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Third Session — Thirty-Second Legislature

of the

Legislative Assembly of Manitoba

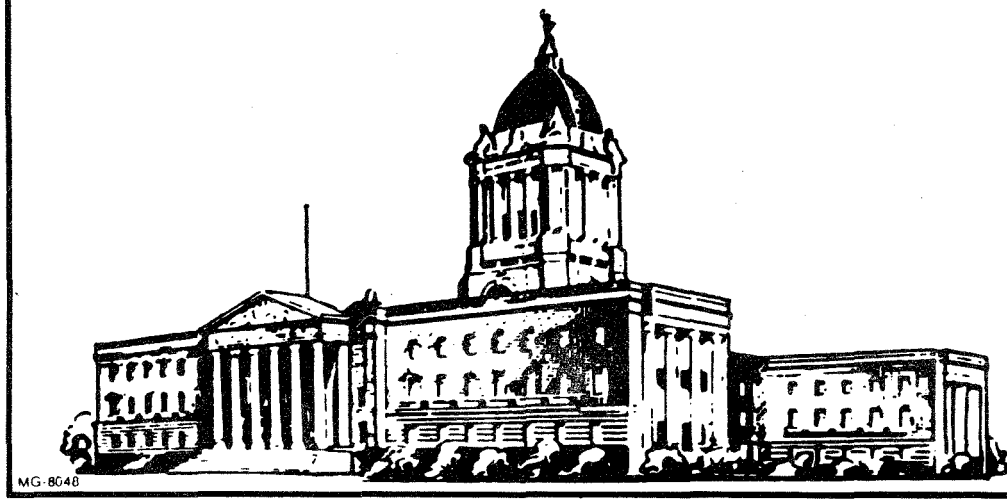
STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

33 Elizabeth II

Chairman
Ms. Myrna Phillips
Constituency of Wolseley



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Thursday, 28 June, 1984

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Ms. M. Phillips (Wolseley)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cowan and Kostyra, Hon. Ms. Dolin, Hon. Mrs. Hemphill

Messrs. Ashton, Banman, Enns, Johnston, Mercier, Harapiak and Ms. Phillips

APPEARING: Mr. Eugene Szach, Legislative Draftsman

WITNESSES: Representation was made with respect to Bill 22 as follows:

Mr. Dick Martin, Canadian Labour Congress.

MATTERS UNDER DISCUSSION:

Bill 22 - An Act to amend The Labour Relations Act and Various Other Acts of the Legislature, passed with certain amendments

Bill 35 - An Act to amend The Construction Industry Wages Act, passed without amendment

* * * *

BILL 22 - THE LABOUR RELATIONS ACT

MADAM CHAIRMAN: I call the meeting to order.

I presume the Minister is trying to get through the crowd outside. Do you want to wait until the Minister arrives? We have a quorum.

Allright, we'll continue with the delegations, Mr. Dick Martin, Canadian Labour Congress.

I should mention before you start, Mr. Martin, that we have a one-hour limit in terms of presentations and questions.

MR. D. MARTIN: Thank you.

Madam Chairperson, I'm here in the capacity of representing the Canadian Labour Congress. The Canadian Labour Congress, for those members of the committee who might wonder, is composed of approximately 2 million members, representing 2 million members across Canada. It's a central labour body for the Canadian labour movement.

Since the preamble to The Labour Relations Act encourages free collective bargaining, we are pleased to see that the majority of these amendments encourage free collective bargaining and submit disputes to the Labour Board, a tripartite body, which is composed of business representatives and labour representatives and a neutral person appointed by the government.

We think it's proper and fitting that labour and management disputes are as removed from the courts as possible and submitted to what, in fact, is a specialist body. It has worked relatively well in other quasi-judicial bodies, such as the Workers' Compensation Board, and we think that it will serve the Labour Board quite correctly.

It is also important to note that there has been a general agreement within the labour management community that the Labour Board, in fact, should be made more professional with better resources including a comprehensive library of arbitration awards and precedence-setting pieces established within the Labour Board.

We regret that the government has not seen fit to proceed with final offer selection, which in our view was a major innovative answer that would compliment the process of free collective bargaining and there was no doubt that labour had some concerns with the process. However, in the overall, it appeared to us that it would become a valuable tool to both management and labour by virtue of the fact that it was a tool of last resource in which either party would not want to use, except that they could use it as a last resort and obtain an agreement that would submit the outstanding problems to a solicitor or a selector.

We encourage the government to further explore this aspect of new labour tools that will, in our estimation, bring about more industrial peace.

I just want to zero in on that final offer selection by the very fact that we think, contrary to what ! heard in some of the presentations this morning on first contract legislation, that the beauty in pieces of legislation such as that, that it in fact does compel the parties to sit down and hammer out a collective agreement. It would be pleasing for labour to see, over a period of time, that first contract legislation is less and less used which means that the parties are coming to an agreement without third party intervention.

On the final offer selection, the way that we understood it in being proposed, was that in fact you were not having your issues submitted to arbitration, but you are submitting your issues to a selector that would choose one package or the other, which is not very much liked by either party, which once again compels them to come to terms with each other without that intervention.

We also regret that the government did not proceed with plant closure legislation. We clearly see about us large company after large company and small company after small company introducing technological change and rationalizing their operations, resulting in large massive layoffs that result in a terrible burden imposed upon the workers and their families and upon the state.

Surely, any responsible government cannot ignore the plight of those workers, their families and society. Surely, there is an obligation upon employers to justify their actions to the workers and to the people in the province and to society in general. People should not

and cannot be thrown out on the trash heap just to increase corporate profits and reverse the burden, placing it on the state and on the individual workers and their families. Plant closure legislation is an absolute must and we urge the government to proceed with all haste.

I have also observed that some business organizations continue to try to represent themselves as representing the rights of workers. I wish to make it patently clear that unions, after a majority vote - a majority of the workers voting for them - are the representatives of the workers and not business. Union officials and leaders are elected and chosen by the workers and I have not seen any employers' organizations receiving a mandate from any of the workers to represent them.

If employees are ever to have the true democratic right to organize freely into unions without interference of petitions and other countless court challenges, then we welcome the certification amendments that will, in fact, hopefully guarantee the true wishes of the employees.

We have heard repeated many times, "Why is there a need for changes for labour legislation when the labour management community is so harmonious in Manitoba?" I wish to point out that the amount of strikes and lockouts in a given period of time is not the only guideline to judge an atmosphere.

How many court challenges have taken place in a given period of time? How many unfair labour practice charges have been laid in a given period of time? How many organizing attempts have been thwarted? How long are arbitration awards awaiting decisions or, in fact, are waiting to just get set up?

We repeat that justice delayed is justice denied. How expensive are all those proceedings to the union, to the workers and, in fact, to the employers? There was a lot of concern I heard echoed about small employers, and I would think that they would welcome the expedited arbitration proceedings that have been proposed in the amendments to The Labour Relations Act. Our general view is that not all is well, and considerable changes were needed to modernize The Labour Relations Act.

Also, it is interesting to note in a memo put out by the Winnipeg Chamber of Commerce on May 17th, that they stated, "If enacted, the amendments to The Labour Relations Act would substantially change the existing balance of power away from employers in favour of unions." Rather interesting I find, this internal document of the Chamber; rather interesting that they admit that the existing Labour Relations Act is substantially in favour of employers. That in itself should demonstrate why changes are needed.

While we don't agree that this legislation is in favour of unions, it will at least, and it appears to, create a more balanced climate. — (Interjection) — Madam Chairperson, the document is right here and I would be pleased to show it to Mr. Enns later. It's by the Chamber of Commerce's omission, not mine.

In a letter sent to me in my past position as president of the Federation of Labour where the Manitoba Chamber of Commerce asked the federation to join them, they said, "The proposed legislation will dramatically interfere with the collective bargaining process." I haven't seen any evidence of this at all in the proposed legislation, and I might add, I am not joining the Chamber of Commerce either. They also said that the level of productivity and reduced competitiveness, once again where is the proof of that? Productivity competitiveness will only come about through free, fair and equally balanced collective bargaining and not through employers smashing unions and bargaining rights.

I have heard this morning about a number of policy papers issued about co-operation, about signed letters. Let me say that in my past position there was much effort by the Federation of Labour to co-operate with employers' groups to solve disputes and in fact in some issues, and it was stated this morning, there was some resolve through the Labour Management Review Committee. We found that we were generally frustrated, though, to have employers convince their fellow employers to come to terms with the respective unions. We found that yes, indeed, the present Labour Relations Act favoured employers and frustrated collective bargaining.

We as a labour movement have encouraged, supported and urged the government to streamline the Labour Management Review Committee and we applaud the government efforts to streamline this committee. It has in fact proved fruitful and I think it will be more fruitful in the future, considering the amount of sub-committees that are discussing various things like technological change, disclosure, arbitration training and the committee has been charged with coming to agreement over arbitrators.

I also might mention that organized labour are also employers and I submit that we have no fear of the proposed amendments. We, in fact, deal with unions with our own organizations and collectively bargain, and we welcome most of these amendments.

Now we have heard repeatedly that labour leaders don't really represent the membership wishes. I have heard it through my whole career. We have never seen any evidence of that, but we have said, yes, indeed, that the leadership in a union should have to represent the workers and now we hear that we should not have to represent the membership wishes.

I am surprised that the Fashion Institute joined in the howling about union bosses and big unions. Now it says that a union official must do his or her job and process grievances. Well, we totally agree that the union leader should represent the wishes of the workers and give representation, but the Fashion Institute, they want a union boss to act in the same way as corporate bosses, I guess; so we reject that and believe that the proposed legislation will serve the membership well and give some membership rights, and that the membership should be entitled to fair representation with the right of appeal to their peers.

Contrary to the employers' submissions, I have heard we believe that the membership has a right to democratic unions, democratic elections and support any strengthening of such institutions. In general, we support these positive amendments. For example, a small employer should welcome the expedited arbitration process. It will save them time, money and expertise. We certainly welcome speeding up a process that has in some cases become cumbersome, expensive and very lengthy.

There was continuous talk about big unions. Well, a few years ago an assessment was made as to the size

of labour organizations compared to corporations. It was found, I recall, that a multinational corporation that operates here in the Province of Manitoba - Inco - had more combined assets than all combined assets of all unions in North America with the exception - and I'm not going to throw in the Teamsters - but all other unions. Now you tell me who is the big multinational tough guy and who is not? It is a joke and it is absurd that there are big unions as compared to big corporations and to the corporate side. I haven't heard any of the business organizations complain about big business as to how it affects small business; how, in fact, they can literally hold a province to ransom, never mind the power they have over workers. Unions are small compared to the corporate sector.

In summation, I would hope that all members of the House support the general thrust of the bill while pursuing some justice in the workplace on plant closure legislation.

You should also pursue the whole concept of FOS and other very important matters that affect working men and women in this province such as improving the minimum wage formula, introducing equal pay for work of equal value that will bring economic and social justice to thousands of women, in particular, who continue to be at the bottom of the economic and, in turn, social scale.

Thank you very much. I am ready to answer questions.

MADAM CHAIRMAN: Any questions for Mr. Martin? Mr. Enns.

MR. H. ENNS: Madam Chair, through you to Mr. Martin; you mentioned earlier on in your comments that it's your opinion that this particular piece of legislation would remove considerably some of the activity that now ends up at the courts in the process of collective bargaining and you welcome that.

Yet, Mr. Martin, we have had a number of lawyers who, I understand, deal daily in the labour management field who have, among other things, indicated to them that they view this piece of legislation as enhancing their own businesses as labour lawyers and have suggested to the committee that quite the opposite will be the result of the passage of this legislation, that there will be considerably more litigation because of the numerous instances where terminology is vague, that it's the kind of language that leads to court challenges.

Now I am not a lawyer; I acknowledge my limited knowledge in labour negotiations and labour management matters, but when a lawyer who earns his living, or a good part of his living, and not one, but a number of them come up to this committee and tell me that he welcomes this legislation becuase it's going to line his pockets, I would ask you, how do you rationalize those statements with the statements that you made when you started your brief?

MR. D. MARTIN: I have no doubt that initially there is going to be challenges within the courts after every piece of new legislation. We saw it in first contract legislation where it was challenged before the courts. After the courts have determined what the legislations says and, hopefully, that doesn't happen too often, the litigation starts to decrease.

Those lawyers, I assume, if they thought the legislation was so bad, they would welcome it in terms of litigation. I understand that most of them are opposed to the proposed amendments. I find that hard to rationalize, that they are opposed to it, and yet they welcome it at the same time because it's going to put a lot of money into their different law corporations.

Initially, it's going to probably be challenged, but I assume that later on that it won't be once it settles down. We have seen it, repeated legislation that's been introduced, where that type of challenge has taken place and then it settles down. I don't think really that most, at least small employers, really want to go to court and spend thousands of dollars in the courts on their matter.

Certainly, speaking for labour, we don't want to go in the courts on it and most employers came to agreement with an arbitration process within their collective agreements because they didn't want to go to the courts. In fact, in some collective agreements in this province now, there is expedited arbitration already in continent-wide agreements that proceed with expedited arbitration to keep it out of the tripartite arbitration and to bring it to one arbitrator that companies have agreed to. It's worked very well and the companies will tell you that it's worked very well.

MR. H. ENNS: Mr. Martin, I can appreciate that from the labour organizers' point of view, one would want to and I accept that, I think, from a general point of view, one would want to arrive at settlements without having to resort to the courts and without having to go through the process of expensive and lengthy legal wrangles.

It's our responsibility, Mr. Martin, to try to judge comments from persons like yourself who appear before this committee as best we can.

Would it be unfair, Mr. Martin, to suggest that seeing as how you represent an organization or organizations that very often have to foot the bills to these lawyers, that you would want to or read into a piece of legislation in the hope that would minimize that?

That's the advice we are getting from you but, on the other hand, should the committee not place greater credence on the very persons who are currently earning the legal fees and who are telling this committee that those legal fees will be higher, bigger and more often?

MR. D. MARTIN: I can tell you that on the general advice that we retained from legal counsel, they are not of the opinion, that same opinion. So if I'm going to believe anyone when I go and seek legal counsel, I am obviously going to listen to the ones that we retained, and they are not necessarily of that opinion at all.

I just want to proceed with Mr. Enns' question in terms of saying, for example, on the expedited arbitration process, that excludes, in many cases, lawyers from being involved. What in fact happens is not even the personnel manager is going to be involved. It will be the four persons and the steward that argue it out before an arbitrator, and that arbitration is, in fact, not a precedent-setting arbitration but at that point in time determines who is right and who is wrong and sets it straight.

I don't think anyone is doing any favours by trying to continue and push tripartite or three-person

arbitration boards that, as I have said and others have said, continue on and on and on, that don't bring any decision down. We'd like to have, and we had sought justice and dignity clauses but they're in collective agreements once more. It's not a new thing; it's something that has been proven and tried and we think it's good to introduce it into the legislation that will serve that labour relations community. After the initial flurry of activity, I don't think that lawyers' pockets are going to get real green from doing it.

MR. H. ENNS: One final question to Mr. Martin.

Mr. Martin, I certainly wish you well in your new responsibilities, and I appreciate how close you are and have been to governments, particularly this government.

Could I perhaps ask you who the new Minister of Labour is going to be in the Turner Cabinet?

MR. D. MARTIN: I haven't got that much influence there, Mr. Enns. I don't think Mr. Turner wants to talk to me.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Martin, let me join my colleague in congratulating you on assuming your new position.

Could you tell the committee whether the Canadian Labour Congress is committed to supporting the New Democratic Party?

MR. D. MARTIN: If it's committed to supporting the New Democratic Party, yes.

MR. G. MERCIER: Mr. Martin, whilst you were president of the Manitoba Federation of Labour during 1981, could you describe the support you gave to the New Democratic Party during that election?

MR. D. MARTIN: Madam Chairperson, I really fail to understand in terms of how this deals with the labour relations amendments that I came here to speak upon. If we want to talk about politics and the political process, I am certainly prepared to do that, but I don't think I would want to do it within this forum.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairman, on a point of order. I want to make it abundantly clear that it's frequently the tradition of this committee to ask of people who are appearing before us their background, their particular credentials that make them appear before us. We have people representing different associations, giving us their backgrounds all the time, Madam Chairman. I think the question is perfectly in order.

After all, among the responsibilities that we have as committee members is to try to accept the advice that is being offered and given, and knowing exactly where it's coming from. If a representative of the Chamber of Commerce appears before this committee, he states so.

MADAM CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: Madam Chairperson, I haven't had as much experience in legislative committees as Mr. Enns, the Opposition House Leader, has in terms of his many years here, but it seems to me that the process for questioning of delegations that appear before legislative committees is to ask questions of clarification regarding issues that are raised in their brief. I don't recall this issue being raised in the brief and, quite frankly, I don't recall in the time that I have sat in committees where that question has been raised. If that is going to be a new standard, then that's one, I guess, that we will have to accept as being established for people coming before this committee, or organizations that come before this committee.

MADAM CHAIRMAN: Mr. Cowan.

HON. J. COWAN: Thank you, Madam Chairperson. This committee operates under some well-established rules and practices and, certainly, the practice is that we do confine ourselves as much as possible to the brief at hand. It is also generally considered to be an acceptable practice that if a person appearing before the committee does not wish to answer a particular question, they do not have to answer a particular question, and that has been done on numerous occasions.

Again, like my colleague, Mr. Kostyra, I have not had the many years of experience that some of the members on the other side have had in respect to committee hearings, but I cannot recall Chambers of Commerce or representatives of employer organizations, many of whom have appeared before this committee recently, and many who have appeared before this committee in the six or seven years that I have been sitting in these types of committees, being asked if they support the Conservative Party and what level of support they provided to the Conservative Party, although it's well-known that such support did exist. That was done, I think, out of courtesy to those individuals and trying to confine ourselves to the points at hand.

I know the Member for Sturgeon Creek, Mr. Johnston, is short on courtesy most of the time. However, notwithstanding that fact, and he's long on chirping from his seat - it has been a practice and I think the record would should it to be so.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Madam Chairperson, there have been suggestions that this legislation is a payoff to the Manitoba Federation of Labour and I am just trying to determine the accuracy of that comment.

MADAM CHAIRMAN: Order please. No. 1, in my opinion, the question is out of order; and, No. 2, even if it was in order, the delegate has the option as to whether he would like to answer it or not.

Mr. Banman.

MR. R. BANMAN: Madam Chairman, yesterday, during this committee sitting, we had an individual who presented a brief before this committee and said that many clauses in this bill were a direct payoff to unions because of problems they had encountered in different situations in organizing. All that the Member for St. Norbert is trying to establish is what kind of link this particular . . .

MADAM CHAIRMAN: Mr. Banman, I ruled the question out of order. Are you challenging my ruling?

MR. R. BANMAN: Yes, Madam Chairman, I am challenging that ruling.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: If we can go back a step or two, you suggested - I thought correctly - that no witness is imposed to answer any questions he doesn't choose to answer and I agree with that. That is also a long tradition of the people appearing before this committee. I do respectfully suggest to you, Madam, to reconsider the question of whether or not the question was out of order. The question was placed because others . . .

MADAM CHAIRMAN: Mr. Enns, order please. I ruled the question out of order. That ruling has been challenged. I will now put the question, shall the Chair be sustained?

Those in favour, say aye, please. Those opposed. In my opinion, the ayes have it.

Mr. Mercier, did you have another question?

MR. G. MERCIER: Mr. Martin, particularly now with your position with a national association, could you indicate where Manitoba stands in terms of the number of days lost with strikes? Does Manitoba not lead the country in the least number of days lost during work stoppages?

MR. D. MARTIN: I believe that the last statistics demonstrated that it had amongst the least lowest days lost due to strikes or lockouts.

MR. G. MERCIER: I have no further questions.

MADAM CHAIRMAN: Are there any other questions from Mr. Martin?

With that then, Mr. Martin, thank you very much for appearing tonight.

MR. D. MARTIN: Thank you. Does anybody wish this Chamber of Commerce document?

MADAM CHAIRMAN: Ms. Judy Lingo; Mr. Michael Hill; Mr. Don Henderson, Manitoba Chamber of Commerce. Is there anyone else who would like to make a presentation to the committee?

That concludes the list of the persons wishing to make presentations on this bill. We'll move to clause-by-clause.

Mr. Enns.

MR. H. ENNS: Might it be advisable to call for any representations on Bill 35 in order to deal with all the representations prior to dealing clause-by-clause? I don't know if there are any.

