, this is a new provision. Its intent is to establish a period of relative stability during the term of a first collective agreement which had been settled by the Labour Board, not for any other purpose. The amendment prohibits applications for decertification from being made during the term of a first agreement imposed by the board. In the absence of such a provision a decertification application could be made

during the 7th, 8th or 9th month of the term of the agreement. Basically, the assumption on which we are operating here is that if we are going to have a one-year contract, then during that period of time there should be a period of, as I indicated above, stability. Such an application could, after that contract is over, proceed as any other decertification application could proceed at that time.

MR. G. MERCIER: Mr. Chairman, the Minister has indicated that where a collective agreement is entered into as a result of the normal bargaining process an application could be made during that contract for decertificaton. Is that not correct?

HON. V. SCHROEDER: There is no change being made in that, that's correct.

MR. G. MERCIER: Mr. Chairman, if there are grounds to make an application to cancel the certification, I don't understand why there should be any difference between the one where there has been a collective bargaining agreement and the situation where one is being imposed.

HON. V. SCHROEDER: Mr. Chairman, where an agreement has been imposed, let us remember that before that agreement is imposed you go through all of the steps of certification in the same fashion as any other bargaining group. They then get into negotiations which stall either on the basis of the union's lack of good faith, the employers' lack of good faith or their inability to get along together or their inability to agree. It is only after one of those items has occurred that a contract could be settled and even then the contract can't be settled by the board until, first of all, the Minister has taken a look at an application to settle and agreed that this is a case for it; and secondly, the board has also come into play and there would be again the conciliation services, etc. If none of that works, we then come into a period of one year during which we say there are not going to be any changes to the rules during that one year. We are going to try to get the parties to live together during that period; we don't want during that term to see a number of other issues coming forward.

If there is a problem with the membership desiring to continue with a union that can be resolved after that one year of, what one might call an incubation period.

MR. G. MERCIER: Mr. Chairman, the Minister proposes to make this legislation retroactive. Would he care to indicate which labour situations he intends to encompass within the effects of this legislation?

HON. V. SCHROEDER: Mr. Chairman, we first announced our intention to pass this legislation on February 25, 1982. There are two provisions in this Act dealing with dates; one is a date on which a union not became certified, but applied for a collective bargaining —(Interjection)— served notice. That date is the date after which a union must have performed that particular procedure in order to qualify at all for the Act; that is, if there are unions out there who did so before that date, I believe it's March of 1981, they will not come within the protection of the Act at all. I don't know whether there are any such unions in being or not. Those which applied afterwards or gave notice afterwards would be eligible and what we're doing is somewhat similar to, for instance, the marital law changes that were made. There was a date set and once you said we're going to proceed, we feel that it would be improper to allow either party to any disputes that were on or in effect on February 25, 1982, to somehow change positions, just as we didn't allow people to change their positions with respect to property rights after that matter was announced at first. I don't know how many employers and employees might be in a situation where they would be affected by that particular date and it's pretty hard to know who is out there, who has been or who was bargaining at that time, who is still bargaining and who will apply for protection under the Act.

MR. G. MERCIER: Mr. Chairman, is the Minister aware of any applications for decertification in any of these instances which this Act will be made applicable to - applications for decertification that have already been started?

HON. V. SCHROEDER: Yes, I believe there is one application for decertification of which I am aware that has been filed within the last several weeks. It hasn't been heard. I understand there's also an unfair labour practice charge against the company and I would presume that being the case, that could take some time before those two issues are resolved because surely they are interconnected.

MR. G. MERCIER: But, Mr. Chairman, the Minister by this legislation is saying that those matters could be referred to the Labour Board for first contract consideration and if a first contract is imposed, then the application that has already been made for decertification would have been outlawed by this legislation for a period of one year.

HON. V. SCHROEDER: In such a case, there would be a direction to the board to look first at - because the Board would ordinarily consider applications based on the date of receipt and because I've indicated previously that we intend to present an amendment which would indicate that date of receipt will be deemed to have been February 26, 1982, of any application for protection under the Act up to August of 1982 - the application relating to first contract legislation would be the one that would be first heard by the board, yes.

MR. CHAIRMAN: If there are no further questions, Page 3—pass; Page 4—there are no amendments to page 4. Are there any questions?

Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, the Minister has made a couple of comments about Section 9, 75.1(1)(a) - "Where an employer or a bargaining agent for a unit is required, by notice given under section 51 after March 31," - so it is retroactive to that point. Wherever a notice has been given to enter or to commence collective bargaining since March 31, 1981, and there's been no collective agreement concluded, the Minister may on the request of either party refer this to the board. It's

retroactive to where a notice has been given since March 31, 1981. The Minister explained the reason for using that date.

HON. V. SCHROEDER: Mr. Chairman, if there was no date, then presumably one could use any union which, no matter when the notice was given, would be entitled to the protection of the Act. With this particular date, we just go back to March of 1981 and any union, which was required to give notice prior to that date, is not entitled to the protection of the Act. I don't see that as being retroactive legislation at all. It just gives a cutoff date for a period of which people are entitled to apply. I don't know. I haven't thought it through. There may well be some unions from five years ago or ten years ago who went through the procedures, have long since disbanded without any formal notification, etc., and would now be in a position without something like this possibly to come forward and say they want an arbitrated first contract; so it's not retroactive legislation at all with respect to that section.

MR. G. MERCIER: Mr. Chairman, why wouldn't the Minister, on the assumption there's some justification in this February 25, 1982, date in Section 10, use that date in this Section?

HON. V. SCHROEDER: Because there may well be unions in existence and bargaining with their employers who have given notice after March of 1981 and they still haven't arrived at an agreement. I don't know whether there are any, other than the one that we've talked about where there's been an unfair labour practice allegation filed and an application for decertification by employees who weren't there, as I understand it, when the strike began. I really don't know why we wouldn't have the Act extended to those people who are in existence and were in existence when we said that we were going to proceed and who were still legitimately in the course of bargaining a collective agreement.

MR. G. MERCIER: Mr. Chairman, I move that the words, "March 31, 1981," be substituted with the words, "February 25, 1982."

MR. CHAIRMAN: Mr. Minister.

HON. V. SCHROEDER: Well, I would oppose that amendment because what it would do is put, say, a union outside of the protection of the Act if it was required to give notice, say, in January of 1982, and there may be all kinds of them out there who have been bargaining for the last number of months, may very well not have been off the job at all and by next November might well be on strike or locked out or whatever and would not be entitled to the protection of the Act. Why would the members want to eliminate those people, who are in the course of bargaining, from the protection of the Act after the Act is passed?

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Chairman, I think what my colleague, the Honourable Member for St. Norbert, has been trying to attempt is some explanation, some rationalization for that particular date. March was a date when this Minister, this present government, was not charged with the responsibility of carrying out the responsibilities of The Labour Relations Act. If for sake of a date, then perhaps November 17th might be a more appropriate one as a date that I will long remember. I agree with the statement by the Minister that there ought to be a date. As he said just a little while ago, if there isn't a date, then it's conceivable that a union that has been in dispute five, four, six, seven years ago could avail itself to the new Act, so we're not in dispute about the necessity or the need for a particular date; but unless the Minister is prepared to tell us that there is a particular situation that he's trying to cover by the selection of that date, a particular dispute that he is aware of or his department is aware of that he wants to cover by that date, it's a little difficult for the Opposition to accept that date. What is sacrosanct about March as compared to April, as compared to November and if we are already going to a retroactive feature in the bill which to many of us presents some problems with the February 25th date, which I will acknowledge was the time that the now Minister, the now government, publicly declared their intentions of introducing this kind of legislation and it's acceptable to me, even if I don't like retroactive legislation, that date be adhered to. But the Minister has so far failed to give us any reasonable answer as to what is important about March, 1981. When Mr. MacMaster was Minister of Labour and we had a Conservative administration in the province, it leads me to ask that question once again, is there a specific labour dispute that the Minister is attempting to retroactively reach back into March, into '81, to cover by the choice of that date?

HON. V. SCHROEDER: Mr. Chairman, the presumption is that where a bargaining agent is certified and where they give notice under provisions of the Act that they wish to begin bargaining for an agreement, that after that notice is given, there is a reasonable period of time during which the parties talk. We've decided that a period of a little better than one year going back is long enough. I'd be prepared to change it in some way so that there's no date at all, so that any union that was certified is entitled to apply, any employer is entitled to apply, but I wouldn't be prepared to agree to a situation where you have disputes currently simmering. We're not going to have this legislation cover those disputes. I think that would be the height of folly. We would pass an Act that wouldn't be applicable to people who require the protection of the very Act that we're passing, so I think that the time period is a reasonable one. More than a year has now elapsed since any unit, which would be entitled to this protection, had given notice. So, on the one hand, I think it's reasonable for the employee groups; I think it's reasonable for the employer groups, because it gives the employer groups protection against anything that could come along from a long time ago.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, the Minister would acknowledge that this is a fundamental change in labour relations and whenever any fundamental change is made in laws, not only regarding labour relations but

any other aspect of the rules under which our society has governed the Legislature, members of the Legislature and members of the Opposition during the past four years were quite adamant about bringing into the Legislature any retroactive legislation.

