

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

I am pleased to submit the 2011/12 Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2011 to March 31, 2012.

During this reporting period, the Board successfully fulfilled its mandate and met its immediate objectives. The staff of the Board will continue to focus on the strategic priorities which are highlighted in this report.

During this reporting period, the Board issued a number of important decisions under both *The Labour Relations Act* and other statutes which it administers. This is evident from the decisions which are summarized in this report. The full text of these decisions are posted on the Board's website.

On May 17, 18 and 19, 2011, the Board held its bi-annual seminar for board members and board officers in Gimli, Manitoba. A wide range of issues were on the agenda. There were presentations on a number of practical topics, presented by the registrar and the board officers. A panel, comprised of vice-chairperson Diane Jones, Q.C. and others, conducted a discussion on managing cases which involve self-represented litigants. As the Board hears many cases involving self-represented litigants, particularly under *The Employment Standards Code*, it is always useful to revisit this issue because of the difficulties which cases involving self-represented litigants case can raise for the Board. Further, there was a presentation by the Workplace Safety and Health assistant deputy minister Don Hurst and their director of Prevention Services Jo-Anna Guerra, on Workplace Safety and Health's new jurisdiction under the expanded definition of what conduct constitutes harassment in the workplace and on new initiatives regarding the proactive enforcement of *The Workplace Safety and Health Act*. This presentation was most timely because it provided the members and officers with a "heads-up" on areas which the Board will undoubtedly be called upon to adjudicate in the future. The seminar was an unqualified success not only from an educational perspective but also because it provided members with the opportunity to interact with each other in an informal setting.

During this year, the Board experienced an increase in its workload, particularly in respect of the number of appeals filed under *The Employment Standards Code*. The number of applications filed with the Board under the *Code* increased by 48 percent and many of these cases involved unique or complex issues. The overall increase in workload was reflected by the number of Written Reasons for Decision and Substantive Orders that were issued by the Board during 2011/12.

Finally, I take this opportunity to express my gratitude to the vice-chairpersons, members and staff for their dedication and service to the Board.

William D. Hamilton  
Chairperson

## **MESSAGE DU PRÉSIDENT DE LA COMMISSION DU TRAVAIL DU MANITOBA**

J'ai le plaisir de soumettre le rapport annuel 2011-2012 faisant état des activités de la Commission du travail du Manitoba pour la période allant du 1<sup>er</sup> avril 2011 au 31 mars 2012.

Au cours de cette période de déclaration, la Commission a respecté son mandat et rempli ses objectifs immédiats. Le personnel de la Commission continuera de mettre l'accent sur les priorités stratégiques dont il est question dans le présent rapport.

Pendant l'exercice, La Commission a rendu plusieurs décisions importantes en vertu de la *Loi sur les relations du travail* et des autres lois qu'elle administre, comme le montrent les résumés des décisions présentés dans le présent rapport. Le texte complet de ces décisions est affiché sur le site Web de la Commission.

Les 17, 18 et 19 mai 2011, la Commission a tenu son colloque semestriel pour ses membres et agents à Gimli, au Manitoba. Un grand nombre de sujets figuraient à l'ordre du jour. La registraire et les agents de la Commission ont fait une présentation humoristique, divertissante et informative portant sur plusieurs sujets pratiques. Un groupe d'experts, composé de la vice-présidente, Diane Jones, c.r., et d'autres personnes, a animé une discussion sur la gestion des affaires où il est question de plaideurs agissant pour leur propre compte. Comme la Commission entend un grand nombre d'affaires où les plaideurs comparaissent sans avocat, particulièrement en vertu du *Code des normes d'emploi*, il est toujours utile de réexaminer ce sujet étant donné les difficultés que cela peut poser à la Commission. De plus, il y a eu une présentation conjointe par M. Don Hurst, sous-ministre adjoint et directeur de la Division de la sécurité et de l'hygiène du travail, et M<sup>me</sup> Jo-Anna Guerra, directrice des Services de prévention de la Division, portant sur les nouveaux pouvoirs de la Division compte tenu de la définition élargie des comportements constituant du harcèlement dans un lieu de travail, et les nouvelles initiatives concernant l'application proactive de la *Loi sur la sécurité et l'hygiène du travail*. La présentation est arrivée à point, car elle a donné aux membres et aux agents un aperçu des sujets sur lesquels la Commission sera appelée à se prononcer dans le futur. Le colloque s'est avéré un franc succès, non seulement d'un point de vue éducatif, mais aussi parce qu'il a donné aux membres l'occasion d'interagir dans un cadre informel, rehaussant ainsi l'atmosphère collégial existant déjà au sein de la Commission.

Au cours de l'exercice, la Commission a dû faire face à une charge de travail accrue, tout particulièrement en raison du nombre d'appels interjetés en vertu du *Code des normes d'emploi*. Le nombre de demandes déposées auprès de la Commission en vertu du *Code* a augmenté de 48 %, et beaucoup de celles-ci avaient trait à des situations uniques ou complexes. L'augmentation globale de la charge de travail a été reflétée dans le nombre accru de motifs écrits de décision et d'ordonnances importantes rendues par la Commission au cours de 2011-2012.

En conclusion, je tiens à remercier de leurs services et de leur dévouement les vice-présidents, les membres et le personnel de la Commission.