MADAM CHAIRMAN: Yes, certainly. There are none registered, but if there are any persons present who would like to make a presentation on Bill 35, we could certainly hear them now.

Bill 22, how does the committee wish to proceed? Clause-by-clause?

MR. H. ENNS: Page-by-page.

MADAM CHAIRMAN: Page-by-page?

A MEMBER: Page-by-page, with the appropriate amendments made to the bill.

MADAM CHAIRMAN: Page-by-page?

MR. R. BANMAN: No, clause-by-clause.

MADAM CHAIRMAN: Clause-by-clause, Mr. Banman?

A MEMBER: Why don't you do page-by-page with the appropriate amendments?

HON. M.B. DOLIN: Some pages don't have a number and some do.

MR. R. BANMAN: Maybe we could do it page-by-page, Madam Chairman, and then we could maybe indicate each section or each page where . . .

MADAM CHAIRMAN: May I assist you? We can do page-by-page. If there's any particular page where you want to go clause-by-clause, we can switch at that time.

MR. R. BANMAN: I agree.

MADAM CHAIRMAN: Very good. Let's proceed. Page 1—pass?

Mr. Kostyra.

HON. E. KOSTYRA: I would move

THAT the proposed clause (1)(a) of The Labour Relations Act as set out in section 1 of Bill 22 be amended by adding thereto, immediately after the word "or" in the 2nd last line thereof, the word "alleged".

MADAM CHAIRMAN: Amendment—pass?

Ms. Dolin.

HON. M.B. DOLIN: I am afraid, Madam Chairperson, that the answer won't be heard so I'll just wait until everybody has their papers. I realize it's a little confusing at this point.

MR. R. BANMAN: Madam Chairman, one of the things which has troubled members of the opposition and people that are dealing with this piece of legislation is, the time in which we're asked to deal with it has been very limited - the actual bill - and now we're faced with some 11 pages of amendments after we paid people $600 a day to draft this legislation. I think it just highlights the problems which the committee, as well as the public at large, faces.

We're asked to deal with a bill here which will have some pretty sweeping changes in labour relations in the province and now in the eleventh - not even the eleventh hour, it's almost the midnight hour - we're going to be dealing with 11 pages of amendments which

the Minister will appreciate, and many areas are very technical and which really haven't given us a good chance to look at them. I guess it really reinforces and makes the case for the opposition even stronger in asking the government to hold over this piece of legislation till everybody's had a chance to iron out the bugs. We've got 11 pages worth of bugs here right now and I just say to the Minister, I believe that she is making a really serious error in dealing with a major piece of legislation like this and hoping to just put it through without having all the proper input in it.

I say to the Minister, 11 pages of amendments at this late hour is just an indication of how quickly this bill was drafted and how poorly the whole situation has been handled. It highlights the problem that this bill will have, I predict, when we're dealing with the application once it hits the workplace.

HON. M.B. DOLIN: I was about to explain the motion on the floor, which I had been asked to do. I have to agree with Mr. Banman to some extent and explain that whenever there is a long amending bill, it becomes very complex. When you write a new act it is perhaps easier to rewrite all the clauses, but when one must refer not only to what is outside the windows . . .

MADMAN CHAIRMAN: Order please, order.

HON. M.B. DOLIN: . . . one must contend with a complex bill on the table, noise outside the windows, a hot night and so on, it does get tiresome and I am very sympathetic and empathetic about those situations. However, we do have an amending bill and we must deal with those amendments.

I can assure you, although you may wish from time to time to certainly raise questions or perhaps even debate a point with us, that the amendments we have brought before you are technical amendments, corrections to the typing, the wording in the various sections. In some cases a section has been replaced in its entirety because it was easier to do that than to try to write out the various changes in wording; that would have taken even more space.

As we go through I'll be happy to explain the changes. The one that you see before you right now is a case where the two clauses should be consistent. The word "alleged" was inadvertently left out of clause (a)(2); it was in clause (a)(1), so it is being inserted into clause (a)(2) to make it consistent. That of course is the way the clause should read.

MADAM CHAIRMAN: The motion to amend—pass; Page 1 as amended—pass; Page 2 - Mr. Mercier.

MR. G. MERCIER: Madam Chairperson, could the Minister explain why, in the definition of business, it is so all-encompassing as to include any part of a business?

HON. M.B. DOLIN: The definition comes from The Manitoba Evidence Act. Is that explanation enough, Mr. Mercier? The definition comes from The Evidence Act in Manitoba. It makes it consistent with The Evidence Act which is appropriate.

MR. G. MERCIER: But this is The Labour Relations Act. Why is it necessary to ensure that the definition of business be so all-encompassing?

HON. M.B. DOLIN: I think I gave you the reason. It is to make it consistent with The Evidence Act so that the description of a business is consistent.

MR. G. MERCIER: Well, Madam Chairperson, if the Minister doesn't have the answer or doesn't want to indicate what the real answer is, I have to accept that, but to say that it's consistent with The Evidence Act is not an answer.

HON. M.B. DOLIN: Where there is a merger or sale, that is the instance in which this is used and it sometimes involves parts of a business.

MR. G. MERCIER: Madam Chairperson, now the Minister is getting to the meat of the question. The Minister wants to make sure that any business or any part of a business is included within the section that relates to union agreements and the sale of a business. Is that correct?

HON. M.B. DOLIN: So that it is clear how a merger is handled and when there are various unions involved or different locals of the union and they have to be melded or meshed together in some way, yes.

MR. G. MERCIER: The intent is to make sure that on the sale of any business or any part of any business that the union agreement will survive that sale and be binding. Is that correct?

HON. M.B. DOLIN: Yes, as staff has said, it meets the statutory provisions for that. What we are talking about here and what we will be talking about later that blends with this - and I can't very well go to that section now because we're not talking about it - but what we are talking about is certification standing. The bargaining unit exists and continues to exist, but the contract which is also carried forward may still remain in existence, or may in fact be renegotiated, but that comes under another section and we'll deal with it when we get there.

MADAM CHAIRMAN: Page 2—pass; Page 3 - Mr. Cowan.

HON. J. COWAN: Madam Chairperson, I move

THAT the proposed clause 1 subsection (t.1) of The Labour Relations Act as set out in section 8 of Bill 22 be amended by striking out the words "one of whose primary objects" in the 1st line of subclause (ii) thereof and substituting therefore the words "whose primary object".

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Madam Chairperson, just to raise a procedural point. I appreciate this is an amendment to the section at the bottom of the page, but if we wish to deal with a clause further on, we can deal with it I guess, but will we revert back later?

HON. J. COWAN: I apologize.

MADAM CHAIRMAN: I would prefer to pass Page 3 and have the motion on Page 4. Mr. Banman, did you wish to speak on Page 3?

Mr. Banman.

MR. R. BANMAN: Yes, I wonder if the Minister could explain, on clause 1(k), why this section dealing with a dependent contractor?

HON. M.B. DOLIN: What was the question? Did you finish your question, Mr. Banman?

MR. R. BANMAN: Yes, Madam Chairman, the changes in the act strike out the words "a dependent contractor" and it is my understanding that the board can now designate anyone that it wishes as an employee. Why is this necessary at this time?

HON. M.B. DOLIN: The purpose of changing that is so that the board is able to recognize as employees, those persons whose contracts, in the opinion of the board, could appropriately be the subject of collective bargaining.

MR. R. BANMAN: The Minister is aware that there are certain functions or certain jobs being carried on by the majority of businesses, many of which are being contracted out. Is the Minister now saying that if someone is a contractor, the board can now go ahead and say, that's wrong, that is not allowed? And that particular individual or group of individuals is designated as an employee, I guess, and therefore would come under the jurisdiction of the bargaining unit.

HON. M.B. DOLIN: Most of the contracting-out situations are to independent contractors. What this will do is allow the board to include some people who can be defined by the board as employees. It gives some discretion to the board in this area.

MR. R. BANMAN: I have to say to the Minister that that makes it very difficult for an employer who arrives at an agreement with, let's say, a truck driver who is doing work on a piecemeal or a mileage basis and then six months later, for some reason or other, either the union or somebody complains and now all of a sudden the board can designate anybody that they wish as an employee. I would say to the Minister that I can see some problems developing with this particular section.

MR. G. MERCIER: Madam Chairperson, there is now a statutory definition of a dependent contractor which in the main appears to refer to the operators of vehicles hauling goods on contract. Is it the intention of the Minister through this amendment to have more people named by the board, or declared by the board, to be employees for the purposes of organization of unions?

HON. M.B. DOLIN: My understanding, Mr. Mercier, is that in the act as it read before, it's very limited. The definition is extremely limited and there have been developed various other occupations that would be parallel, but because of the limitations of the act, the board couldn't deal with them. The act now enables the board to deal with those. Some occupations that - I can think of one instance - that didn't exist certainly in any way as they do now - the Courier Services that we all use is an example of one occupation that certainly was not in existence in the way it is now, a number of years ago, 12, 14 years ago. It was a very limiting provision in the old act and it's been expanded to give some discretion so that the board can determine whether the person is an employee or a different contractor.

MR. G. MERCIER: Madam Chairperson, is it the intent of the Minister, using her example of people who operate Courier Services, that more of these people will be declared as employees by the board?

HON. M.B. DOLIN: Is it the intention that they be declared that?

MR. G. MERCIER: Why are you passing this, is it so that more of these people be declared employees of the board, so that they can be organized?

HON. M.B. DOLIN: If I may quote from the current act, "the person is a person employed to do work and includes a dependent contractor but does not include a person who is employed in a capacity that in the opinion of the board would make it unfair to that person . . ." etc. You know the section I'm reading from, section k, it has not changed, I believe.

What we are saying is that in the old act, the clause was very limited and we believe there are areas that the board needs to be able to make a decision about and it cannot, under the provisions of the old act.

MR. G. MERCIER: Could not designate those people as employees.

HON. M.B. DOLIN: They are employees.

MR. G. MERCIER: Just a simple question to the Minister. Does she see by virtue of this amendment that more people will be unionized?

HON. M.B. DOLIN: The opportunity to organize, to become a part of a bargaining unit or to have a union represent one is an opportunity that people have. We don't have to bestow it upon them, they have that already. But the board has to be able in this instance to make a decision and it cannot under the old act; it's too limited.

MR. G. MERCIER: Madam Chairman, I wonder if the Minister could just answer the question. I think it could be answered yes or no. By virtue of this amendment, is it the intention of the government to see more people become unionized? Will this amendment lead to more people being eligible to become unionized?

HON. M.B. DOLIN: Whether or not more people will become unionized, I certainly couldn't say. More people may be eligible to be unionized.

MADAM CHAIRMAN: Page 3—pass; Page 4 - Mr. Cowan.

HON. J. COWAN: I would move the previous motion - I don't know if it's necessary to repeat it - that was erroneously moved for Page 3.

MADAM CHAIRMAN: Amendment—pass; Page 4, as amended . . .

HON. J. COWAN: Well, do you want me to read it again?

I move

THAT the proposed clause 1(t.1) of The Labour Relations Act as set out in section 8 of Bill 22 be amended by striking out the words "one of whose primary objects" in the 1st line of subclause (ii) thereof and substituting therefor the words "whose primary object".

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: Madam Chairman, that is precisely the motion that we were going to put forward and we can support that amendment.

HON. J. COWAN: We'll hold hands on that one.

MADAM CHAIRMAN: Amendment—pass.

MR. E. SZACH: Madam Chairman, may I interject with a technical point?

We left out a section number on that page. If you look at the section headed subsection 4(3) repealed and substituted, there is no section number below it. That is section 11 of the amending bill, for clarification of the committee.

MADAM CHAIRMAN: Is that agreed? Pass.

Page 4, as amended - Mr. Banman.

MR. R. BANMAN: Madam Chairperson, I move

THAT the proposed amendment of subsection 10(4) of The Labour Relations Act as set out in section 12 of Bill 22 be amended by striking out clause (a) of section 12.

The affect of this particular motion, Madam Chairperson, has the effect of reverting to the old act in that we were changing the period at which time everything was frozen until an agreement was in place, from six months to 12 months. This says that we keep it at the six-month level which was in the old act. In other words, what we're doing is we're saying 12 months is too long, we would like to keep it at the six-month figure.

MADAM CHAIRMAN: Those in favour of the amendment. Those opposed. Amendment defeated.

Page 4, as amended—pass; Page 5—pass.

Mr. Mercier.

MR. G. MERCIER: Madam Chairperson, the section that begins at the bottom of Page 5 and continues on Page 6, a reinstatement where there is no collective agreement. There was presentation from the Manitoba Health Organization that requested the committee to examine this section because they believed that some kind of provision should be made that recognizes the right of an employer to refuse to reinstate an employee who has been guilty of vandalism against the employer during a strike or who is guilty of conduct that would be found to be so serious as to justify dismissal had the strike or lockout not occurred. Does the Minister reject that argument?

HON. M.B. DOLIN: I'm sorry, I was getting some technical advice. Could you just repeat the last part of your question?

MR. G. MERCIER: The Manitoba Health Organization made a presentation with respect to this section indicating that they did not quarrel with the provision for reinstatement, but they said they believe that some kind of provision should be made that recognizes the right of the employer to refuse to reinstate an employee who has been guilty of vandalism against the employer during a strike, or who was guilty of conduct that would be found to be so serious as to justify dismissal had the strike or lockout not occurred. Does the Minister reject that argument?

HON. M.B. DOLIN: If the employee is not in the place of employment, I would find it difficult to understand how this could happen. The employees during a strike or lockout are outside the building, of course, and no specific instance of this was given. If the member would like to suggest a situation that he thinks might exist, I would think there might be other areas that cover that particular concern. If the person vandalized property or was charged with vandalism of the property, that would be a different situation.

MR. G. MERCIER: The Manitoba Health Organization referred specifically of an employee who was guilty of vandalism against the employer during the strike. As the Minister is saying under her legislation, the employer would have to reinstate that employee. Does she not believe that there should be some change in this section to accommodate this position? It doesn't particularly seem unreasonable.

HON. M.B. DOLIN: With regard to the issue that the member is referring to, there is no change from the current act. The same provisions are incorporated here. I don't know whether he is suggesting an amendment that you add to the bill at this point or what he is suggesting.

MR. G. MERCIER: We have had representations that the reinstatement provisions in this amendment should be amended so an employer can refuse to reinstate an employee who has been guilty of vandalism against the employer during the strike and in another situation. Does the Minister not feel there should be an amendment to this section that would grant the employer that right?

HON. M.B. DOLIN: I would refer the member to section 11(1)(f) in the current act and then 11(2) in the current act.

I guess what I am saying is, if the member has an amendment to put forward then I would suggest that he do that. There is nothing in the current act that deals with vandalism per se. What we are providing in the amendments to The Labour Relations Act are the same as in the previous act. It is complementary.

MR. G. MERCIER: We're not making much ground with the Minister on this one, we'd better proceed.

MADAM CHAIRMAN: Page 6—pass.
Page 7 - Mr. Kostyra.

HON. E. KOSTYRA: I move,
THAT the proposed subsection 11.2(1) of The Labour Relations Act as set out in section 15 of Bill 22 be struck out and the following subsection be substituted therefor:

Using professional strikebreaker.
11.2(1) Every employer or employers' organization, and every person acting on behalf of an employer or employers' organization, who or which uses, or offers to use, or purports to use, or authorizes or permits the use of, a professional strikebreaker commits an unfair labour practice.

MADAM CHAIRMAN: Amendment—pass; Page 7, as amended—pass.
Mr. Banman.

MR. R. BANMAN: With regard to the clause dealing with the insurance scheme I would ask the Minister, since UIC payments aren't paid to striking employees, what has been the experience in the past when employees have gone out on strike with regard to other benefits that normally are looked after by the employer under either the collective agreement or in other ways?

HON. M.B. DOLIN: I can't speak for every case, Mr. Banman, without researching it, and if you want that information we can provide it for you at a later date, I'm sure, although it would take some research. But the situation is usually worked out between the parties.
The union often pays for the benefits during the duration of the work stoppage. The company sometimes maintains a pension plan or something like that during a work stoppage. What we are saying is that information has to be shared if those benefits are to be continued and, of course, many of these plans must be continued, as you know, on a monthly basis.

MADAM CHAIRMAN: Page 7—pass. Page 8 - Mr. Banman.

MR. R. BANMAN: Madam Chairperson, I move
THAT the proposed clause 15(d) of The Labour Relations Act as set out in section 18 of Bill 22 be amended by addding thereto, immediately after the word "penalty" in the 2nd line thereof, the words "or by undue influence".

HON. M.B. DOLIN: Just briefly on that, I'll repeat what I explained I believe in the House, that the words "undue influence" exists currently only in Manitoba and the New Brunswick labour law. They have been removed elsewhere and clearer terms used and that is why we have made this change.

MR. R. BANMAN: I would just point out to the Minister that I believe that undue influence, with regard to the organizing, should constitute an unfair labour practice and I believe this is one way of trying to get a balance between the employer/employee groups and the unions should be aware that undue influence, when on an organizing drive, that it could be considered an unfair labour practice and I would recommend the motion to the committee.

MADAM CHAIRMAN: Those in favour of the amendment please say aye. Those opposed. I declare the amendment defeated.
Page 8—pass; Page 9—pass; Page 10—pass.
Page 11 - Mr. Banman.

MR. R. BANMAN: Section 20(1)(b) where it says, "has exercised any of the employee's or person's rights under this Act" - why is this section in there?

HON. M.B. DOLIN: Didn't we pass page 11?

MADAM CHAIRMAN: No.

HON. M.B. DOLIN: 20(1)(b). I have to uncover my notes, if you'll just wait a moment.
Sorry, I know where the section is now. If a person has rights they ought to be able to exercise them and questions regarding the exercising of that right should not be a determining point for employment.

MR. R. BANMAN: I have to say to the Minister, Madam Chairman, that I really don't understand that explanation.

HON. M.B. DOLIN: Perhaps I could explain it in the context of a human rights issue. If a person has a right to join a union, be part of a union, be active in a union, then such activities and such memberships should not be the subject of, or the determination of whether or not a person is employed.

MADAM CHAIRMAN: No further questions?
Page 11—pass; Page 12 - Mr. Banman.

MR. R. BANMAN: I move,
THAT the proposed subsection 21(1) of The Labour Relations Act as set out in section 23 of Bill 22 be amended by adding thereto, immediately after the word "board" in the last line thereof, the words and figure "not later than 6 months after the unfair labour practice is alleged to have occurred or last occurred".

MADAM CHAIRMAN: Those in favour of the amendment?
Mr. Banman.

MR. R. BANMAN: Madam Chairperson, we are in this particular section, saying that there is no time limit really to filing a grievance or an unfair labour practice with the board and I believe, as I think most common sense people will agree, that to allow an indefinite time for someone to retroactively go after and allege an unfair labour practice without imposing a certain time constraint on it, really will not lead to harmony in the workplace or good relations between employer and employees.
I would say to the Minister that I believe the six-month time period that was in the old act should be left in and really what this amendment does is, it says that someone that is alleging an unfair labour practice

has to file that within a six-month period or that particular case cannot be heard. I say to the Minister, six months in the workplace, if something has happened which is an unfair labour practice, my goodness six months time is plenty of time to bring that out and deal with it. I don't see why we want to give unlimited time to anybody who would like to allege an unfair labour practice. Six months is good and that's why I put forward the amendment.

HON. M.B. DOLIN: What the board has found in its experience, and in studying this situation is that the six months, clear and simple, is far too limiting and I would refer you to the first clause on the next page, 21(2) Undue delay. The board has the discretion to not accept such a complaint if it finds that it has been unduly delayed even less than six months.

But if it has found that perhaps the information was not available and as we act in the House, that the first possible moment the complaint is brought forward, then it can in its discretion, allow it six months and two days later. But is protected and persons are protected from undue delay by the following section.

MR. R. BANMAN: I would just point out to the Minister that a six-month period, I believe, is plenty of time and all this section will do is, it will cause further problems. I can just see what will happen is, that after eight or nine months if there is suddenly a problem with the collective agreement and the union, or one side, is unhappy with the other side, then of course they can then raise and say at such and such a time, 8, 9, 10 months ago this happened and now we say it's an unfair labour practice because we're going to show you that we're not happy with what's happening right now. So I say to the Minister, I don't think it's good to leave it open-ended and the six-month period should be put back in.

MADAM CHAIRMAN: Those in favour of the amendment — (Interjection) — Mr. Mercier, the question had been called before you put your hand up.