I'm not in fact that supportive of the February 25, 1982 date that the Minister uses in Section 10, but it is the one he uses and I don't think I will be able to change his mind or that of the government. Unless the Minister can offer any specific reason for the setting of the March 31st, 1981 date, I would contend that February 26, 1982, is the maximum amount of retroactivity that should be allowed in this bill, a bill that we do not support.

HON. V. SCHROEDER: That argument would be similar to saying that if we change any law, any person that wasn't born at the time or who had been born beforehand isn't entitled to the provisions of the change. What we're talking about here is unions that were born before a certain period of time not being entitled to the benefits of this new Act and we're saying that any union that was born somewhere before March 31, 1981, isn't entitled to the benefits of the changes. You're saying that you don't want that protection for those who are already in existence, other than those who were in existence on February 25, 1982, and I think that's a very strange argument for the Opposition to be making. This is not a retroactive provision. You can argue that the February 25, 1982 provision is retroactive; in fact it is retroactive to the date when we announced what we were going to do. This date is not a retroactive date. This is a date which says that if something happened before that date, then you're not entitled to the provisions of this Act.

MR. G. MERCIER: Mr. Chairman, I think the Minister made a Freudian slip. He only referred to the benefits of this legislation for unions. Supposedly, he's bringing it forward on the basis that it has benefits for both management and labour.

The fact of the matter is that he's changing the rules for collective bargaining. Those should only be made with respect to any future wage negotiations. They should really only be applicable to anything that occurs after this bill is passed. I say to the Minister that those were the rules. Management and labour conducted collective bargaining under the rules in March or up until this date without this legislation and I submit to him that any changes should only be made effective from the date the legislation is passed.

HON. V. SCHROEDER: Mr. Chairman, we don't make those changes. We don't say in our other legislation and we haven't heard the Opposition argue it that we're supposed to name a date after which a union came into being for them to take the protection of the other provisions. I don't know why we would have that with respect to this provision, and in terms of assistance to employers and employees, I believe that the Act is of benefit to both employers and employees. However, where you have long-time outstanding, possibly, certificates of which I don't know of any, but if you have those then clearly the advantage would be for the union, because the employer is obviously not going to dig one of them up and say, I want a contract imposed. It would be a union. So that date is for the benefit of the employer and not for the union, so again I just don't understand the logic of arguing that is a retroactive piece of legislation. The February 25, 1982, piece is certainly one that is retroactive, but we feel that we don't want relationships changed from the time on which we announced that we were going to move on this. In fact we would have preferred to have moved much sooner. It's certainly not the fault of the Opposition that we didn't. We didn't get our act together as quickly as we could have and we would have preferred to have done that.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Chairman, the question here is still before us, the specific reason for that particular date. In general, Mr. Chairman, retroactive legislation is used very cautiously by legislators and it should. I'm sure, wearing his other hat as the Minister of Finance, he may well wish to have made his payroll tax retroactive to 1975 or '76 or all of the last four years or a decade ago to help out his financial situation somewhat. It is poor business and only under extenuating circumstances that we pass legislation with retroactive features to it. The accepted way, the normal way and the way which is fair to all citizens is that legislation is passed on the day of proclamation, on the day of Royal Assent when the bill is passed. That is the way 99.9 percent of the legislation ought to be passed and people aren't caught retroactively with the rules changing.

Now, in this particular instance, we view the February 25th or February 26th day with some reluctance as having some rationale in terms of at least the government publicly stating its intention to pass certain kind of legislation, namely, the legislation before us. I can't help but persist in asking the Minister which particular labour negotiations currently under way is he attempting to cover by the retroactive feature of March 31st? I think it's not unfair for us to ask which particular negotiations that either are in that category that he says there might be a number of that there are outstanding labour disputes going on in the province that he wishes to encompass with this legislation by this date?

HON. V. SCHROEDER: Well, Mr. Chairman, I've explained a number of times that there is no retroactivity in this date. We're ready for the vote if you wish to . . .

MR. CHAIRMAN: Committee rise.