MR. G. MERCIER: No it had not.

HON. M.B. DOLIN: Let him speak.

MR. G. MERCIER: I want to bring to the attention of the Minister that we have, for example, limitation of actions legislation in the province which prescribes time periods during which actions must be commenced depending upon the type of civil action it is. We have a Summary Convictions Act which requires prosecutions to be commenced within six months. All of this legislation is done for a good reason; that if somebody is going to make a complaint it must be a timely complaint, and these matters shouldn't be allowed to hang over the heads of people.

This is a section that applies to both employers and employees. It applies to both. It's not a question of taking one side or the other. It applies to everyone and to have a section that follows what the Minister has referred to, where the board is going to make a decision on what is undue delay, makes the whole piece of legislation very uncertain and unnecessary. The Minister has not in any way shape or form justified why the six-month period should be amended so that there is in effect no limitation unless the board determines otherwise.

We have had situations in the past, and I can recall doing it with respect to an amendment under The Highway Traffic Act where the previous limitation period had been one year, and while we were in government we amended it to two years, and after a study by the Law Reform Commission, it was felt that the limitation period should be expanded to two years because of the difficulties that the one-year period had brought to many people.

If the Minister can satisfy the committee that there is justification for extending six months to nine months or to a year, we might be prepared to accept that. But to completely take out the limitation period at all and leave it open to an uncertain discretionary decision by the board which will be the subject of a great deal of litigation, is just not satisfactory to people on our side of the House and the Minister has not justified her position with respect to my colleague's proposed amendment.

HON. M.B. DOLIN: I believe that the Member for St. Norbert has made a very good point and that is exactly the point that this change is in here.

The Labour Board is made up of employer and employee representatives. This clause affects both employees and employers. In the discretion of those people that are appointed by employer groups and employee groups in the discretion of those people, they will decide whether the complaints brought before them has been unduly delayed and the protection lies in the next clause 21(2) Undue delay.

MADAM CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: The clause the Minister refers to, 21(2), giving the board the discretion for undue delay, the board is going to be in a terrible position if they decide to accept a complaint before them that is two years old and somebody comes along later and says that they want to have one and they say no to them. There has been a precedent set and the board will probably go through a long detailed explanation as to why the undue delay is allowed for one person and not the other. I think the Minister is putting the board in a very precarious position and there will be arguments and there will be presentations made on behalf of the person that were not treated the same as others.

HON. M.B. DOLIN: May I say again that the board has been deliberating for some time in their new method of acting. They meet in committee. They go over their policies, their rules, their regulations. They bring forward new policies and regulations to us, that they have determined the way in which they should conduct their business. This is one area where they have told us that to say that an absolute day of the month, of the year, whatever, is too limiting, that there have been cases where on both sides of that date - not many - but there have been cases when they should have been able to exercise their judgment.

MR. F. JOHNSTON: My colleague said that there should be some time. But is the Minister saying that a year, if it was in the act, that they must do it within a year; that a year is not enough?

HON. M.B. DOLIN: My information from those who deal with this section, who are on the Labour Board is that, it is not a year, but it is not seven months and 12 days and it is not five months and 28 days. It is close to six months, but it is not an exact date that then limits them from dealing with what they should be dealing with, and they feel that this change should be there.

I have a great deal of faith and I believe that members opposite do too in the appointees to the Labour Board and the seriousness with which they carry out their responsibilities.

MADAM CHAIRMAN: No further questions, are you ready for the question? Those in favour of the amendment say aye. Those opposed. The nays have it and the amendment is defeated.

Page 12—pass; Page 13 - Mr. Kostyra.

HON. E. KOSTYRA: I would move

THAT the proposed subsection 21(3) of The Labour Relations Act as set out in section 23 of Bill 22 be amended

(a) by adding thereto, immediately after the word "practice" in the 2nd line of clause (b) thereof, the word "or"; and

(b) by adding thereto, immediately after clause (b) thereof, the following clause:

(c) at any time decline to take further action on the complaint.

MADAM CHAIRMAN: Amendment—pass; Page 13 as amended—pass.

Page 14 - Mr. Kostyra.

HON. E. KOSTYRA: I move

THAT the proposed clause 22(3)(b) of The Labour Relations Act as set out in section 23 of Bill 22 be amended by adding thereto, immediately after the word "of" in the 2nd last line thereof, the words "income or other".

MADAM CHAIRMAN: Amendment—pass.

Mr. Mercier.

MR. G. MERCIER: Madam Chairman, could the Minister explain the rationale behind why the board has such a wide discretion on interim orders before there has been any determination on the complaint?

HON. M.B. DOLIN: Is the member referring to section 22(2)?

MR. G. MERCIER: Yes.

HON. M.B. DOLIN: I'm not sure that the question relates to the power involved as clearly as it might. Let me answer in this way and see if it serves to answer the member's concern.

When the board is clearly sure that a certification will be granted, I think we are all aware that most of the applications for certification come in with well over 60 percent, or 65 percent even, of the employees having signed cards. So when the board is sure that they are in fact going to grant that certification but there is a question about the inclusion of someone who may be, as an example, support service that deals with confidential material, or a group of computer operators, or someone who should not be included in that local, when that is the question that's outstanding then the board may grant interim certification. Is that what the member is referring to?

MR. G. MERCIER: Madam Chairman, the section we're talking about are hearings into unfair labour practices.

HON. M.B. DOLIN: Okay, sorry. I see I have the wrong section here. When you come to that question later, you'll have my answer already.

MR. G. MERCIER: Madam Chairman, we're talking here about hearings with respect to whether or not there have been unfair labour practices. In the section, sections give to the board very broad powers to make Interim orders before there has been any final determination of a complaint and I would like the Minister to explain the rationale, why such discretionary power should be given to the board?

HON. M.B. DOLIN: It's the board's present practice to grant adjournments. This section then allows for the board to make adjournments subject to terms and conditions that it deems are reasonable. There is an example I can give you. If one party asks for an adjournment and the other party would be unfairly prejudiced by having to pay the expenses of bringing in out-of-town witnesses and so on, the board might oblige the party that is seeking the adjournment to pay the costs. That would be the order.

MR. G. MERCIER: That's fine, but that's not what the sections say. The sections give the board the power to impose penalties in all sorts of terms and conditions and reinstatements, etc., and this is before there has been any final determination.

I don't disagree that for someone who is prejudiced by reason and someone else asking for an adjournment the board should have the power to ask that party to pay costs. That's not what we are talking about, though. We are talking about the broad powers of the board here to make Interim orders where there has been no final determination of the complaint. Why is that included?

HON. M.B. DOLIN: Let me give you another example, probably a more serious example than the one I just gave you, although both situations might arise and, in fact, do arise before the board where there has been a dismissal of an employee during a union-organizing drive, as an example. Okay?

The board might order that the employee be reinstated pending a final hearing. The Interim order such as that will be determined by the board and they will and they have, in fact, developed their policies and practice in this regard.

MR. G. MERCIER: Well sure, that in effect is a final determination which is made before but is made on

an interim basis. That's the kind of decision that should only be made in the final determination.

Are these recommendations from Ms. Smith?

HON. M.B. DOLIN: These are recommendations from the government, sir.

MR. G. MERCIER: I know. Is the government acting on recommendations from Ms. Smith in making these amendments?

I take it that the Minister is refusing to answer that question?

HON. M.B. DOLIN: I believe the member knows that Ms. Smith certainly presented us with an internal document. We took that into consideration; we took a lot of things into consideration; and we came forward with what the government recommended as amendments to the bill.

MR. G. MERCIER: Who recommended this change?

HON. M.B. DOLIN: I think I have answered that question. I don't know how many times the member wishes to ask it. The bill before you and the White Paper are the government's recommendations based on advice from many sources, one of them being Ms. Smith's report. There were certainly others.

MR. G. MERCIER: Madam Chairman, with all due respect the Minister has not answered the question. She has offered as an example that could be used under this section where an order to be made by the board that would, in effect, amount to a final determination, but it was done before the matter is heard. It would be done pending a final determination of the complaint.

We're trying to determine why such vast powers should be given to the Labour Board to make Interim orders pending a final determination. These powers certainly could be subject to abuse and, if used, I think would certainly set back labour relations. If the intention of this bill is to improve labour relations, then the powers that are given in this section could certainly set it back a long way.

I would like to know where this recommendation came from.

HON. M.B. DOLIN: The member continually refers to a final determination. If he reads the section it says, "pending a final determination of the complaint".

When one has a Labour Board, a quasi-judicial body given certain powers, one does not write out in legislation what that body's determinations are going to be. One sets out the rules for its determining those, perhaps, but one does not predetermine them. The board has the discretion to make the judgment. Since the board is a tripartite board, it is our belief that they will make appropriate decisions and they will have to live by them.

MR. G. MERCIER: Who has recommended to the government that the board be given such vast discretionary powers, to be made on an interim basis pending a final determination?

HON. M.B. DOLIN: Madam Chairperson, I am not sure whether the determination of the opposition here is to go through this bill clause-by-clause asking who recommended each clause. I frankly couldn't even tell you; I can't remember. I don't think they are appropriate questions and I would have to put that before the committee.

I can tell you where they exist in other jurisdictions from time to time. I can tell you why we believe that they are appropriate recommendations, but I don't believe it is appropriate for me to tell you that who in our consultative meetings might have said, "I think this is a good idea or I think that's a good idea or why don't you do something else?"

MADAM CHAIRMAN: Page 14 as amended—pass.

HON. M.B. DOLIN: 22(4), there is another amendment.

MADAM CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed subsection 22(4) of The Labour Relations Act as set out in section 23 of Bill 22 be amended by adding thereto, immediately after the word "of" in the 3rd line of each of clauses (d) and (e) thereof, in each case the words "income or other"; (e) being on Page 15.

MADAM CHAIRMAN: Amendment—pass; Page 14—pass?

Mr. Banman.

MR. R. BANMAN: Page 15(i), why is this needed?

MADAM CHAIRMAN: Page 14—pass; Page 15 - Mr. Banman.

MR. R. BANMAN: The same question, Madam Chairman.

HON. M.B. DOLIN: The board is given the power to do whatever is fair. I wonder if the member has a concern with that.

MR. R. BANMAN: It is another sort of remedial power of the board?

HON. M.B. DOLIN: Yes.

MADAM CHAIRMAN: Page 15 as amended—pass; Page 16 - Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed subsection 25(1) of The Labour Relations Act as set out in section 25 of Bill 22 be amended

(a) by adding thereto, immediately after the word "for" where it occurs for the first time in the 2nd line thereof, the words "employees in"; and

(b) by adding thereto, immediately after the word "for" in the last line thereof, the words "employees in".

MADAM CHAIRMAN: Amendment—pass?

MR. E. SZACH: Madam Chairperson, may I interject for a moment?

I'd like to point out to the members, those familar with The Labour Relations Act will recognize sections 25 to 50 as being in a part titled "Certification and Bargaining Rights, Part 2." Technically under The Interpretation Act, those part headings are not part of a statute and therefore we're not repeating the headings in the amending bill. I thought it might be helpful though, whenever we reach a new part of the bill as it will be identified in the continuing consolidation, to point that out to the committee members. I simply say at this stage that we're not into the part of the act that is headed "Certification and Bargaining Rights, Part 2."

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: Madam Chairperson, I move

THAT the proposed subsection 24(2) of The Labour Relations Act as set out in section 24 of Bill 22 be amended by adding thereto, immediately after the word "union" in the last line thereof, the words "and every person who acts in the manner described in this subsection commits an unfair labour practice".

MADAM CHAIRMAN: Those in favour of the amendment please say aye.

You wanted to speak, Mr. Banman?

MR. R. BANMAN: It used to be an unfair labour practice, Madam Chairman, to solicit during working hours when there had not been permission or access granted by the employer. I think that we have had a few cases where a union which has solicited during working hours has been tagged with unfair labour practices under the act which we are presently living under. What I am saying to the Minister is that, really, if this is not included in this act, what you have is really no deterrent by the union to walk into the place of employment.

Sure, the union can then be reprimanded for having done that, but in essence there is no penalty to doing it and I would say to the Minister that I believe, in light of the past experiences, that is should be an unfair labour practice for someone to walk into a place of employment during working hours and solicit for any particular union. I say to the Minister that I would want to add this last section which I just read, to this section and hopefully the members of the committee will agree to it.

HON. M.B. DOLIN: There is an answer to this and I would like to give it and have the members consider this possibility. The employers can, in fact, ban union solicitation which disrupts production. That's what the section says. If employees disobey these rules, they are subject to disciplinary action or even dismissal in appropriate cases.

MR. R. BANMAN: But could the Minister confirm that it is now not an unfair labour practice?

HON. M.B. DOLIN: That section has been removed. If the employee can be disciplined or dismissed by the employer, I would think that is certainly a remedy that is stronger than an unfair labour practice.

MR. R. BANMAN: Madam Chairman, that is pretty sneaky, because if an employer now is in the position of having to take upon himself to discipline an employee that is trying to unionize, what better clout or what better impetus for the union to say, look how mean this employer is, he's not allowing unionization or allowing us to get the drive going during working hours. Under the old section of the act, at least it was an unfair labour practice and everybody knew where they stood. But what the Minister is saying is that they are really going to now allow the practice to happen; hopefully, the employer will catch them at it and discipline a few people, and that will help the union cause to unionize that shop because it is not an unfair labour practice. If the Minister doesn't understand that, she doesn't know what is happening in the workplace.

HON. M.B. DOLIN: And the member doesn't know what's happening in Ontario. This wording is similar to what is in Ontario and so it obviously is not so burdensome. What we are talking about here is the disruption of production in the workplace, not an attempt to organize. There is nothing wrong with organizing and that had better be very clear. The question here is disrupting production or disrupting what is happening in the workplace while organizing.

Obviously, the employer has the right to discipline the employee for that. That discipline can take many forms. We can't say what is in place in the workplace as discipline; that is determined by the various workplaces and usually by the employer, particularly if they're not organized. So up to and including dismissal, those remedies are there. I can't imagine that an employer would want to go through the whole filing of an unfair labour practice, keeping that employee on, not disciplining that employee, going before the Labour Board for an unfair labour practice. It seems rather self-defeating.

MR. R. BANMAN: I say to the Minister, that what in a very subtle way, the section is changed to try and make the employer the heavy in the scene and I cannot go along with that and therefore I have proposed the amendments.

MADAM CHAIRMAN: Those in favour of the amendment please say aye. Those opposed. The nays have it. I declare the amendment defeated.

Page 16 as amended—pass; Page 17—pass; Page 18 - Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed subsection 26(6) of The Labour Relations Act as set out in section 25 of Bill 22 be amended by adding thereto, immediately after the word "unless" in the 5th line thereof, the words "in the opinion of the board".

MADAM CHAIRMAN: Amendment—pass; Page 18 as amended—pass; Page 19 - Mr. Banman.

MR. R. BANMAN: Could the Minister explain 27(1)(b)?

HON. M.B. DOLIN: What section does the member wish explained?

MADAM CHAIRMAN: Mr. Banman, could you repeat your question?

MR. R. BANMAN: 27(1)(b).

HON. M.B. DOLIN: I believe this can be explained best by saying that it is a clarification of the existing act. It allows an agent for the employees to act for the employees themselves; it's not limited to the employees themselves. It's a clarification of the wording.

MADAM CHAIRMAN: Page 19—pass.

Page 20 - Mr. Banman, you had a motion on Page 2 of your list that was out of sequence, the third motion was on Page 20? All right then, Page 20—pass.

MR. R. BANMAN: I had a competent draftperson but I didn't have to pay $600 a day for him.

MS. M.B. DOLIN: We did too, the same one.

MADAM CHAIRMAN: Page 21—pass; Page 22 - Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed clause 32(a) of The Labour Relations Act as set out in section 25 of Bill 22 be amended by adding thereto immediately after the word "employer" in the 1st line thereof the words "or any person acting on behalf of the employer".

MADAM CHAIRMAN: Amendment—pass.

Mr. Banman.

MR. R. BANMAN: I move

THAT the proposed section 32 of The Labour Relations Act as set out in section 25 of the bill be amended by striking out the last two lines thereof and substituting therefor the words and figures "the board shall conduct a vote in accordance with subsection 39(2) for the purpose of satisfying itself as to whether the employees in the unit wish to have the applicant union represent them as their bargaining agent".

MADAM CHAIRMAN: Question? Those in favour of the amendment please say aye. Those opposed. The nays have it. Both amendments defeated.

MR. G. MERCIER: I'll ask for a count.

MADAM CHAIRMAN: All those in favour of the amendment please raise their hands. (4) Those opposed. (5) The amendment is defeated.

Mr. Cowan.

HON. J. COWAN: Perhaps I'll have better luck. I move

THAT the proposed section 32 of the Labour Relations Act as set out in section 25 of Bill 22 be amended by striking out the word and figures "subsection 31(1)" in the 2nd last line thereof and substituting therefore the words and figures "section 31".

MADAM CHAIRMAN: One moment, Mr. Cowan, is that one not on Page 23?

HON. J. COWAN: Yes, and I thought the last one was on Page 23 as well.

MADAM CHAIRMAN: We haven't passed Page 22.

HON. J. COWAN: You see, I didn't have better luck.

MADAM CHAIRMAN: The amendment that was proposed by Mr. Banman was on Page 23 but it was referring to a section which is on 22.

Consequently, I would like to pass Page 22, as amended—pass; Page 23, Amendment—pass; Page 23, as amended—pass.

Page 24 - Mr. Banman.

MR. R. BANMAN: I move

THAT the proposed section 36 of The Labour Relations Act as set out in section 25 of Bill 22 be amended

(a) by adding thereto, immediately after the word "to" in the 3rd line of subsection (1) thereof, the words and figure "subsection (2) and";

(b) by adding thereto, immediately after the word "union" in the last line of clause (2)(a) thereof, the words and figure "and by paying to the union an amount of not less than 5 dollars in respect of initiation fees or monthly or periodic dues of the union"; and

(c) by adding thereto, immediately after the word "to" in the 10th line of subsection (2) thereof, the words and figure "or within 7 days of".

MADAM CHAIRMAN: Do you want to explain, Mr. Banman?

MR. R. BANMAN: It really strikes at the heart, I guess, of one of the things that I can't really see this government moving on and which I find highly objectionable.

First of all, to have a person sign a card without having any monetary attachment to the signing of that card - in other words, there is no financial commitment no matter how small, to the individual who is signing the card or is being asked to sign the card to allow someone to just sign a card, like a petition, without having to make some financial commitment, Madam Chairperson, I don't find at all to my satisfaction. I think the federal act in the regulations now states that the membership must be $5.00. I submit to you that that is a very nomimal amount of money and that is the least we should ask someone to put up when he or she is signing their name to a union card.

The other section, which is mentioned in here, is the fact that a person who has signed a card under this act now, does not have the right to change his or her mind at all, and it's been said time and time again by different people who have made presentations before this committee that there should be a time period in which an individual has time to change their mind. My goodness, we talk about consumer protection, we talk about different pieces of legislation where we do not want to allow people who have made a decision, maybe

in haste sometime, haven't thought about it properly, maybe were under the influence of peer pressure as well as other things, have done something and, upon sober reflection, want to change their mind.

I say to members of this committee that there is no way that we should enact legislation which does not allow a person to change his or her mind. I am suggesting to the Minister that we should be allowing a seven-day period in which that could happen, a seven-day period in a case where a union files the next day after somebody has signed the card, is a small concession to that individual, and I believe is in the best interest not only of the harmonious relationships that later on have to develop between management and labour, but is of vital importance to that individual.

I say to the Minister, to not allow that is really basically saying that all the consumer protection legislation which we all have passed in the many other areas, whether it be with regard to the selling of fishing quotas and things like that, we have always given individuals the right within a certain time period to change their mind. I believe it absolutely imperative that we allow at least a seven-day period for this to happen.

HON. M.B. DOLIN: Without sparking any debate, let me say that I really am sorry that I continually hear from members of the opposition words like "sober second thoughts" and innuendoes that union cards are signed in not a truly thoughtful state. That is a reflection upon individuals in our province whom we don't know by name but who are there, it is a reflection on them, it is a reflection that I think is very very unfortunate and I would disassociate myself entirely from any such comments. I want to do that.

But I want to also tell the members that it is the experience of the Labour Board who receive these certifications, that they often have to not count cards because more than six months has elapsed since the person has signed them.

Now the potential member signing a card may at any time, up until the date that that application is filed, remove his or her name from the potential membership. All they have to do is let the union know, let the board know that they have done so in case they think the union might not report it. They send copies of a letter or whatever they want to do to let the board know that they do not wish to be included.

The vision that has been put forward of somebody riding in, in the night - as one of the news media persons said to me - leaping over the backyard fence at your barbeque, signing you up for the union and tossing the applications on to Johnny Korpesho's desk the next morning, is not fact; it is fiction; and I think it's science fiction.

So I would say that the experience of the board is that organizing drives take much longer, so persons do have the time to reflect upon their decisions. They do have time to withdraw that decision, change their minds if they wish to, and they have every full right to do that up until the date of application.

MADAM CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Madam Chairman, it is rather surprising to me that the Minister would make a reference to people who have mentioned the word "sober" and then she regards those statements as a reflection against people that they don't know what they're doing.

People, if they buy a car or refrigerator, if they buy a home which is probably the largest investment of their life, if they buy a life insurance policy, if they purchased most anything within this province or in Canada, have the right to change their minds.

In this particular case, basically, the only place where they don't have the right to change their minds in this legislation, which is basically written, in this case, to the benefit of the unions. It really seems to me that the Minister has now taken sides completely against management and business within this province by this piece of legislation because it discriminates drastically against anything else that happens as far as consumer protection is concerned.

Then the other part of it is that the seven days - we mentioned the seven days - the other people who have not been contacted, the 45 percent who don't have to be contacted, they are just completely left out of the picture.

Why in the case of this legislation does a person not have to change their mind and in all the legislation that the NDP has proposed while they have been in government for 12 years in this province in the last while, they were the ones that believe that people should have the right to change their mind and brought in many of the consumer protection clauses that create that situation within this province.

Now, Madam Chairman, why does the Minister decide that she takes the side against all of the other legislation that has been put through pretty well in this province and takes the sides of the unions against management and small business within this province?

HON. M.B. DOLIN: The statute that the member refers to, I believe in The Consumer Protection Act, refers to protection for those persons who have purchased something usually from a door-to-door salesman - photos of your children, encyclopaedias, that sort of thing - it has never been included in this act and I don't know whether the member has an amendment that he wishes to put forward that is comparable. I think that it is not appropriate for this act.

Let me remind the member, as I have indicated before but not specifically - I will do so now - that 14.3 percent of the applications received by the Manitoba Labour Board for certification have an employee sign-up percentage of 95 percent to 100 percent. Over 60 percent of the applications have 65 percent or more signed up.

We are not talking about slipping in an application for certification. We are not talking about hoodwinking people into joining a union. We are talking about people who wish to have a bargaining agent represent them, and we are talking about how we determine the true wishes of those employees. They have the right to exercise their freedom of association. That is clear.

What we are doing is amending the act, adopting a method that we believe is fair and is appropriate and is, in fact, not an entirely new idea in Canada, to determine the true wishes of the employees. We think it is the best way to do it.

MR. F. JOHNSTON: Last night when I posed the question to Mr. Pullen - and I would be prepared to look at Hansard when we get it - he said, "How else can we do this then by going from door-to-door soliciting people to join the union?" If that isn't the same as somebody going from door to door selling something, I don't know what is.

They're asking them to join a union, selling them on the benefits of however they sell them to join it, and I don't see any reason why they shouldn't have the same benefit that they have in other situations, which is seven days, to change their minds.

HON. M.B. DOLIN: I believe that if Mr. Johnston will check that same Hansard section a little bit farther on, but not too much farther, he was answered also by Mr. McGregor, who said, "Give me the right to talk to all the employees, 100 percent of the employees. Let me meet with them in the workplace and talk to them and I will be happy to do that."

Going door-to-door, as the member says, visiting with persons in their homes, is because there can be no disruption of the workplace, not even a threat of disruption of the workplace. It is very difficult to even find out who the employees are in many many situations. Employees come to a bargaining agent and ask them to organize and then it is up to the organizing agent to determine who the employees are and ask them whether they wish, in fact, to have a bargaining agent. I am free to welcome anyone I wish into my home and that is true of any other person in this province, in fact in this country.

MR. F. JOHNSTON: When the Minister referred to Mr. McGregor's statement, I refer to hers, that she's free to welcome anybody she likes into her home. That's quite true. These people are free to welcome anybody they like into their home.

The Minister would have the opportunity if she bought something to change her mind in most cases. In this case, the people don't.

MADAM CHAIRMAN: Mr. Banman, did you have a question or a comment?

MR. R. BANMAN: Yes, I would urge the Minister to, if she doesn't think this is that important a section that it's going to cause that much trouble, I would urge her in that case to pass it and allay some of the fears which have been expressed and some of the concerns that members of the opposition have put forward.

MADAM CHAIRMAN: Those in favour of the amendment, please say, aye. Those opposed. The nays have it. I declare the motion defeated.

Page 24—pass; Page 25 - Mr. Mercier.

MR. G. MERCIER: Madam Chairman, could the Minister explain why in section 36(4) the words "undue influence" are not used in addition to "intimidation, fraud or coercion"? Why is that level or that standard of proof required and not "undue influence"?

HON. M.B. DOLIN: I would refer the member to approximately a dozen answers on the same question.

Undue influence only existed in labour law in Manitoba and New Brunswick. Other jurisdictions have changed their labour law to read, threats, coercion, and so on as we have. We feel it is a move forward and in law we have been advised that it is the more appropriate terminology.

MADAM CHAIRMAN: Page 25—pass; Page 26 - Mr. Cowan.

HON. J. COWAN: Yes, Madam Chairman. I move

THAT the proposed clause 37(1)(a) of The Labour Relations Act as set out in section 25 of Bill 22 be struck out and the following clause be substituted therefor:

(a) the appropriateness of the unit; or

MADAM CHAIRMAN: Amendment—pass.

Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed subsection 38(1) of The Labour Relations Act as set out in section 25 of Bill 22 be amended by striking out the words "or composition" in the 2nd line thereof.

The intent of this is to strike cut the words "or composition" in subsection 38(1).

HON. M.B. DOLIN: Because they're unnecessary.

HON. J. COWAN: Because I'm informed, Madam Chairman, that in the opinion of those people who are responsible for this legislation, they are not necessary to provide for the intent of that specific clause.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Who are those people responsible for this legislation?

HON. J. COWAN: I would have to suggest that the government itself is responsible, but that the Minister of Labour, on behalf of the government, would be pleased to provide more elaboration if necessary.

MADAM CHAIRMAN: Ms. Dolin.

HON. M.B. DOLIN: Thank you for the long worded invitation, Mr. Cowan.

I am advised by the same person who you complimented just moments ago at the clever drafting of your own amendment, that this is not necessary.

MADAM CHAIRMAN: Amendment—pass.

Mr. Banman.

MR. R. BANMAN: I move

THAT the proposed section 38(1) of The Labour Relations Act as set out in section 25 of Bill 22 be amended by striking out the words "but an employer has no" in the 3rd last line thereof and substituting therefore the words "an employer has".

MADAM CHAIRMAN: Those in favour of the amendment.

HON. M.B. DOLIN: Wait a minute, I want him to explain.

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: One of the areas of contention which was brought to the committee's attention was the fact that employers really now have no status when it comes to a certification application. I would suggest to the Minister that we really have, by this section and several others, just about neutered the employers when it comes to dealing with the rights to have anything to say at any particular time with regard to the certification process, or the certification itself.

I believe that if we are talking, the government is often espousing the philosophies of individual freedoms, individual rights, here's a classic case where really what we're doing is muzzling the employers all through the unionization process and now we come to a time where they really haven't even got a status before the board. I find that a very distasteful type of approach to handling this whole act.

I would urge the Minister to support this change so that the employer does have some avenue and some area where he or she can make representation with regard to their wishes and possible wishes of the employees that they have working for them. So I would urge the government to support this amendment.

MADAM CHAIRMAN: Ms. Dolin.

HON. M.B. DOLIN: The intent of this section is not to disallow the employer from any complaint to the board that there might have been, as we have in other sections, fraud or threat or coercion in the gathering of the signatures.

But what is not appropriate is for the employer to come before the board and argue that that employer doesn't want a union. The employees have the right and that's what we were saying, it's the desire of the employees, the true wishes of the employees. They have the right of free association and they have the right to choose a bargaining agent. Maybe the Member for St. Norbert had some comments he wanted to make too. If he could suggest to me other than a complaint against the way in which the signatures were gathered, which the board would determine by investigation, of course, as it determined whether certification was appropriate, what else the employer would have to say, perhaps we could be clear on where we stand on this.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Madam Chairman, could the Minister indicate in how many other jurisdictions similar non-status is given to the employer?

HON. M.B. DOLIN: If the member will give me a moment, I will get that answer.

I don't have a breakdown on the jurisdictions across Canada, but I can tell you that the status of the employer in this regard was removed in the early 1970s in Manitoba. It's consistent with the current act. We would have to check other jurisidictions to be sure whether or not it appears there. I just don't have that information in front of me right now.

But it's no change from the present act. The status of the employer as someone to appear before the board and complain that they don't want a union was removed early in the 70s.

MR. G. MERCIER: Just one final question. Can the employer make representations with respect to the appropriateness of the unit for bargaining?

HON. M.B. DOLIN: Yes.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Madam Chairman, I just wanted to make the point that the Minister is indicating that this is no different from the current act, but what is being changed in the meantime is the fact that 38(2) is changed and once the cards are submitted in 55 percent of signed cards, there is no opportunity for other employees to make representation or to have discussions or to try and further affect the process.

Therefore, it would seem reasonable under the circumstances that the employer would have at least some status to be able to discuss maybe unfair labour practices on the part of the union or on the part of the organizers, or indications on his part of knowledge of fraud, coercion or any of those things. He should have some status, since the employees no longer have an opportunity to have a cooling-off period or an opportunity to, for instance, counsel their fellow employees against the union.

I think that's the difference and that's what ought to be considered. The employer should have status because you're taking away the rights of other employees, for instance, to change the certification.

HON. M.B. DOLIN: Let's be clear on this. The no-status situation of the employer is in relation to employee wishes and you were talking, I believe, about several other aspects.

MR. G. FILMON: Since the employees themselves have no opportunity once the cards are submitted and the certification process is proceeding, they have no opportunity to change that or to have any discussions with fellow employees or anything else other than making allegations and being able to substantiate allegations of fraud, coercion - or whatever those three terms that are in the section. Since that has been precluded, then I believe it's only fair that at least the employer should have status to give testimony as to employee wishes. Somebody has to have status to give the other side

MADAM CHAIRMAN: The question on the amendment. Those in favour of the amendment please say aye. Those opposed. The nays have it and the amendment is defeated.

Mr. Mercier.

MR. G. MERCIER: Section 37(3) on that page, is that a change?

HON. M.B. DOLIN: Section 37(3) refers, as the member will see, back to section 37(1) where it is a representative

of the board that may have been asked to gather relevant information and prepare a report for the board.

MR. G. MERCIER: I understand that, Madam Chairman. I read the section. I want to know why that person's report, which section 37(2) says is admissible in evidence in the certification proceeding as prima facie proof of its contents. 37(3) goes on to say that the person who prepares the report is not a compellable witness. Is that a change in the proceedings? Why shouldn't he or she be a compellable witness and be subject to cross-examination on the report?

HON. M.B. DOLIN: The subject of cross-examination? It's a report to the board, I would first remind the member. In a search of the jurisdictional law in this case, it is found that this works very well in the Province of Alberta and has for some time.

MR. G. MERCIER: Is this a change in Manitoba?

HON. M.B. DOLIN: With the board's increased powers and increased support, the board will have, in fact, persons that it can ask to do some of the investigative work that is necessary to determine whether it should or should not act on any particular case. You'll find that throughout, and this is a whole new section.

MR. G. MERCIER: Why shouldn't the person who makes the report which is accepted as prima facie proof of its contents under section 37(2), be subject to questioning on that report and be a compellable witness?

HON. M.B. DOLIN: I have a little trouble trying to determine why the person would be cross-examined under the card system of certification. But what we know that the board intends to do is to not only clarify but publicize and make much stronger its system of determining accurate signatures. The signature system, of course, in a card system is tighter than it is in other kinds of systems and I can refer you to the Saskatchewan system in that case. But I'm trying to imagine who the member would think we'd be cross-examining. It's a report for information.

MR. G. MERCIER: Madam Chairman, the Minister says it's a report for information. It's more than that. Under section 37(2) it's prima facie proof of its contents; and under 37(1) it's a report requested by the board related to the appropriateness of the bargaining unit or the employer's operations. But under section 37(3), the person who prepares the report is not a compellable witness in the certification proceeding.

Now with all due respect to the employees of the board or the employees of any board or department, they're not perfect, mistakes can happen, and why shouldn't the person who prepares that report be subject to questions on that report?

HON. M.B. DOLIN: The intention of the section, and I think the section has to be taken as a whole, is to allow the board to use its own representatives to help eliminate delays in the certification process, by gathering information, preparing a report and submitting it at the prehearing stage.

MR. G. MERCIER: Madam Chairman, with all due respect to the Minister, she doesn't seem to understand.

This report under 37(2) is prima facie proof of its contents and the person who makes the report under 37(3) is not a compellable witness and therefore can't be asked questions on the report.

I submit that, human nature being what it is, mistakes will be made from time to time. Why can't that person be a compellable witness where the findings are questioned?

HON. M.B. DOLIN: These people who would be gathering information, are acting in good faith as employees of the board. Okay?

MR. G. MERCIER: So why wouldn't they answer questions then if they're asked?

HON. M.B. DOLIN: I was just checking this for accuracy too, but I think the members are quite aware that conciliation officers and mediation officers, they aren't called either. It's the same principle.

MR. G. MERCIER: These are special reports prepared for the board. The Minister says it's a new section. Is the Minister saying these people are perfect and they will not make any mistakes in their findings?

HON. M.B. DOLIN: The information that is gathered and given to the board is shared with the parties. The parties can challenge any portion of that that they wish.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Maybe I can be helpful, Madam Chairman, but yes, the parties can challenge the facts of the report, but the report is taken as prima facie proof of its contents and the person who prepared it can't be asked to give evidence, can't be compelled to give evidence. So, therefore, if one of the parties believes that there is an error, for instance, in the description of the employer's operations, they can't ascertain whether or not the person having prepared the report understands that it was an error, or took some things into account. Why wouldn't you want them to be compelled to at least give evidence on the report they've prepared?

HON. M.B. DOLIN: The parties, should they see such perceived error in the report, can easily submit evidence to the contrary in order to prove their case.

MR. G. FILMON: Who would be hurt by having the person who prepared the report asked to come forward, or required to come forward, as a witness?

HON. M.B. DOLIN: What would be gained by this?

MR. G. FILMON: What would be gained would be the opportunity for fairness and justice in ascertaining the correctness and the veracity of the information and an opportunity to cross-examine.

Openness, fairness, that's a laudable objective and it seems to me is one of the objectives of the whole labour relations' process. If that could be achieved by

having a person asked to come forward or required to come forward and give testimony as to the report they've prepared, it seems to me that that's a laudable objective and everyone would gain by that kind of openness and fairness.

MADAM CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: I have a question for the Minister. Was it not the case that these reports are prepared at the present time for the Labour Board but are not made public and the purpose of this section is to make that report public so that both parties can have access to it? At the present time, those reports are done, but are not made public?

HON. M.B. DOLIN: Yes, that is the present practice of the board.

HON. E. KOSTYRA: So the purpose of this amendment is to ensure that both parties to the application are aware of the information that the board bases its decision on and have the right to challenge or to question that information?

HON. M.B. DOLIN: That's exactly correct. That's 37(2) plus the information in 37(1); but 37(2) expands the information given to the parties.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Well then it would seem to me to be a natural and logical extension to have the person, who prepared the report, be available to be questioned.

MADAM CHAIRMAN: Page 26—pass; Page 27 - Mr. Ashton.

MR. S. ASHTON: Madam Chairperson, I move

THAT the proposed clause 39(2)(a) of The Labour Relations Act as set out in section 25 of Bill 22 be struck out and the following clause be substituted therefor:

(a) describe the unit or proposed unit for the purposes of taking the vote and, where necessary, the professional employees in the unit or proposed unit practising each separate profession; and.

MADAM CHAIRMAN: Amendment—pass.
Mr. Ashton.

MR. S. ASHTON: A further motion, Madam Chairperson. I move

THAT the proposed subsection 39(3) of The Labour Relations Act as set out in section 25 of Bill 22 be struck out and the following subsection be substitued therefor:

Application of quick vote.
39(3) Where the board has ordered and conducted a vote among employees in a proposed unit prior to determining the appropriateness of the unit for collective bargaining, the board shall, upon determining the unit which is appropriate for collective bargaining, proceed to determine to its satisfaction the percentage of the employees in the appropriate unit who wished to have the applicant union represent them as their bargaining agent at the time the application was made, and where the percentage is as described in clause 31(1)(b), the board may treat the vote referred to in this subsection as a vote conducted in compliance with clause 31(1)(b) and is not required to conduct any further vote in order to comply with clause 31(1)(b).

MADAM CHAIRMAN: Amendment—pass.

Before we pass Page 27, the word "certification" in the very top line of the page, has an extra "i" in it, a typographical error. Will you correct that?

Page 27 as amended—pass; Page 28—pass; Page 29 - Mr. Ashton.

MR. S. ASHTON: I move

THAT the proposed section 42 of The Labour Relations Act as set out in section 25 of Bill 22 be amended by striking out the word "voting" in the 2nd line thereof and substituting therefore the words "who vote".

MADAM CHAIRMAN: Amendment—pass.
Mr. Ashton.

MR. S. ASHTON: I move

THAT the proposed section 43 of The Labour Relations Act as set out in section 25 of Bill 22 be amended by striking out clauses (a) and (b) thereof and substituting therefor the following clauses:

(a) upon an application made to the board by
  (i) any employee in the unit, or
  (ii) the employer of the employees, or
  (iii) any union which appeared before the board when the bargaining agent was certified; or
(b) after a hearing held by the board on its own motion.

MADAM CHAIRMAN: Amendment—pass.

MR. E. SZACH: Before you pass the page, Madam Chairperson, another typographical error - leave of the committee to correct the word "process" in the last line of subsection 41(4). Add an extra "s".

MADAM CHAIRMAN: Page 29 as amended—pass; Page 30 - Mr. Kostyra.

HON. E. KOSTYRA: I move

THAT the proposed section 45 of The Labour Relations Act as set out in section 25 of Bill 22 be amended by adding thereto, immediately after the word "and" in the 3rd last line thereof, the words and figures "subject to clause 35(c)".

MADAM CHAIRMAN: Amendment—pass; Page 30 as amended—pass.

Page 31 - Mr. Szach.

MR. E. SZACH: If I may interject, Madam Chairperson, just to point out that the continuing consolidation, sections 46 through 50 will be headed: Part 3 - Successor Rights.

MADAM CHAIRMAN: Page 31 - Mr. Banman.

MR. R. BANMAN: Successor rights and obligations. I guess dealing with mergers of the bargaining agent, can the Minister inform us what effect these two sections are going to have on subcontracting of work?

HON. M.B. DOLIN: Could I ask the member for a clarification? Are you talking about contracting out? Maybe you could explain a little bit further. Is it a construction project you're talking about, or what is it exactly?

MR. R. BANMAN: Let's take the example of someone doing a certain type of a job for the government on a tender basis; that particular individual is unionized. On a tender basis then, that particular contractor loses out to another one who is going to perform the job for the government. The new contractor is not unionized. Will this section say to that particular individual, or will it give the board the discretion to say to that individual, you have to now take over and bargain with the union that was with the other employer?

HON. M.B. DOLIN: The short answer to that is no.

MR. R. BANMAN: So the Minister is saying that, where a collective agreement is in place, it does not transfer to a new successful tender.

HON. M.B. DOLIN: To a new successful tender? No. This is not tender. We are talking about sales here and mergers.

MADAM CHAIRMAN: Page 31—pass; Page 32 - Mr. Mercier.

MR. G. MERCIER: Sale of business. Can the Minister explain the difference between this section and the present provisions of the act?

HON. M.B. DOLIN: The incorporation of the various sections that appear in the present act and that are now in what you see before you, in the amendments to the act, are a little complicated. If you'll let me read from the notes so that I can get the section numbers straight, I hope you will allow that.

The subsection, and I hope this answers your question. If it doesn't, ask it again or ask it more specifically. But the new subsection 47(1) together with section 49 incorporates the principles that are contained in the present act, 35(c) and 64(d), subsections 36(1), 36(3), 65(1) and 65(3).

When a business is sold or there is a merger or amalgamation of businesses the certification, bargaining rights and collective agreements which are in existence at the time, remain binding. I'll refer you there to clauses 47(1)(a) and 47(1)(b) which I think is what you are referring to.

Also, the successor employer becomes a party to the binding procedures. That's under the certification clauses that we have already talked about. Other proceedings including unfair labour practice proceedings and grievance arbitrations proceedings and so on, if those are in process at the time of the sale or merger. The closest reference that I can give you to compare this to is the Canada Labour Code.

MR. G. MERCIER: Would the Minister agree that the board has much more broad discretionary powers in these situations than they previously had under the old provisions?

HON. M.B. DOLIN: I would say that the powers of the board have increased, yes, in general, and it also includes this section because they may assist the parties in determining how that merger will take place. We talk about seniority rights, we talk about grievances and process and so on - those still continue and are inherited if you will, in the merger or the sale.

MR. G. MERCIER: Has the Minister given any consideration to the adverse effect that such broader discretionary powers might have upon someone who wishes to make an attempt to rescue a floundering or insolvent business and attempt to restore it to a viable operation?

HON. M.B. DOLIN: I would then refer that employer to section 47(3). It's on the next page, but I have to refer you to it to answer your question.

MR. G. MERCIER: What will the effect of that be?

HON. M.B. DOLIN: Well, I can cite a recent incident where I clearly watched on the late news one night, a bargaining agent offer to renegotiate a contract in order to maintain the jobs of the employees. So this kind of thing does happen and the opportunity for it in law is there. It says that the employer has the responsibility and inherits - the new employer as they buy a business - what is the status quo at the time. But there also may be some changes in the contract that can be negotiated, but it's a matter of negotiations.

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: What about in the case we just saw, the Superior Bus case?

HON. M.B. DOLIN: That was exactly the case I was citing, because I happened to have seen that particular bargaining agent offer to renegotiate the contract. However, the Superior Bus case is different in that it's a receiver manager and then a sale. There is a great deal of case law developing at this point around that issue and we have not dealt with that in the amendments because of the changing case law and our, I suppose, inability to predict which way that is going to go. We're waiting for decisions and we will watch very closely what happens. We haven't had, over the past 15 years or so, not until the last few years, the number of bankruptcies, receivers appointed, that sort of thing happen. So, the law is now just developing around that situation.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: What would happen in a situation where, for example, a business closed on February 1st,

it was a union agreement and two or three months later someone purchased the assets of the business and began to operate it as a going concern? Would this section have any implications, would that . . .

HON. M.B. DOLIN: I'm sorry, Mr. Mercier, I'm having trouble hearing you.

MADAM CHAIRMAN: Mr. Johnston, could we have order? We can't hear.

MR. G. MERCIER: What would happen in a situation where a business closed, for example, on February 1st and two or three months later someone buys the assets of the business and operates it as a going concern? There was a union agreement in effect. Under these sections, could that union attempt to impose that agreement on the new purchaser of the assets who is then operating them as a going concern?

HON. M.B. DOLIN: I would think that it would have to be case specific because I wouldn't know whether the employees would have been laid off, with severance pay, disbanded, found other jobs. I wouldn't know whether they would be recalled as a unit by the new owner somewhere down the road. If the sale took place in perhaps a shorter period of time, I would say that it probably it would apply. But I think it would have to be case specific. It would have to be determined by the situation at hand and whether the employees were in fact there.

MR. G. MERCIER: I think it's important we get an answer on this question. On February 1st the employees are laid off; the business shuts down. Within two or three months, the employer sells the assets of the business and somehow the purchaser starts up the business two or three months later, four or five months later. Under that situation, could that purchaser of the assets, who is then operating them as a going concern, somehow be compelled to comply with the union agreement which had existed?

HON. M.B. DOLIN: I think there is a piece missing from this puzzle you are putting before us, and that's the layoff of the employees which would probably have been under the conditions laid out in the contract and they would have, in fact, been laid off. That would have terminated the contract. But on the face of it, yes, it applies. But you're laying out a case three or four or five months later. I'm sure those employees would have been laid off under the terms of their contract.

MR. G. MERCIER: If they were laid off under the terms of the union agreement . . .

HON. M.B. DOLIN: The business closes.

MR. G. MERCIER: . . . and the business closed, is the Minister then saying that that new purchaser would not be bound by the union agreement in that situation?

HON. M.B. DOLIN: The new owner has the same right of layoff under the contract that the previous owner had, but I guess I'm still puzzled by how four or five months later the new owner would re-employ. Now this might happen, I suppose, if you had people who were laid off and never moved away from a small town, let's say, and they still were there, I fail to see how they would have survived for those four or five months. So you would not, in fact, have them, but the new owner does inherit the contract with all of its clauses including its layoff clauses.

MR. G. MERCIER: Is the Minister saying that under the circumstances that I have cited, the purchaser of those assets who starts up the business, two, three, four, five months later, would be bound by the terms of that union agreement that the union had with the vendor of the assets of the business?

I ask this question in all sincerity because it is a situation that happens on a regular basis, and with the state of the economy over the past two years, it happens on a regular basis. I would like to have a definite answer.

HON. M.B. DOLIN: If the member could refer to Page 32 at the bottom, 47(2)(b), "at the time of the sale a union is bargaining agent for any of the employees employed in the business . . . "If there are no employees employed in the business, I think you have your answer. It's talking about the employees employed in the business. There is no business.

MR. G. MERCIER: Is the Minister saying then that the purchaser in those circumstances would not be bound by the union agreement, because at the time of his purchase of the assets, the business was not operating and the employees were not employed in the business?

HON. M.B. DOLIN: This is getting extremely hypothetical, because we're talking about a situation I believe where there is a business that is not operating, maybe an empty building for all I know, has nobody employed in it, has a number of people - the former employees - all laid off by the previous owner and someone comes along and purchases what's left of that business. Sometimes when they purchase, as you said at the beginning, the assets of that business, there certainly have been times when the only asset left was a pension fund and businesses have been purchased just for that and never operated. So again, as I say, we are really far into the land of hypothesis here.

Should the new employer have a few people still left, a skeleton crew, let's say, keeping the plant under surveillance, the maintenance staff or something like that still there, yes, the section would apply. The balance of the time of the contracting - you're talking four or five months, it probably was in effect for a while, it might be a week a month, two months to run - yes, that contract is in effect with all of its clauses and any recall provisions that might be there in the contract. If the new owner started up the business I would think that that owner would have to abide by the recall, the seniority lists and so on, provided for in the contract.

MR. G. MERCIER: The Minister's answer then causes me a lot of concern, because there have been during the past few number of years with the economy in the shape it's been, a number of businesses that have shut down because they have not become viable operations.

The Minister's interpretation of the act and its intent is correct. It is certainly going to discourage and act as a disincentive to people who want to attempt to rescue businesses that have floundered or become insolvent.

HON. M.B. DOLIN: The member's intent is now clearer to me as well, because I believe what you are suggesting, Mr. Mercier, is that it would be appropriate for someone who is in a floundering business, or a business that's in trouble - let's assume that it is, we don't know that, we don't see the books but we assume it's in trouble - that business is closed down and sold, and comes back without a union, without a bargaining agent. That's no way to treat people. That's no way to get rid of a union; that's not appropriate.

MADAM CHAIRMAN: Page 32 - Mr. Banman.

MR. R. BANMAN: The Minister is saying, let's use an example of San Antonio Gold Mines. They've been closed down and the assets are left in place; it's closed for five or six months and somebody manages to buy it. Is the Minister saying that if there's a contract that's still in place, that that new company has to take over that contract?

HON. M.B. DOLIN: That's correct.

MADAM CHAIRMAN: Page 32—pass; Page 33—pass; Page 34 - Mr. Harapiak.

MR. H. HARAPIAK: I move

THAT the proposed section 48 of The Labour Relations Act as set out in section 25 of Bill 22 be amended by striking out the words "respondents to the application" in the 4th line thereof and substituting therefor the words "parties involved in the alleged sale".

MADAM CHAIRMAN: Amendment—pass; Page 34, as amended—pass; Page 35 - Mr. Mercier.

MR. G. MERCIER: Section 50(1), is that a new section?

HON. M.B. DOLIN: No, that is not a new section.

MR. G. MERCIER: What is the existing section?

HON. M.B. DOLIN: The existing one is 119.1.

MR. H. HARAPIAK: I have an amendment from Mr. Mercier. I move

THAT the proposed section 50 of The Labour Relations Act as set out in section 25 of Bill 22 be amended

(a) by striking out the words "on its own motion" in the 1st and 2nd lines of subsection (1) thereof and substituting therefor the words "in any other proceeding before the board"; and

(b) by striking out subsection (2) thereof and substituting therefor the following subsection:

Duty on affected parties.

50(2) Where on the hearing of an application or in the course of a proceeding referred to in subsection (1) it is alleged that more than one corporation, individual, firm, syndicate, association or any combination thereof are or were under common control or direction, the parties affected by the allegation shall adduce all facts within their knowledge which are material to the allegation.

A MEMBER: Are you sure about that, Harry?

MADAM CHAIRMAN: Amendment—pass?

Ms. Dolin.

HON. M.B. DOLIN: The whole section has been clarified to indicate that. Do you want me to explain the section or the amendments, by the way? What are you asking for?

A MEMBER: The amendments.

HON. M.B. DOLIN: The proposed amendments to section 50 have been changed to make it procedurally parallel to the successor rights provisions. Thus the board will be able to make a determination of a single employer either on a special application or where the question arises out of any other proceeding of the board. In subsection (2), that has been changed to make it clear that in both such situations that I described, the parties who are alleged to be involved must provide the board with relevant information.

MR. G. MERCIER: Why is it necessary to put such a section in the act?

HON. M.B. DOLIN: As we pointed out, it's not entirely new. The section has been clarified to indicate that an application can be made for a determination that shows that two corporations are really one.

The present section seems to require that this determination can only be made in he context of some other proceeding. The reference for precedent - this section is virtually identical to section 1(4) of The Ontario Labour Relations Act.

MR. G. MERCIER: Why is it necessary though - I don't think the Minister has explained this - to say that the parties affected shall adduce all facts?

HON. M.B. DOLIN: To get information.

MR. G. MERCIER: Is that similar provision in The Ontario Act?

HON. M.B. DOLIN: I can read to you the entire section of The Ontario Act, but I will just look up that particular answer.

The section that responds specifically to your question in The Ontario Act is 1(5) "Wherein an application made pursuant to subsection 4, it is alleged that more than one corporation, individual firm, syndicate or association or any combination thereof are or were under common control or direction, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation."

MADAM CHAIRMAN: Amendment—pass?

Mr. Szach.

MR. E. SZACH: Madam Chairperson, just for the benefit of the members, pointing out that section 26 of the amending bill takes us into Part 4 of the Continuing Consolidation Division of the act which will be Part 4 - Collective Bargaining and Collective Agreements.

MADAM CHAIRMAN: Page 35 as amended—pass; Page 36 - Mr. Harapiak.

MR. H. HARAPIAK: I move

THAT the proposed subsection 54(2.1) in The Labour Relations Act as set out in section 26 of Bill 22 be struck out and the following subsection be substituted therefor:

Termination by strike or lockout.

54(2.1) A notice to bargain collectively given in the circumstances described in subsection (2) shall be deemed to be notice of termination of the collective agreement given under the termination provisions of the collective agreement for purposes of any strike by, or lockout of, the employees in the unit in respect of which the collective agreement is in force, and any strike or lockout which commences after the deemed date of termination of the collective agreement resulting from the notice is not contrary to this Act and immediately terminates the collective agreement.

MADAM CHAIRMAN: Amendment—pass.

Mr. Banman.

MR. R. BANMAN: I move

THAT Bill 22 be further amended by striking out Section 28 thereof.

Madam Chairman, in essence, what we're asking the committee to do is to resurrect the old section which, in effect, removes the new clause 58(1)(c) which asks the employer to cost out all benefits and provide those to a bargaining agent.

The costing out of that really means that the employer is supposed to effectively tell the bargaining agents the cost of the profit sharing, the pension plans, maternity leaves, holidays, part and privileges, etc., and I believe that particular section does nothing to enhance the collective bargaining process so I believe that we should revert back to the old act and leave it the way it was.

HON. M.B. DOLIN: It's for the information of the members of the committee. Recent case law has indicated that there should be a clarification of this section and that what is laid out in this section is part of the good-faith bargaining concept.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Madam Chairman, does the Minister not realize that if employers have to provide costing information, that may affect their competitiveness with other similar employers. Is this information confidential and will not be released to other employers?

HON. M.B. DOLIN: That can certainly be the agreement between the parties.

MR. G. MERCIER: Well, that could be the agreement between the parties, but there's no reference to an agreement in this section.

HON. M.B. DOLIN: Good-faith bargaining.

MR. G. MERCIER: The employer has to provide this information. What guarantees does an employer have that it will not be released by the union or by somebody else?

HON. M.B. DOLIN: I think that we need to restate the intent of good industrial relations and industrial harmony, and that is good-faith bargaining and a clear desire to come to an agreement on a contract situation between the parties. We know that the vast majority of our contracts in this province are reached in that way.

The few cases where it is impossible to get information and therefore determine what the situation really is, make it necessary sometimes for the board and, in fact, for courts - that's the development of the case law that I was referring to - to insist that information be shared. Otherwise, there is no way that parties can know what's going on with each other. That is what good-faith bargaining is all about and, as I say, it happens in 90 percent of the cases.

MR. G. MERCIER: What other jurisdiction requires employers to provide information with respect to the cost of benefits?

HON. M.B. DOLIN: I'd have to get that information for you, Mr. Mercier.

MR. G. MERCIER: As of now I take it, the Minister has had this kind of information with respect to other sections we've asked and where it's been advantageous, she has offered. I suspect here that there is no other jurisdiction that requires this kind of information.

HON. M.B. DOLIN: I have said I don't know. I will get the information for you.

MADAM CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Does this section mean that if a company that has head offices in other provinces or elsewhere with a branch in Manitoba, and the branch in Manitoba is negotiating with the union that's in Manitoba, that the company would have to produce it's books, it's statements, etc., and crossed out the benefits as stated in here when the negotiations are on? Is the Minister saying that the company would have to produce all of that during the bargaining?

HON. M.B. DOLIN: I think the question referred to a situation that was almost interprovincial in its nature. What we are saying here is the employees in that particular bargaining unit have a right to know the cost of the benefits that are considered part of their wage package. This is not out of line with recent pension legislation that requires members of a pension plan know the cost, the investment and the benefits that they'll receive from that particular employee benefit.

This is information that is considered by employers and employees clearly as a part of the collective bargaining situation, and as much as clear weekly or bi-weekly wages this is considered a part of the wage package and therefore the information has to be shared or a full assessment of the situation can't be made.

MR. F. JOHNSTON: Let me put it another way. If there's a national company with branches across Canada and the branches may deal with different unions but the company has employee benefits that they purchase as a group or from head office, etc., is that company expected to supply their costs of employee benefits and that makes it available to everybody else what they are able to purchase their benefits for?

Well if that's the case you can rest assured that there'll be a lot of people moving out of Manitoba, or they won't come to Manitoba. Who would come to Manitoba under those conditions when they have to disclose that kind of information? You wouldn't, anybody in their right mind wouldn't.

MADAM CHAIRMAN: Question on the amendment. Those in favour please say aye; those opposed. The amendment is defeated.

Page 36 as . . .

HON. M.B. DOLIN: Excuse me. I promised Mr. Mercier an answer with regard to jurisdictions. The answer is that this does not exist in other jurisdictions.

MADAM CHAIRMAN: Page 36—pass.

HON. M.B. DOLIN: We passed the page. We'll let you talk about it but we passed it.

MADAM CHAIRMAN: Mr. Banman did you want to speak on that page?

MR. R. BANMAN: Well, I think that's all the more reason for removing that - and that's been one of the major arguments throughout the whole exercise that we've been going through the last couple of days here - is that we are doing certain things which will be a disincentive to people to locate here. Here we have a section which we are now going to start blazing trails in a field which nobody else has entered before and I say to the Minister, that it's a wrong-headed move and we should not be passing it.

MADAM CHAIRMAN: Page 36 as amended—pass; Page 37—pass; Page 38—pass; Page 39—pass; Page 40—pass; Page 41—pass.

Page 42 - Ms. Hemphill.

HON. M. HEMPHILL: I move

THAT the proposed amendment to section 66 of The Labour Relations Act as set out in section 31 of Bill 22 be amended by adding thereto, immediately before the word "the" in the 1st line of the proposed subsection 66(2) thereof, the words and figures "where a collective agreement does not contain a provision of the kind described in clause 54(2)(a)".

MADAM CHAIRMAN: Amendment—pass. Page 42 as amended—pass.

Page 43 - Mr. Banman.

MR. R. BANMAN: At the bottom of 42 over into 43. I move

THAT the proposed section 68(3) of The Labour Relations Act as set out in section 33 of Bill 22 be amended by striking out clauses (a) and (b) thereof and substituting therefor the following clauses:

(a) the employee is a member of a religious group, and as a matter of conscience based on religious training or beliefs is opposed to belonging to a union or financially supporting it; and

(b) the employee has a person belief in these religious teachings and is committed to them.

Madam Chairman, we had a presentation yesterday which dealt with this section, and I think once again highlighted something that a number of us on this committee here tonight have been wresting with I guess - I for the last 11 years because I can remember this section coming forward back in 1974, one of the first years that I was in the Chamber - when the government at that time allowed this type of exemption and then a year later changed the act to what it reads now.

I guess one of the primary concerns that I have with this is that we really are not allowing the people who, by their own personal religious beliefs and convictions - prefer not to belong to a union. We are really not giving them the freedom of choice that we should. We're all concerned about the Charter of Rights; we're all concerned about the different freedoms that we all want to protect for different individuals and here's a classic case where the government can show that they really believe in some of the stuff that they talk about.

So I suggest to the members that this particular section should be passed. I believe, and I think it was brought out last night, that this will not create any large exodus out of any unions because of people exercising their rights in this particular section.

The gentleman before us yesterday from the Seventh-Day Adventist Church indicated clearly that while his particular church teaches that it's preferable not to belong to unions, that did not preclude somebody from belonging. So it really is left up to the individual choice and individual conscience.

So I say to the members of the committee, that I believe we should be allowing the people the freedom to choose whether or not they want to belong to a union, and then have those particular funds that normally would flow to them, go to a charity which is mutually agreed to by the union and the employer and the employee. I also would like to say that this section, as I mentioned earlier, has been of some concern to a number of people in this province over the years.

Every time this particular section comes up or The Labour Relations Act is opened up, there is always a group of people who come in and present their concerns with regard to this. I think it might be a very opportune time, in light of the fact that the Federal Government passed a Charter of Rights and we all are living under that, that these people be given that right, that privilege to exercise their true beliefs and follow their conscience.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairman, I too would like to go on record with respect to this particular section and make the following observations.

Yesterday or earlier on this morning, the response most often given particularly to questions asked by my Leader, as to why the act is now before us when the legislation that has stood in place since 1972 or 1973 apparently was reasonably effective in creating harmony in the labour relations scene, the answer most frequently given was, times have changed - 10, 12 years have gone by - we are facing different circumstances.

Simply to underline and support what my colleague, the Member for La Verendrye has said, yes indeed, times have changed. We now do have a Charter of Rights and a Constitution which, among other things, expressly sets out the religious freedoms that Canadians have a right to enjoy. We have made a point, Madam Chairman, in recognizing those religious freedoms. Even this government that has passed legislation such as compulsory helmet laws, will then exempt on grounds of religious freedom certain groups from that piece of legislation which their proponents say could be a matter of life and death.

We're now speaking about labour legislation, and we are not speaking about somebody that simply wants to get out of paying their dues. The option of making a contribution to a charity of one's choice is there. Perhaps even more importantly, the spokespersons from the Manitoba Federation of Labour last night, when asked this question directly by my colleague the Member for La Verendrye, acknowledged that the exemption clause for religious reasons was no problem to the labour movement, did not in any significant way create difficulties for organized labour.

Why then - and I plead with the Minister - not on this occasion and bearing in mind that, yes, times have changed . . . we didn't have a Charter of Rights in 1972 and 1973 and 1974, although those rights were there and taken for granted. But we now have a Charter of Rights, and indeed our whole society, and I say correctly so, has become more mindful of the rights of minorities. This government likes to remind all of us that that is certainly a commitment that they share.

I must put on the record the rather cynical behaviour on the part of the New Democratic Party with respect to this clause. It was first introduced by the then Labour Minister, Mr. Russ Paulley, in 1973. Pardon me, it was not in the bill that he introduced in 1973, but accepted at the urging of the opposition which I had a part in and others. At that time, it was a particular religious sect known as the Plymouth Brethren that were very deeply concerned about the matter, among others. The then Labour Minister accepted the amendment at the committee stage, just as we are talking about it right now.

The then Minister of Labour, the New Democratic Party under Premier Schreyer accepted a religious exemption clause in their labour bill in 1973. Regretfully, I have to remind members, that was also of course an election year. It was changed the following year, in 1974. That's why I use the word "cynically", the cynical treatment that this particular clause has been given.

So, Madam Chairman, you know we haven't been winning many points tonight on this bill. Is there no generosity in her heart to acknowledge that the people that appeared before us do so for the most genuine reasons? Is she questioning the pastor, the minister of the Seventh-Day Adventist Church that appeared before this committee? Is she questioning the sincerity of the adherence of the group known as the Plymouth Brethren or indeed others that ask for this exemption to be broadened in the manner in which they've asked, people of the Mennonite faith, bearing in mind that the excuse most often given for the reason for this bill is that times have changed?

Well in this particular instance, I agree with her. Times have changed. We are more conscious of minority or religious rights and ought to be, and we've codified them in a Charter of Rights in our Constitution. I say to Madam Minister that it would not in one iota affect the significance of what you're doing here today with this entire package on Bill 22 to graciously accept and acknowledge the rights of that handful of people in this province that choose to exercise it.

HON. M.B. DOLIN: I am pleased to hear the member defend the Charter of Rights so sincerely now. I am sincerely pleased. I don't think that was always the case.

However, I want to concur that I listened most carefully to what was said last night and, in fact, it was not new. We'd had these discussions before. The member refers to the Plymouth Brethren. I can state in all honesty that the Plymouth Brethren practically wrote this section. It meets their requirements. They are extremely happy with it, and you can check that with any one of the 200 of them.

Seven appeared before the public hearings - I believe it was seven - they requested that this section be written in this way. What has changed in this section is that the board now can make the determination, and that is appropriate. The board can make the determination of the charity if there is a logjam between the person and the union.

What the amendment that is being proposed does is say that anyone of any religious faith who doesn't like unions, who doesn't feel that unions are appropriate, and I believe . . .

MADAM CHAIRMAN: Order please.

HON. M.B. DOLIN: . . . can say that they do not wish to be a member of the union. They can be a conscientious objector to unions.

Now what we have said here is that, if it's a tenet of the faith, if it's an article of faith, yes, that's appropriate. That is the exclusion. That's an exclusion that will be granted very willingly and automatically. What the representatives from the Seventh-Day Adventist last evening was saying was, that they did not like strike action, they did not like work stoppages. Now, they have the opportunity to either vote against the strike action, and even if it is taken by their colleagues, they have the right not to go on strike. We know that in this province, that can and does happen. Employees do continue to work while there is a work stoppage. All of that may take place.

In fact, in conversations that we had with the leaders of the Seventh-Day Adventist Church when we read them this section, they indicated to us that they felt it served their purposes. With that information, I think the section is appropriate and will be used fairly.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Madam Chairman, the Minister has given us the best reason why it should not be proceeded with in this form. She has said that it's specifically tailored to the needs of one particular religious sect - the Plymouth Brethren - but that others who has teachings of their church counsel against union activities or union-like activities, cannot have the same protection of this clause because they refuse to preclude or to state, as a tenet of their religion, that people are precluded from joining unions but they simply say as a part of their religious teaching that they prefer that people not join unions, then they leave some opportunity for individual discretion and decision. But Pastor McIvor clearly said that it was their preference that their members not join unions, but they refused to make it an issue which would preclude them from being a member of the church if they were a member of the union, or vice versa.

Because of the way in which this article is worded it says only, that if your religion says that you are precluded from joining a union, then and only then are you able to not join a union based on your religious beliefs as a conscientious objector.

It seems as though this is so narrrowly worded that it only applies to one religious sect, the Plymouth Brethren, and it leaves out other sects that have been referred to, Seventh-Day Adventists, Mennonites, and others and in that respect, it's obviously too narrow, and if the Minister's intent is to indeed, be true to her word and allow for conscientious objectors on religious grounds, then she should have no problem in accepting this amendment.

Even the Manitoba Federation of Labour have suggested that it wouldn't be a concern to them, that there wouldn't be many people who would be affected by this. It would probably be a handful at most and I see no reason why the Minister has now become so dogmatic that no matter what we propose, no matter what has been said here at committee, if it differs from her original intention, it's out. — (Interjection) — The Minister of Industry, Trade and Technology says they accepted one of our amendments. Hallelujah!

MADAM CHAIRMAN: Are you voicing a religious objection?

MR. G. FILMON: I'm thinking about religious objections, hallelujah.

Mr. Chairman, just in response to that, the Minister has no problem with the 44 amendments that are here because of shoddy draftsmanship that have nothing to do with the presentations that were made at committee during the past two days, these are going through by rote - and I predict that next year we're going to have another 40 of the ones they haven't found yet because of the hasty manner in which this whole thing was drafted - but here we have something of principle, something that would help individual people in this province, that would not just pay lip service to religious objectors on conscientious grounds but would give true meaning to that recognition, and the Minister says no.

HON. M.B. DOLIN: Madam Chairperson, the amendment proposed by the opposition member is simply too wide open to abuse, it is simply too wide open.

We have checked this section with the Seventh-Day Adventists and that was the religious group that presented to us last night and we are very aware of their concerns, and we are aware that they believe that this section meets their needs, and they believe that if they have someone who does not wish to be a member of a union in a closed shop - which is the only place that this would occur because no one is forced to join a union if there is a closed shop, that's where the situation might occur - that they believe that this section gives them the provision they need to exclude the member of their religion in that particular situation. It hadn't been an issue with any other religion. No one else has raised it, no one else seems to have that particular concern within their religion.

We did the same thing, the members might recall, in Bill 95 last year in The Pension Act. Again it was very satisfactory to the people who were concerned about it. Again, they told us what they needed in the act. We were very aware of their needs and we had the legislation drafted to meet their needs. There are very few people that have those needs and they did come forward to us and we did check it with them after it was finished. Members can check with various people on staff who talked to these people, who checked it out with them, who had them come back, and I know we have letters that are filed saying thank you, this is what we wanted in the legislation.

MR. G. FILMON: Yes, I wonder if I could ask the Minister what percentage of unions in Manitoba are closed shop?

HON. M.B. DOLIN: I don't know that, I'll have to get the information. — (Interjection) — Well, it's the same question isn't it?

MADAM CHAIRMAN: Question on the amendment?

MR. G. FILMON: Madam Chairman, I can't understand how the Minister can sit there and say that this is acceptable to the Seventh-Day Adventists when Pastor McIvor was here last night and proposed this very amendment that we've put forward, because he believed that what exists in the proposed Bill 22 is not acceptable.

HON. M.B. DOLIN: I've given the answer to that already.

MR. G. FILMON: Just so that I don't have to wait for a transcript of Hansard, would the Minister mind repeating the answer again?

HON. M.B. DOLIN: There seemed to be two religious groups that wish to have a religious objection included in the statute. One is the Plymouth Brethren. They clearly have written in the Articles of Faith, the tenets of faith of the Plymouth Brethren - I guess I'll paraphrase, I'm quoting their words - that they shall not be yoked to unbelievers. This means that they do not belong to any kind of an association, not just unions, but professional associations, pension plans, any other kind of employee benefit plans, they do not believe that they should belong to that; that is an article of

their faith. They believe that it is important that that be upheld in legislation. We agreed with them.

The Seventh-Day Adventists have not, in the articles of their faith, the fact that they should not or may not, or that they are precluded from belonging to a union or from any other organizations that I am aware of. What they do teach - and I, not being a member of that faith don't know whether this has the strength of an article of faith or the tenet of faith - Pastor McIvor would, I believe, teach that it is an article of faith and would defend the right of one of the members of his church to not join a union, he says that he would and has, in fact, appeared before the Labour Board and had his church member excluded, but it isn't all of them. It isn't all of the members of the Seventh-Day Adventist Church, and what he clearly explained is that it's not union membership and it's not the benefits accruing from union membership that they object to or that they teach any objection to, it's some of the actions taken by unions in their bargaining, in other words, strike action.

When he was questioned on this, and I believe we can check this in Hansard, he agreed, yes, it was the work stoppage, in particular, that they object to. I have explained that it is not necessary to be excluded from union membership in order to be excluded from work stoppage or from a strike action. In fact, in many cases, one does not have to be a member of the union if one is simply included in the bargaining unit.

What does accrue to the member of the bargaining unit is the benefits of union membership, in other words, the wages, the employee benefits, that member of that particular faith does gain. That's the difference, as I understand it, between the Plymouth Brethren and the Seventh-Day Adventists. I respect the right of all of those people to hold their personal beliefs, to live by their personal beliefs, but I would suggest that it is incumbent upon the person to be able to show to the Labour Board - and that's the only change that's in here, you know; it's not the union that determines it, it is the Labour Board - that it is, in fact, a teaching, a tenet, an article of faith.

Now since those are the two religions involved in this, those are the two that have come forward, no other one has been mentioned, and I would suggest that if the Member for La Verendrye is suggesting that any member of any faith, because they happen to be a member of a religion - and I don't know why we would just limit it to religions then - can say I am a conscientious objector to unions and, therefore, be excluded under this clause, that's the kind of wide-open situation we would have.

Now we are only talking here about presentations from two religious sects. We have met the needs of both of them. They have confirmed that with us. Pastor McIvor has, in fact, appeared before Labour Boards under similar clauses and had his members excluded. He believes that this would cover conscientious objectors from his faith, and I agree with him and I agree with his right to appear before the board on their behalf.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Madam Chair, that is not what Pastor McIvor said. He said he had appeared before other labour boards in other jurisdictions, including Saskatchewan, where it is not worded in this manner, and he was successful on behalf of people of his faith. He further said that he did not believe that, because of the way this was worded, it would exclude members of his religious faith.

I further want to correct the Minister, because she said that this was open to anyone to say that they are conscientious objectors on personal grounds, because it says very clearly in this proposed amendment, and I quote: ". . . based on religious training or beliefs as opposed to belonging to a union." So they have to demonstrate that it's their religious training and beliefs that make them a conscientious objector, and it is not wide open to anybody under any circumstances.

MR. H. ENNS: Just one final comment, I simply add to that which has already been said and remind the Minister that, by way of an example, it's true that some particular religious faiths have, for instance, pacifism as a tenet of their faith and in time of war, as such was the case in the last World War, exercised that right and it was recognized on conscientious grounds.

However, Madam Minister, it was not at all exclusive to that particular faith because the Roman Catholic or the Jewish faith or the United Church or the Anglican Church did not specifically have it as a tenet of their faith. There were conscientious objectors acknowledged from those other religious groups and bodies, if they could demonstrate that it was indeed a matter of personal conviction and personal conscience that could stand the test of scrutiny in front of some judicial body.

Now, Madam Chairman, that truly is what the Charter of Rights talks about when we talk about the freedom of religion. We're not talking in the narrowly defined sense that the Minister is talking about, who makes her judgment on the basis of who appeared before this committee or who appeared before an inquiry earlier or had discussions with her. That is not the case at all. If that is her narrow definition of religious liberty and freedom in this country, then I beg to differ from it.

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: One of the things I would like to point out to the Minister, if she did a little bit of research on this issue, she would find that this particular issue is not just isolated to the two religious groups that she's talking about. There have been a number of Mennonite people that have been involved over the years who have come and seen me, who have gone to the board, who have gone to great lengths trying to take advantage of this particular section, because they felt that their religious belief was such and their conscience dictated to them that they should not be involved in this type of union activity.

Now I say to the Minister that one of the problems that she has in dealing with this section is that she is dealing with people who have to express their personal beliefs. Personal salvation doesn't come from joining an organization that has a certain set of guidelines; it's a very personal thing. Many churches have adopted, as Pastor McIvor said, the approach that they will not, because somebody joins a union, ask them to leave their congregation. That is up to the person to decide for himself or herself.

I say to the Minister that we've just gone through a whole year of dealing with an issue which the government constantly kept talking about minority rights and how the government has to protect the rights of minorities and individuals. We heard that every day in the Legislature. Here is an opportunity for them to practise what they were preaching the whole year, and allow some individuals who, by their own personal religious beliefs, really believe that they should not belong to a union. Here is a chance to demonstrate what you've been talking about all the whole last year.

MADAM CHAIRMAN: Question on the amendments. Those in favour? Those opposed? The amendment is defeated.

HON. M.B. DOLIN: They've suddenly discovered minority rights.

MADAM CHAIRMAN: We have another amendment on Page 43.

Ms. Hemphill.

HON. M. HEMPHILL: I move

THAT the proposed clause 68.1(b) of The Labour Relations Act as set out in section 34 of Bill 22 be amended by striking out the word "or" in the 4th line of subclause (i) thereof and substituting therefor the word "and".

MADAM CHAIRMAN: Amendment—pass; Page 43 as amended—pass.

I'm wondering if the committee would be interested in taking a five minute break, a recess?

HON. M.B. DOLIN: The Minister is interested, the Minister is going to take a two minute break.

MADAM CHAIRMAN: Can we continue in the Minister's absence? We'll continue then, Page 44 - Mr. Banman. You'll wait? You want to wait till she gets back?

MR. R. BANMAN: Please.

MADAM CHAIRMAN: All right, we'll take a five minute recess.

(Recess)

MADAM CHAIRMAN: I'll call the committee back to order.

Page 44 - Mr. Mercier.

MR. G. MERCIER: Page 44 is part of section 35. I wonder if the Minister could . . .

MADAM CHAIRMAN: Order please.

MR. G. MERCIER: . . . explain why this legislation is really legislating so many provisions into a collective agreement?

HON. M.B. DOLIN: To maintain industrial harmony during the term of the contract.

MR. G. MERCIER: Why does the government feel it's necessary that they legislate these agreements rather than allow the process that has worked successfully over the past number of years to continue to operate? She herself has cited the record of strikes in this province as leading the country.

HON. M.B. DOLIN: Pardon, who's leaving the country? I'm sorry I missed that.

MR. G. MERCIER: Leading the country.

HON. M.B. DOLIN: You're opposed to Manitoba leading the country?

MR. G. MERCIER: No.

HON. M.B. DOLIN: What are you opposed to?

MR. G. MERCIER: If we're leading the country, why legislate these provisions into collective agreements?

HON. M.B. DOLIN: I think that the member is aware that the statistics that he is quoting and the . . .

MR. G. MERCIER: I'm quoting you.

HON. M.B. DOLIN: Yes, that's correct, and at this point in time we are doing very well, thank you, with regard to unemployment figures and with regard to work stoppages and so on. That isn't always the case.

I can only quote to you again the old adage that you don't wait until it rains to fix the roof. If something has worked very very well in 90 percent of the cases and is unattainable in the other 10 for one reason or another, then why shouldn't that other 10 percent be able to operate in the harmony that has been achieved by those who are able to bargain collectively, employer and employee, and gain that kind of harmony? We believe that is best for the industrial relations situation in Manitoba for everyone.

MR. G. MERCIER: Does any other jurisdiction legislate these principles into collective agreements?

HON. M.B. DOLIN: If you're talking about 69.1 or 69.2 - which one are you talking about, please?

MR. G. MERCIER: The principles in section 69.

HON. M.B. DOLIN: I'm sorry, I'm listening to several conversations here.

The deemed arbitration provisions, that's something that's been around for a long long time, Mr. Mercier, I don't understand your objection to them. I don't understand why you didn't repeal them when you had the chance if you didn't like them. They've been around for a long time - about 1970, that's about 14 years.

MR. G. MERCIER: My question was, does any other jurisdiction legislate these principles into collective agreements?

HON. M.B. DOLIN: The information I have from those who are familiar with other jurisdictions, are familiar

with labour statutes, they tell me that they would be astonished if it didn't appear in the others. I don't have those other statutes before me, so I can't give you explicit information. This is nothing new. I don't understand the objection.

MADAM CHAIRMAN: Page 44—pass; Page 45—pass. Page 46 - Mr. Mercier.

MR. G. MERCIER: Section 69.2(1), Madam Chairman, could the Minister indicate why there is no corresponding duty upon a union?

HON. M.B. DOLIN: I'm sorry, did you ask me another question?

69.2(1)? There are other provisions that require the union to administer their responsibilities fairly and this is the same requirement or the other side of the coin, if you will, for the employer to administer the contract fairly, the collective agreement fairly.

MADAM CHAIRMAN: Page 46—pass - Mr. Banman.

MR. R. BANMAN: I would wonder if the Minister could tell us 69.2(1) and 69.2(2). We talk about obligation to act fairly because the word "fairly" means, as we had in the House the other day, an example of what one person thought was fair and what another thought was not fair, does the Minister not feel that this section is going to lead to more grievances and cause more expense, rather than trying to clear up some of the problems which she thinks it will?

HON. M.B. DOLIN: I asked that question of a number of lawyers and of legal people. Those of us who are not lawyers may think that, Mr. Filmon, but lawyers are the ones who usually are the practitioners. In those who deal with this kind of law, lawyers, a number of them that I asked, assure me that there is a substantial case law surrounding the definition, if you will, of "fair" and "fairly" and "fairness" that has developed over the past number of years, probably since this act was amended in any substantial way.

The idea of fairness in law is clear.

MR. R. BANMAN: Let's say, for instance, in a retail business which has a collective agreement in place, the management decides to promote an outgoing individual to a senior position and even though that particular individual does not have seniority within the system, suddenly somebody with more seniority who maybe doesn't have that kind of an outgoing personality that's required for that position says, hey, this isn't fair. Does this section leave that, does that then become a grievance?

HON. M.B. DOLIN: It depends on whether the persons that you are describing are members of the bargaining unit, and it depends on the collective agreement that is in place if they are members of the bargaining unit.

MADAM CHAIRMAN: Page 46 - Mr. Banman.

MR. R. BANMAN: I just posed that question because I can see all kinds of things creeping in here which can really frustrate the system and cause for a lot more grievances, and I suggest to the Minister that this clause is probably a bit of a sleeper and it's going to probably cause her a lot of problems.

MADAM CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: This is obviously an assumption that employees are not fair, and the employees of this province haven't been fair and don't act fair. Now, if we write it in that the obligation of the employer is to act fairly, why can't you write it in that the obligation of the union is to be fair?

HON. M.B. DOLIN: That is included not in this section obviously because we're referring here to the employer - and I assume that wherever you said employee in your statement you meant employer - where it's the responsibility of the employer. I'm sure Hansard will pick that up.

The duty of the union, you say the bargaining agent, therefore the employee is to act fairly, it's covered under another section of this amending act.

MR. F. JOHNSTON: Where?

HON. M.B. DOLIN: It's section 16 of The Labour Relations Act.

MADAM CHAIRMAN: Page 46—pass; Page 47—pass. Page 48 - Mr. Banman.

MR. R. BANMAN: 75.1(1) - would the Minister not agree that this particular section promotes the win-loss system?

HON. M.B. DOLIN: No, the Minister would not agree.

MR. R. BANMAN: What concerns me in this particular section, Madam Chairman, is almost the intent to get the board to tell the employers how to run their business. I think it takes away some of the discretion, or it takes away the discretion not to impose. And I think there's only one other jurisdiction, which is Quebec, that has this type of legislation in place.

Since the majority of settlements in 1982 - for instance, I think something like 98 percent or 99 percent of the settlements - were reached at without work stoppages. Does the Minister really feel that at this point in time this particular section is necessary?

HON. M.B. DOLIN: This section was brought in two years ago, as the member will remember perhaps, and it has been remarkably successful in its deterrent effect, which is the effect that was hoped that it would achieve.

There have been 11 applications to date; there have been only three contracts imposed; five agreements were reached by the parties within the time limits - and the member knows there is an extension, I believe, to those time limits that the board can and does offer to the parties - and it does assist them with reaching their own agreement and helps them through the impasse. This is for first contracts only, and the member I think understands that it is the most difficult time of bargaining.

What it does assure is that there will be a contract that is fair, and I'm giving arguments that were given two years ago, of course, that looks at the situation in the industry; that looks at a number of different factors in designing that contract if, in fact, the board does have to impose the contract, but in the majority of cases either the solution is reached by the parties, that's the majority of the cases, or as I say in three cases over two years there was a contract imposed and then the parties are assisted in living with that contract. In other words there is a sort of counsellor there to help them to live with the contract. That is even more assistance in maintaining industrial harmony.

We don't want these parties to be at each others throats. We don't want them to be arguing forever about what should or should not be in the contract or refusing to meet. We do assist them with conciliation services. In fact, that's one of the new requirements because that's been our past practice, that we have said that they must have gone as far in their bargaining as to have asked for a conciliation officer and had the help of that conciliation officer and still not have been able to reach a contract before they apply for first contract.

Now when there was the application to the Minister to refer - I'm sure the member is aware - that all that the Minister did, and this was evolved through practice and policy and hadn't had to be consistent for every application, was to check that the union was certified; check the statutory time limits and so on; make sure that everything that had to be met was, in fact, met by the parties; and then the referral was made to the Labour Board.

But a political judgment call on whether a first contract should be imposed or not is not appropriate and we feel that politics should stay out of this and that the Labour Board should be assisting the parties.

MR. R. BANMAN: That's why we're here. Madam Chairman, politics should stay out of it. That's why we're here, and that's why we are facing this bill because of politics.

Madam Chairman, I move

THAT the proposed section 75.1 of The Labour Relations Act as set out in section 37 of Bill 22 be amended by striking out the word "shall" where it appears in the 2nd line of subsection (2) thereof, the 4th line of subsection (3) thereof and the 4th line of subsection (4) thereof, and in each case substituting therefor the word "may".

MADAM CHAIRMAN: In terms of order, we haven't passed 47, and your amendment is on Page 48, Mr. Banman. Can we deal with Page 47, and then go back to your amendment? Mr. Mercier was before you.

Okay, Mr. Filmon.

MR. G. FILMON: Before we pass 47, in the title of section 69.3(2), is that supposed to be, "Deemed consolation" or "Deemed consultation"?

HON. M.B. DOLIN: The title?

MR. E. SZACH: It's supposed to be "consultation." The section headings also are not part of the statute technically, so they're changed in our office. However, I appreciate that being pointed out because I didn't catch that.

HON. M.B. DOLIN: Where's the consolation? I need a little consolation.

MR. E. SZACH: It's in the first heading on the page.

HON. J. COWAN: See, you've won one, Gary.

MR. G. FILMON: Can I trade that for another one?

HON. J. COWAN: No, you've got to use that one.

SOME HONOURABLE MEMBERS: Oh, oh!

MADAM CHAIRMAN: Order please, order please. Mr. Szach.

MR. E. SZACH: While we're in the technical end of it, I would like the committee's leave to change a typographical error in the 3rd last line of the page, the word "officer".

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Madam Chairman, the Minister has expressed support for the Labour Board during discussion of the past pages. Does she truly have that confidence in the Labour Board in giving to it the discretionary powers that she has so far in the amendments to the act we've considered?

HON. M.B. DOLIN: Yes, I do have that confidence in the Labour Board, and our government has that confidence in the Labour Board. So does the Labour Management Review Committee and representatives of management in business. They have asked for a stronger, better supported, more powerful Labour Board.

MR. G. MERCIER: Madam Chairman, if the Minister does have that confidence, I ask her, in considering the amendment from the Member for La Verendrye to consider the fact that similar legislation in B.C. and in Ontario and the federal legislation does give discretion to the Labour Board as to whether or not they will impose a first contract . . .

MADAM CHAIRMAN: Mr. Mercier, on a point of order, may I interrupt? You're talking about Mr. Banman's amendment at this point? Could we pass Page 47 before we do that?

Page 47—pass. Page 48, Mr. Banman's amendment.

MR. G. MERCIER: Madam Chairman, I was referring to the legislation in other provinces. In fact, in all jurisdictions where they have first contract legislation, the Labour Board has discretion as to whether or not a first contract will be imposed. If she has this confidence, I don't see why she doesn't agree to the amendment because the effect of the legislative provisions could very well be that a party may benefit from bargaining in bad faith, because there is no discretion in the hands of the Labour Board to dismiss

an application where a party has been bargaining in bad faith. Surely an organization that does that should not benefit from the legislation.

I would ask her to deal with that question. Why does the government feel it so incumbent to require a first contract to be imposed, and the Labour Board not to be given that discretion when it is given that discretion in other jurisdictions and when the effect of this may very well be that a party guilty of bargaining in bad faith may benefit? My understanding is that, in fact, our Labour Board, in spite of the fact that they didn't have jurisdiction, in an earlier case said that they refused to impose a first contract because they felt the union was not bargaining in good faith.

HON. M.B. DOLIN: We feel, Mr. Mercier, that the deterrent effect of this section is enhanced by the clear and specific terms of the section. We feel it is one of the reasons that it has worked so well.

We also feel that employees who have chosen to be represented by a bargaining agent, who have chosen to be members of a union deserve to have the opportunity to live with a contract, live under a contract. Any practitioner on either side of this business will tell you, will assure you that the most difficult time for employees and employers is in the development of that first contract. They have no experience with it. They have not lived with the contract before, and often they need to be assisted.

Now we know that this is the most difficult time. We also know that most of these situations proceed without any assistance at all. Unions are certified; contracts are bargained and signed, ratified and so on. But in those instances where perhaps the employer doesn't really believe that the employees want the union or has no experience with negotiating with the union, and perhaps the union is dealing with an employer - it is obviously dealing with an employer it has not dealt with before - there is perhaps animosity that has built up. Perhaps there are problems that have developed. We want to be sure that is kept at the lowest possible level, and that the employees in that situation, the workers, are given a chance to live with the contract.

Now they may never sign a second contract. I don't know. I can't assure that. We can't assure that, but they ought to have the opportunity to live with the contract, both employer and employee. Our experience in the situation is that they do, in fact, devise their own contract in all but three of the cases.

MR. G. MERCIER: Why would the Minister not give the Labour Board the discretion to reject an application by a union for first contract where the union had been bargaining in bad faith?

HON. M.B. DOLIN: I find it interesting that the member is assuming that it's the union that is bargaining in bad faith.

MR. G. MERCIER: Take it the other way, either way.

HON. M.B. DOLIN: What would be the point of dismissing a case because they were unable to bargain? The whole point of the legislation is to get the parties to bargain, and to get a contract in place with the least amount of animosity or the least amount of tension between the parties.

MADAM CHAIRMAN: Mr. Fiimon.

MR. G. FILMON: Madam Chair, I believe that what we have been saying is not that the Labour Board should dismiss the case, but rather should refer the parties back to the bargaining table because they're not prepared to impose a contract at the time. They should have the discretion to do that.

That only seems to make good sense, and I would like to know what the Minister's response is to the question that the Member for St. Norbert asked. Why would she want not to give that discretion to the Labour Board to be able to refer the case back, and not have to impose a contract on that situation where there's a possibility that there's evidence of bad faith on either the part of the employer or the employees?

HON. M.B. DOLIN: What the Leader of the Opposition describes is exactly what happens. The Labour Board says, get back there and bargain. They even extend the time limits set out in the legislation, there's a provision for that. What they do say is, we're not going to tolerate this forever. Get back there and bargain but we're putting some time limits on it. If there is a charge, or a complaint of bad faith bargaining, that can be remedied in other ways under other sections of the act, there are remedies for that.

The board insists that the parties must bargain, they must bargain together, and they put time limits on it, and if the parties say at the end of I believe it's 60 days, look we've got some of these things out of the way but we have a few more to go, the board will extend that time and still help the parties to come to an agreement, but they will not tolerate forever the existence of a certified bargaining agent and an employer existing in a workplace without a first contract.

MR. G. FILMON: That's precisely the point, Madam Chairman, of limiting the time - the 60 days plus then within a further three days a notification that they have 30 more days - that limitation invites bad-faith bargaining because it says, all we have to do is wait another 30 days boys and we've got our deal.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairman, through you to the Minister. You know, just a few moments ago the Minister expressed her confidence and that of the government in the Labour Board with its enhanced authority. I recall distinctly at second reading of the bill the Minister took pains to tell the members about how she had, in her words I believe, depoliticized the board by the changes that were being made to the board in its makeup and in its tenure. You know, for all these reasons that the Minister herself gave us about the capacity of this board to act properly and appropriately, it's simply inconsistent that she would then not consider seriously the amendment before us.

Again I say to the Minister - and I think she's right in this instance - we're dealing in 1984-1985. The nature and the mandate of the board has changed. She prides

herself in some of the changes that she's made to that board in granting it a greater degree of independence and authority. Why then not allow what seems to be, for both the employer and the employees, discretion on the part of the board that is being asked for by this amendment?

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: Thank you, Madam Chairman. Through you to the Minister, suppose the applicant for the first contract refuses to bargain, what happens then?

HON. M.B. DOLIN: Suppose the applicant for the - I'm not sure of your hypothesis.

MR. R. BANMAN: Well, let's say somebody has managed to sign up enough cards and is not bargaining.

HON. M.B. DOLIN: They could not apply for first contract because they had to have applied for conciliation services and there are certain requirements before you get to apply for conciliation services. Bargaining has to have broken down before you apply for conciliation services and then the conciliation officer proceeds with the powers of the conciliation officer and that has to have taken place, as you will see by the amendments, before the application for a first contract is acceptable.

MR. R. BANMAN: But what we're saying here is that the board's hands are tied. The union can go through the motions.

HON. M.B. DOLIN: Mr. Banman, the board does not wish this section changed. It believes it works well.

MR. R. BANMAN: Well, what we're saying is that we now have a section here where there is no discretion left to the board. The Minister, as my colleagues have just said, has put her full trust in the board and we see a system here which can be improved by adding the word "may", and then instead of the board being forced to deal with things in certain ways they can use their discretion. The Minister, as I said earlier, has said that she believes the board can handle that discretion. Now that you've got this section, why would you want to treat it every differently than the other provinces have?

HON. M.B. DOLIN: This section works well for us. It has proven in two years to work well for us. The board has not requested a change here. They believe it is working well. It is a deterrent; that is exactly what it is supposed to be. Experience has shown us that we have a good section and it is not our intent to amend it.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: How many times has it come into play in the first two years, that particular aspect of that particular section?

HON. M.B. DOLIN: There have been, as I said, 11 applications made to date; three contracts imposed; five agreements reached by parties within the time limits; one union was decertified; one application dismissed; and one application is pending; that makes 11.

MR. G. FILMON: My recollection is that in some of those cases the board refused to impose a settlement so we didn't have the effect of this section in place for some of that.

HON. M.B. DOLIN: There was one and that was, if I'm not mistaken, the first one that went before the board, but I would have to check the records to see if it was actually the first one as it was at the very beginning.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Madam Chairman, I would ask the Minister to turn back to Page 29, section 41(4) where the board has a discretion to submit or to dismiss an application where, in the words of that section, "the bargaining agent made such efforts in good faith, but the employer failed or refused to make such efforts in good faith".

Now in that situation the board is required to exercise discretion, make a determination with respect to employer bargaining in good faith. We're just asking that in this area hereto that the board be given the discretion to determine and ensure that the applicant for the first contract has been bargaining in good faith.

HON. M.B. DOLIN: Mr. Mercier, I'm sure you could find many places throughout the amendments, and throughout the original act, where the board has discretion, even more in the amendments because of the increased powers of the board.

You will also find a number of places where there are time limits, strict time limits, that's what expedited arbitration, as an example, is all about - time limits.

In this case, we feel that the rules are appropriate and are correct. We have placed three amendments before you in this amending act. We believe that they're the appropriate ones. I think we're going around in circles, actually.

MR. G. MERCIER: Madam Chairman, just because the Minister feels we are doing the right thing, the Minister has arrogantly assumed that everything she does is right. She doesn't want to hear from anybody. She's heard from the Federation of Labour and the union organizers, and she's satisfied that that's all she wants to hear from. What she's doing here is inconsistent with the whole act and inconsistent with good collective bargaining.

MADAM CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: I'd just like to refer back to where we were discussing the time limit on grievances coming to the board and we regressed. We requested that there be a time limit of 6 months, 12 months and the Minister gave us a very long lecture at that time not too long ago tonight, that the board should have the discretion, the board was there to make those decisions, the board had faith in the board. Now, we have a

situation where grievances, they have all of that type of discretion and now they are not given this discretion.

MADAM CHAIRMAN: Are you ready for the question? Those in favour of the amendment please say aye; those opposed nay. The amendment is defeated.
Page 48—pass; Page 49—pass.
Page 50 - Mr. Szach.

MR. E. SZACH: Again, for the information of the members, starting with section 81, continued consolidation will read "Part 5, Lockouts and Strikes."

MADAM CHAIRMAN: Page 51 - Mr. Szach.

MR. E. SZACH: Starting with section 83, Part 6 will read, "Mediation, conciliation boards, and industrial inquiry commissions".

MADAM CHAIRMAN: (Pages 51 to 58 were each read and passed.)
Page 59 - Mr. Mercier.

MR. G. MERCIER: Section 98, the MARL brief, expressed a concern with respect to the entry and inspection powers under this section. Has the Minister considered that matter and is she considering any amendments to this section?

HON. M.B. DOLIN: This, as I understand from Legislative Counsel, is being examined in all of the statutes, this particular area. There may be amendments at a future date to all of the acts that contain this kind of clause.

MR. G. MERCIER: I know they're all being examined and there have already been amendments to a number of sections that have these powers. Why isn't this examined now when it's going through the legislative process?

HON. M.B. DOLIN: Well, in the interests of getting a uniform approach to the situation, it is felt that it's appropriate to examine all of the statutes and look at making them all consistent.

MADAM CHAIRMAN: Page 59—pass; Page 60—pass.
Page 61 - Mr. Szach.

MR. E. SZACH: Just point out that section 102, we start Part 7 of the act, grievance arbitration.

MADAM CHAIRMAN: Thank you.
Mr. Kostyra.

HON. E. KOSTYRA: I move
THAT the proposed clause 102(b) of The Labour Relations Act as set out in section 38 of Bill 22 be amended by adding thereto, immediately before the word "the" in the 1st line thereof, the words and figures "within the time prescribed therefor in a collective agreement, or where no such time is prescribed, within 10 days of the submission of the matter to arbitration".

MADAM CHAIRMAN: Amendment—pass; Page 61 as amended—pass.
Page 62 - Mr. Harapiak.

MR. H. HARAPIAK: THAT the proposed section 103 of The Labour Relations Act as set out in section 38 of Bill 22 be amended
(a) by striking out the words and figure "to arbitration in accordance with subsection (1)" where they occur in subsections (2) and (3) thereof and in each case substituting therefor the words "for determination by an arbitraton board"; and
(b) by striking out subsection (5) thereof and substituting therefor the following subsections:

Appointment by board.
105(5) Where
(a) either party to the arbitration fails to name an individual to be a member of the arbitration board; or
(b) the two individuals named as members of the arbitration board by the parties fail to agree on the appointment of a chairperson;
within the applicable time prescribed in this section, the board shall, on the request of either party and as the case requires, appoint the individual, the chairperson, or both.

Failure to comply with agreement.
103(6) Where a party submits a matter for arbitration by an arbitration board under a collective agreement which provides for the appointment of the arbitration board, but one or more individuals required to be appointed to the arbitration board is or are not appointed thereto within the time prescribed therefor in the collective agreement, the board shall, on the request of either party, make the required appointment or appointments to the arbitration board.

MADAM CHAIRMAN: Order please.
Amendment - Mr. Harapiak.

MR. H. HARAPIAK: I move
THAT the proposed section 104 of The Labour Relations Act as set out in section 38 of Bill 22 be amended by adding thereto, immediately before the word "No" in the 1st line thereof, the words "Unless the parties agree otherwise".

MADAM CHAIRMAN: Amendment—pass; Page 62 as amended—pass.
Mr. Harapiak.

MR. H. HARAPIAK: I move
THAT the proposed section 106 of The Labour Relations Act as set out in section 38 of Bill 22 be amended by adding thereto, immediately after the word "Act" in the last line thereof, the words and figures "and, at the request of either party, the arbitrator or arbitration board shall hear and determine any or all of the matters referred to in clauses (a) to (c) as part of the arbitration proceeding".

MADAM CHAIRMAN: Amendment—pass; Page 63 as amended—pass; Page 64—pass. Mr. Banman.

MR. R. BANMAN: I move

THAT the proposed subsection 109(2) of The Labour Relations Act as set out in section 38 of Bill 22 be amended by striking out clauses (f) and (g) thereof and substituting therefor the following clause:

(f) do two or more of the things set out in clauses (a) to (e).

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: Section (f), Madam Chairman, is one which, I think, has been identified by almost everybody who presented a brief before committee, and I think caught the attention of most members when going through the bill even the first time.

To allow authority even to the board to: ". . . do any other thing necessary to provide a final and conclusive settlement . . . "is something which, I believe, is putting too much power in the hands of the board. To go ahead and give someone that type of authority legislatively is something that I would not like to see. Therefore, we have moved here today that the section be deleted.

MADAM CHAIRMAN: Those in favour? Those opposed? I declare the amendment passed.

Mr. Cowan.

HON. J. COWAN: I wish to move a further amendment to the subsection

THAT the proposed subsection 109(2) of The Labour Relations Act as set out in section 38 of Bill 22 be amended

(a) by striking out the words "in discharging this responsibility" in the 3rd and 4th lines thereof and substituting therefor the words "without restricting the generality of the foregoing".

MADAM CHAIRMAN: Amendment—pass; Page 65 as amended—pass; Page 66—pass.

Page 67 - Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed subsection 112(2) of The Labour Relations Act as set out in section 38 of Bill 22 be amended by striking out the words "Notwithstanding any provision of a collective agreement" in the 1st and 2nd lines thereof.

MADAM CHAIRMAN: Amendment—pass.

Mr. Szach.

MR. E. SZACH: My apologies, Madam Chairperson. I was writing on the previous page. I wanted to seek committee leave to delete a word in section 111 on Page 66. I've got the word "and" twice in the first line. It's really unnecessary. I would like to delete the first "and".

MADAM CHAIRMAN: Could I have the committee's attention, please? Okay, is Mr. Szach's amendment passed?

HON. J. COWAN: I would think so.

MADAM CHAIRMAN: Page 67, as corrected—pass.

Page 68 - Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed section 113.2 of The Labour Relations Act as set out in section 38 of Bill 22 be amended by striking out the words "within fourteen days after" in the 6th line thereof and substituting therefor the words and figures "after the expiration of 14 days from".

MADAM CHAIRMAN: Amendment—pass; Page 68 as amended—pass.

Page 69 - Mr. Cowan.

HON. J. COWAN: I move

THAT the proposed subsection 113.3(1) of The Labour Relations Act as set out in section 38 of Bill 22 be amended

(a) by adding thereto, immediately before the word "Every" in the 1st line thereof, the words and figure "Except as provided in subsection (2)"; and

(b) by striking out the words and figure "subject to subsection (2)" in the 3rd and 4th lines thereof.

MADAM CHAIRMAN: Amendment—pass;

Mr. Cowan.

HON. J. COWAN: Madam Chair, I move

THAT the proposed subsection 113.3(2) of The Labour Relations Act as set out in section 38 of Bill 22 be amended by striking out the words "on the sole grounds" in the 3rd line thereof and substituting therefor the words "solely by reason".

MADAM CHAIRMAN: Amendment—pass; Page 69 as amended—pass; Page 70—pass; Page 71—pass.

Page 72 - Mr. Kostyra.

HON. E. KOSTYRA: I would further move

THAT the proposed subsection 113.5(8) of The Labour Relations Act as set out in section 38 of Bill 22 be amended by adding thereto, immediately after the word "shall" in the 3rd line thereof, the words and figures "whether or not the parties have jointly applied for a grievance mediator under subsection 113.4(1)".

MADAM CHAIRMAN: Amendment—pass; Page 72 as amended - Mr. Kostyra.

HON. E. KOSTYRA: I would further move

THAT the proposed clause 113.5(10)(a) of The Labour Relations Act as set out in section 38 of Bill 22 be amended by adding thereto, immediately after the word "dismissal" in the 1st line thereof, the words and figures "or the suspension for a period exceeding 30 days".

MADAM CHAIRMAN: Amendment—pass; Page 72 as amended—pass; Page 73 - Mr. Kostyra.

HON. E. KOSTYRA: I would further move

THAT the proposed clause 113.6(a) of The Labour Relations Act as set out in section 38 of Bill 22 be amended by striking out the words "shall be required"

in the 1st line thereof and substituting therefor the words "is competent or compellable".

MADAM CHAIRMAN: Amendment—pass; Page 73 as amended—pass.
Page 75 - Mr. Kostyra.

HON. E. KOSTYRA: I would further move
THAT the proposed subsection 119(1) of The Labour Relations Act as set out in section 39 of Bill 22 be amended by striking out the word "labour" in the 1st line thereof.

MADAM CHAIRMAN: Amendment—pass.
Mr. Kostyra.

HON. E. KOSTYRA: I would further move
THAT the proposed subsection 119(2) of The Labour Relations Act as set out in section 39 of Bill 22 be amended by adding thereto, immediately after the word "respectively" in the 3rd line of clause (c) thereof, the words "as the Lieutenant Governor in Council considers appropriate", and by striking out the same words in the 3rd last line thereof.

MADAM CHAIRMAN: Amendment—pass.
Mr. Szach.

MR. E. SZACH: In the continuing consolidation, sections beginning with 119 will be identified as "Part 8, Manitoba Labour Board and general provisions".

MADAM CHAIRMAN: Page 74 as amended—pass; Page 75—pass; Page 76—pass; Page 77—pass.
Page 78 - Mr. Kostyra.

HON. E. KOSTYRA: I would further move
THAT the proposed subsection 120(8) of The Labour Relations Act as set out in section 39 of Bill 22 be struck out and the following subsections be substituted therefor:

Majority decision at proceeding.
120(8) The decision of a majority of the members of the board or a panel present at a meeting or other proceeding is the decision of the board or panel; and if the votes are equal the chairperson of the board or the presiding member of the panel, as the case may be, has a casting vote.

Final decision in matter.
120(9) The final decision of a majority of the members of the board or a panel is the final decision of the board or panel, and if there is no final decision which is common to a majority of the members, the final decision of the chairperson of the board or the presiding member of the panel, as the case may be, shall be deemed to be the decision of the board or panel.

MADAM CHAIRMAN: Amendment pass. Page 78 as amended—pass; Page 79 - Mr. Kostyra.

HON. E. KOSTYRA: I'd further move
THAT the proposed subsection 121(1) of The Labour Relations Act as set out in section 39 of Bill 22 be amended by adding thereto, immediately after the word "but" in the 2nd line thereof, the words "subject to this section".

MADAM CHAIRMAN: Amendment—pass; Page 79 as amended—pass.
Page 80 - Mr. Banman.

MR. R. BANMAN: Regulations of the board. I wonder if the Minister could tell the committee whether the board has already made up some regulations.

HON. M.B. DOLIN: Yes, the board does design its own rules and regulations.

MR. R. BANMAN: Has the board made regulations with regard to this new act?

HON. M.B. DOLIN: This new act has not been passed yet. I don't know - if you are asking whether some of the things in the act are board policy, or board practice already, certainly the board does have some things in practice, yes. It has ways of operating but it certainly couldn't have made regulations under an act that doesn't exist.

MADAM CHAIRMAN: Page 80—pass; Page 81 - Mr. Szach.

MR. E. SZACH: Madam Chairperson, in clause (i), on Page 81, I seek leave of the committee to correct a typographical error on the 3rd line the word "circumstances".
I'd also seek leave to correct what was a typographical error - the singular word "time" in the first line should really read "times" and in the context would make more sense as a plural word.

MADAM CHAIRMAN: Agreed? Page 81 as corrected—pass. Mr. Szach.

MR. E. SZACH: On Page 82, a similar typographical error in clause (m), the top 3rd line, the word "action" was intended to be plural, and I'd seek leave of the committee to make it plural.

MADAM CHAIRMAN: Agreed? Page 82 as corrected—pass; Page 83—pass.
Page 84 - Mr. Kostyra.

HON. E. KOSTYRA: I'd further move
THAT the proposed subsection 121.2(5) of The Labour Relations Act as set out in section 39 of Bill 22 be amended by adding thereto, immediately before the word "On" in the 1st line thereof, the words "In any proceeding before the board or".

MADAM CHAIRMAN: Amendment—pass; Page 84 as amended—pass.
Page 85 - Mr. Kostyra.

HON. E. KOSTYRA: I'd further move
THAT the proposed subsection 121.3(1) of The Labour Relations Act as set out in section 39 of Bill 22 be amended
(a) by adding thereto, immediately after the word

"board" in the 2nd line thereof, the words "or any panel of the board"; and

(b) by adding thereto, immediately after the word "board" in the 2nd last line thereof, the words "or panel".

MADAM CHAIRMAN: Amendment—pass; Page 85 - Mr. Kostyra.

HON. E. KOSTYRA: I'm sorry, one more amendment. I further move

THAT the proposed subsection 121.3(2) of The Labour Relations Act as set out in section 39 of Bill 22 be amended

(a) by adding thereto, immediately after the word "board" in the 3rd line thereof, the words "or any panel of the board"; and

(b) by adding thereto, immediately after the word "board" in the last line thereof, the words "or panel".

MADAM CHAIRMAN: Amendment—pass; Page 85 as amended—pass.

Page 86 - Mr. Harapiak.

MR. H. HARAPIAK: I move

THAT the proposed subsection 121.3(4) of The Labour Relations Act as set out in section 39 of Bill 22 be amended

(a) by adding thereto, immediately after the word "board" in the 1st line thereof, the words "or any panel of the board"; and

(b) by striking out the 4th line thereof and substituting therefor the words "board or panel may refer any question of law before it for".

MADAM CHAIRMAN: Amendment—pass. Mr. Harapiak.

MR. H. HARAPIAK: I move

THAT the proposed subsection 121.3(5) of The Labour Relations Act as set out in section 39 of Bill 22 be amended by adding thereto, immediately after the word "board" in the 1st line thereof, the words "or any panel of the board".

MADAM CHAIRMAN: Amendment—pass. Mr. Mercier.

MR. G. MERCIER: Why is that necessary?

HON. M.B. DOLIN: The words that were changed were necessary to clarify that the subsections apply to decisions made by panels of the board as well as decisions made by the board itself.

MR. G. MERCIER: Not the amendment - my question is really with the section. Pass the amendment.

HON. M.B. DOLIN: Okay, yes.

MR. G. MERCIER: The amendment is passed. Okay. Why is the section necessary? If the court wants to review the constitutional jurisdiction of the board or a panel they're going to review it; they don't need the approval of this government.

HON. M.B. DOLIN: I don't see that, you know, I think the point is well taken that it doesn't have to be in the act in order to make it possible for this to happen. But I think the member should be aware that what we have said consistently is that particularly the office consolidation of this act, which is the practitioner's handbook, is going to be used for the education of those persons whom it effects, and we feel that this is an area that has not been handled as completely as it might and we, both as a department of government and the Labour Board itself intend to make sure that all parties whom this law affects are aware of the law and of their rights and responsibilities under it. So it's educational is the best way that I can explain it.

MADAM CHAIRMAN: Mr. Harapiak.

MR. H. HARAPIAK: I further move

THAT the proposed subsection 121.3(6) of The Labour Relations Act as set out in section 39 of Bill 22 be struck out and the following subsections be substituted therefor:

Judicial review of final decision.

121.3(6) Notwithstanding any other Act, a final decision, order, direction, declaration or ruling, but not a procedural, interim or any other decision, order, direction, declaration or ruling, of the board or a panel of the board may be reviewed by a court of competent jurisdiction solely by reason that the board or the panel failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, if

(a) the applicant for review has first requested the board or the panel, as the case may be, to review its decision under subsection (3), and the board or the panel has decided not to undertake a review, or has undertaken a review and rendered a decision thereon, or has failed to dispose finally of the request to review within 90 days after the date on which it was made;

(b) the board has been served with notice of the application and has been made a party to the proceeding; and

(c) no more than 30 days have elapsed from, as the case may be, the decision by the board or panel not to undertake a review, or the date of the decision rendered by the board or panel on the review, or the expiration of the 90 day period referred to in clause (a).

Deemed final decision.

121.3(6.1) For purposes of subsection (6), a decision which the board or a panel of the board has decided not to review, or has failed to review within the 90 day period referred to in clause (6)(a), shall be deemed to be a final decision of the board or panel.

No extension of grounds.

121.3(6.2) Nothing in this act extends the grounds on which a court may quash or set aside a decision of the board or a panel of the board, or issue or

prerogative writ against the board or a panel of the board.

MADAM CHAIRMAN: Amendment—pass; Page 86 as amended - Mr. Mercier.

MR. G. MERCIER: What is the Minister afraid of? Why is she attempting to close off access to the court so much?

HON. M.B. DOLIN: I'm not sure if the member is asking a specific question about this specific clause, or a general question about the clauses contained throughout the act. — (Interjection) — Then, the answer is basically the same though, that the judicial nature of the board means that unless it has made an error in law, its decisions ought to stand. If it has made an error in law that may be taken to the courts - exceeded its authority, etc.

MADAM CHAIRMAN: Page 86 as amended—pass.
Page 87 - Mr. Kostyra.

HON. E. KOSTYRA: I further move
THAT the proposed subsection 121.3(8) of The Labour Relations Act as set out in section 39 of Bill 22 be amended by striking out the figure and word "2 months" in the 2nd last line thereof and substituting therefor the figures and word "60 days".

MADAM CHAIRMAN: Pass. Mr. Kostyra.

HON. E. KOSTYRA: I further move
THAT the proposed subsection 121.3(9) of The Labour Relations Act as set out in section 39 of Bill 22 be amended
(a) by adding thereto, immediately after the word "board" in the 3rd line thereof, the words "or any panel of the board"; and
(b) by adding thereto, immediately after the word "board" in the 8th line thereof, the words "or panel."

MADAM CHAIRMAN: Pass. Mr. Szach.

MR. E. SZACH: Madam Chairperson, in repealing subsection (6) and re-enacting three subsections in its place, we've placed decimal points in the numbering of that particular section. I seek leave of the committee to renumber section 121.3 to eliminate the decimal points in the subsections.

MADAM CHAIRMAN: Agreed? Mr. Kostyra.

HON. E. KOSTYRA: I further move
THAT the proposed subsection 121.4(1) of The Labour Relations Act as set out in section 39 of Bill 22 be amended by adding thereto, immediately after the word "or" where it occurs for the 2nd time in the 4th line thereof, the words "in any".

MADAM CHAIRMAN: Page 87 as amended—pass; Page 88 - Mr. Szach.

MR. E. SZACH: A typographical error in the subsection 42(1), the amendment to clause 29(a) of The Employment Standards Act. The second last word should read "amended" rather than "amend" and I seek leave to so amend it.

MADAM CHAIRMAN: Agreed? Page 88 as corrected—pass; Page 89—pass; Page 90—pass.
Page 91 - Mr. Ashton.

MR. S. ASHTON: I move
THAT section 47 of Bill 22 be struck out and the following section be substituted therefor:
Commencement of Act.
47 This Act, except section 25, comes into force on January 1, 1985, and section 25 comes into force on the day this Act receives the Royal Assent.

MADAM CHAIRMAN: Pass?

MR. R. BANMAN: Why?

HON. M.B. DOLIN: The reason for the January 1, 1985 commencement date for this act, in the first place, is because it is going to take the board some months to gear up, if I can use that term, to be sure that it has in place all of the necessary mechanisms for expedited arbitration for mediation services. It will take the department a little while to make sure that all of these things are in place so that, in fact, the bill as we have passed it can be effective.
Section 25, it is not necessary to do any of those things before section 25 can be enacted, and so it is reasonable to have section 25 effective upon Royal Assent.

MR. R. BANMAN: Well, Madam Chairman, I just want to say I think most everybody, in looking at the act, was under the impression that January 1, 1985 was the magic date when all this would click in and people would have a chance to see exactly how this was going to affect them. We now have it changed where really in essence what's going to happen is that tomorrow, if we pass this for third reading, we're going to have this receive Royal Assent and it will be law tomorrow afternoon, so that is somewhat of a substantive change from what the majority of people who have been presenting public briefs and the general public have been led to believe that this would be January 1, 1985, is now, of course, it'll probably hit tomorrow.
I say to the Minister with regard to the act, we will deal with it tomorrow in a more general sense at third reading. I would just reiterate what I said earlier, that I think not only would the people of Manitoba have been better off if a little more time had been taken to try and reach a consensus on this bill, but I think she would have done herself a favour. As I said, all the citizens of Manitoba probably would be better off if that's the course of action she'd taken, but for her own reasons she decided not and the government, of course, will have to live with that decision.

MADAM CHAIRMAN: Amendment—pass. Mr. Szach.

MR. E. SZACH: It's consequent upon the renumbering of section 121.3. I'd seek leave from the committee to renumber the last section reference in section 45 on

this page. The amendment of subsection 44(3) of The Workplace Safety and Health Act should read 121.3(11).

MADAM CHAIRMAN: Agreed?

HON. M.B. DOLIN: Agreed.

MADAM CHAIRMAN: Page 91 as amended and corrected—pass; Preamble—pass; Title—pass; Bill Be Reported - Mr. Enns.

MR. H. ENNS: Madam Chairman, we've laboured for some hours tonight to try to make a bad bill somewhat less bad. I just want to put on the record that the opposition continues to oppose passage of this bill. I won't take the time of the committee at this late hour to do, which sometimes is the case, to make any lengthy comments about it, but simply to indicate to the Minister that none of the amendments that she was brought forward make this bill anymore palatable than it was in its original form.

I could make a less flattering comment about the assistance that she received in drafting this bill. She may even consider splitting with members of this committee some of the $600 a day that you had paid in drafting this bill, seeing as how we had to rewrite it tonight. It comes close to an unfair labour practice that we engaged in here tonight.

We believe sincerely that the Minister and the government have not shown that this kind of legislation is in any way helpful to the government's stated No. 1 priority, job creation. You have been told by the major employers of this province that the contrary to that objective is the likely result of passage of this bill. I serve notice to the Minister and to the government that it will be our intention to oppose this bill as vigorously as we can at third reading.

Thank you.

MADAM CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Just briefly, Madam Chairman, the Minister should reflect on this bill and the confrontation that she has aroused amongst Manitobans over this bill, and how she has divided the labour-management people in the province over this bill. What she is doing, Madam Chairman, is ensuring that after the defeat of this government, there will be another review of labour relations acts in Manitoba. She is ensuring that there will be more moderate legislation brought in after the next election.

MADAM CHAIRMAN: Bill be reported - Mr. Banman.

MR. R. BANMAN: Madam Chairman, along the same lines expressed by the Member for St. Norbert, one of the things that Manitoba has fortunately been able to do in many things is maintain a pretty stable equilibrium on whatever happens. We aren't subject to the ups and downs in the economy that our neighbouring provinces are. If we have a decline in our economy, it's a relatively modest one; if we have an increase in our economy, it's relatively modest. It is a very stable province, because of the manufacturing, the agricultural. It's a very diverse province.

The difficulty that we have - and the Member for St. Norbert put his finger on it a few minutes ago - in dealing with labour legislation if there is not a consensus reached, what happens is we're going to get into the position where the pendulum is going to swing. This Minister has started that pendulum swinging.

The last act was not changed in some 12 years substantively, and it went through three different administrations until finally this one decided to open it up. The danger and the thing that they have done with regard to labour relations in this province has, as I mentioned earlier, done away with a certain amount of the stability that was in place. Of course, as some of these sections come up and don't work, there will be pressure on the next administration to change that. That is unfortunate for both labour and for management.

It goes back to what we said earlier. It should have been a bill that was drafted, put before the people of Manitoba, before labour and management, and a consensus arrived at on the bill itself so that some of the major contentious issues which are now before us wouldn't be there.

MADAM CHAIRMAN: Bill be reported? Do you want a recorded vote?

MR. H. ENNS: Yes.

MADAM CHAIRMAN: Those in favour say, aye. Those opposed. In my opinion, the ayes have it.

Bill be reported.

BILL NO. 35 - AN ACT TO AMEND THE CONSTRUCTION INDUSTRY WAGES ACT

MADAM CHAIRMAN: Page-by-page?

Mr. Mercier.

MR. G. MERCIER: I don't have the bill before me, but I believe there is just one section.

MADAM CHAIRMAN: One page, two clauses.

MR. G. MERCIER: Could the Minister, perhaps through Legislative Counsel, indicate how long that section has been in the act?

HON. M.B. DOLIN: It's been in the act since 1963, I believe.

MR. G. MERCIER: Since 1963.

HON. M.B. DOLIN: That's what I was told.

MADAM CHAIRMAN: Page-by-page. Page 1 - Mr. Banman.

MR. R. BANMAN: Thank you, Madam Chairman. The bill before us, we've made several observations about the bill and some of the concerns that municipalities and a number of other people have expressed, and some of the difficulties we are facing with The Construction Industry Wages Act. While this act is in

a small way trying to do away with a problem the government perceives to be a problem, there are many areas which should be looked at in The Construction Industry Wages Act.

I hope that the Minister will have a look at those so that we can create some more youth employment and not have pieces of legislation on the statutes which work as an anti-employment piece of legislation rather than one that would help create employment in the province.

HON. M.B. DOLIN: I can assure the member that that act and other related acts are being reviewed by a number of different groups.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairperson, this afternoon I asked the Minister of Labour a question having to do with making it possible for municipalities to come to a mutually agreeable arrangement with their employees who would come under this act as operators of heavy duty construction industry. In the case of municipalities, usually it's cab drivers or maintainers. She answered me that she was indeed in discussion with the municipalities, and left the impression at least with myself and other members of the House that some satisfactory arrangement might be arrived at with municipal officials on this matter.

My question to her now is: I would assume that it would mean somehow doing what the old clause allows to do. Why then make the change? Is the Minister telling me and the committee members that she is prepared to do what a number of us have suggested, start making a number of exemptions. In this case, I ask specifically about municipalities, because that was the question that I directed to the Minister. Would she care to elaborate on that?

HON. M.B. DOLIN: As I explained this afternoon, that's a different situation. It is related to the same act. It is a situation that has been raised in my Estimates frequently. It is a situation where a municipality hires a construction worker year-round for several different jobs and wants to pay them an annual wage and has to figure out what they pay them for the portion of the time that they do various jobs within the construction industry. We realize that that is a problem, and that we need to seek a solution.

As I indicated this afternoon, that is what we are going to do. This amendment before you has to do with paying someone less than minimum wage. That is what we are changing.

MR. H. ENNS: Madam Chairman, I would hope that at 1:15 in the morning, you would cease and desist from deliberately misrepresenting . . .

SOME HONOURABLE MEMBERS: Oh, oh!

MR. H. ENNS: Madam Speaker, I chose the word carefully. It's not unparliamentary. I didn't say, mislead or deceive or lie. I said, deliberately misrepresenting a commonly held opinion that when you're talking about the minimum wage in Manitoba, you're talking about $4 or whatever is the minimum wage. We're talking about the minimum wages as defined for specific pieces of construction work or on machines - it could be $14 an hour, it could be $15 an hour, it could be $9 or $10 an hour - so let's not confuse the issue, Madam Minister.

Madam Minister, I appreciate that you and your department are now going to sit down and tackle this difficult problem. You're going to try to resolve it somehow when the answer is staring you in the face: let them come to their own conclusion, let them mutually agree - the grader operator with the Municipality of Woodlands, or the Municipality of Cartier and come to that agreement, which they have done all these years. When will you learn to let people arrive at acceptable, mutually desirable work situations, rather than have the heavy hand of government, the heavy hand of bureaucracy have to make them eat strawberries and cream, as somebody else said before this committee, whether they want to or not.

Thank you, Madam Minister.

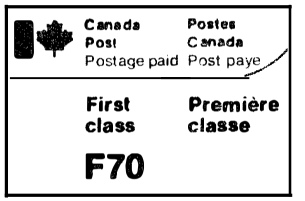
HON. M.B. DOLIN: My mother always told me that misrepresenting was lying, so I always thought they were the same thing. I am doing neither. I would point out to the member that we are discussing An Act to amend The Construction Industry Wages Act which is an act that we have in Manitoba which sets out minimum wages for the construction industry, and the Member for Lakeside is quite aware of this.

MADAM CHAIRMAN: Page 1—pass; Preamble—pass; Title—pass; Bill Be Reported?

All those in favour say, aye; all those opposed, nay. In my opinion, the ayes have it. Bill Be Reported.

Committee rise.

COMMITTEE ROSE AT 1:17 A.M.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