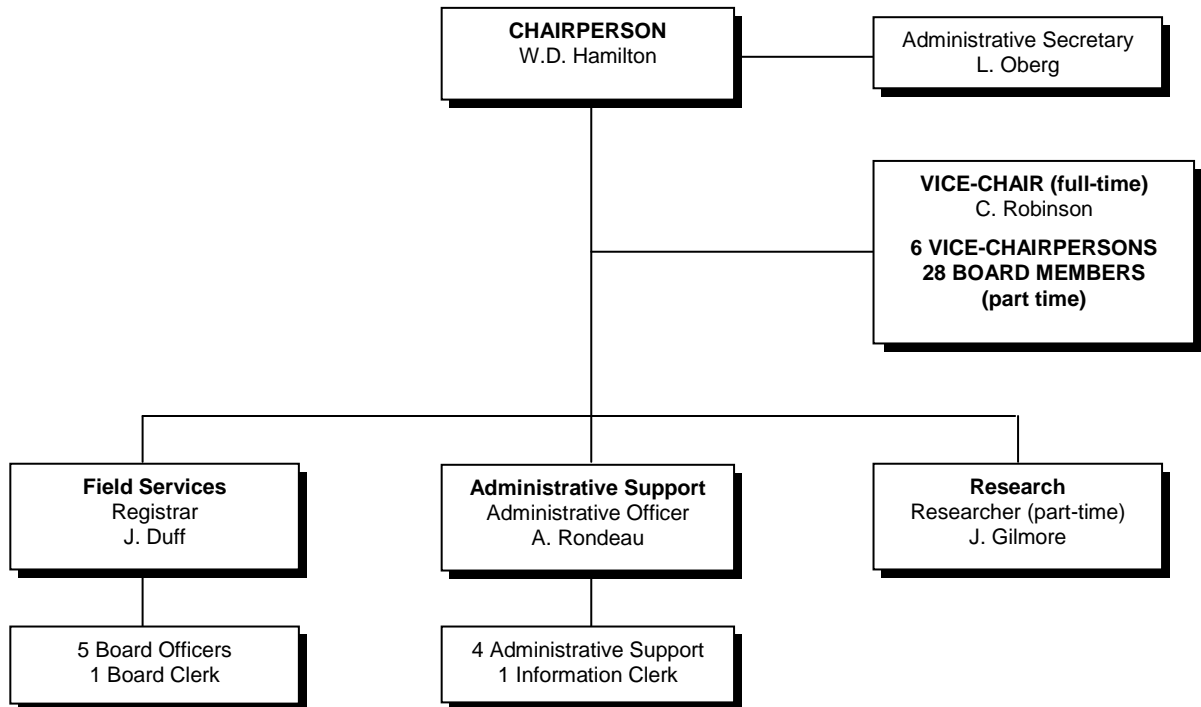
Le président  
William D. Hamilton

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**Manitoba Labour Board  
Organization Chart  
as of March 31, 2012**



# The Manitoba Labour Board

## INTRODUCTION

### Report Structure

The Manitoba Labour Board (the Board) annual report is prepared pursuant to subsection 138(14) of *The Labour Relations Act*.

"The report shall contain an account of the activities and operations of the board, the full text or summary of significant board and judicial decisions related to the board's responsibilities under this and any other Act of the Legislature, and the full text of any guidelines or practice notes which the board issued during the fiscal year."

### Vision and Mission

To further harmonious relations between employers and employees  
by encouraging the practice and procedure of collective bargaining  
between employers and unions  
as the freely designated representatives of employees.

### Objectives

- to resolve labour issues fairly and reasonably, and in a manner that is acceptable to both the labour and management community including the expeditious issuance of appropriate orders;
- to assist parties in resolving disputes without the need to proceed to the formal adjudicative process; and
- to provide information to parties and/or the general public regarding their dealings with the Board or about the Board's activities.

### Role

The Board is an independent and autonomous specialist tribunal responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under *The Labour Relations Act* and any other Act of the Consolidated Statutes of Manitoba.

The majority of the applications are filed under *The Labour Relations Act (L10)* and *The Employment Standards Code (E110)*. The Board is also responsible for the administration and/or adjudication of matters arising under certain sections of the following Acts:

*The Apprenticeship and Certification Act (A110)*  
*The Construction Industry Wages Act (C190)*  
*The Elections Act (E30)*  
*The Essential Services Act (Government and Child and Family Services) (E145)*  
*The Essential Services Act (Health Care) (E146)*  
*The Pay Equity Act (P13)*  
*The Public Interest Disclosure (Whistleblower Protection) Act (P217)*  
*The Public Schools Act (P250)*  
*The Remembrance Day Act (R80)*  
*The Victims' Bill of Rights (V55)*  
*The Worker Recruitment and Protection Act (W197)*  
*The Workplace Safety and Health Act (W210)*

***The Labour Relations Act***

The Board receives and processes applications regarding union certification, decertification, amended certificates, alleged unfair labour practices, expedited arbitration, first contracts, board rulings, duty of fair representation, successor rights, religious objectors and other applications pursuant to the *Act*.

***The Employment Standards Code***

As the wage board appointed pursuant to the *Code*, the Board hears complaints referred to it by the Employment Standards Branch regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to *The Construction Industry Wages Act* and *The Remembrance Day Act*. Until the April 30, 2007 amendment to the *Code*, the Board also processed hours of work exemption requests and applications for exemption from the weekly day of rest.

***The Apprenticeship and Certification Act***

The person named in a compliance order or required to pay an administrative penalty may appeal the matter to the Board within 14 days after receiving a notice under subsection 36(6) or 37(5) of the *Act*.

***The Elections Act***

A candidate, election officer, enumerator or an election volunteer for a candidate or a registered political party may file an application relating to requests for leave from employment under section 24.2 of the *Act*. An employer may apply to the chairperson of the Board to request an exemption from the requirement to grant a leave under section 24.2 of the *Act*, if the leave would be detrimental to the employer's operations.

***The Essential Services Act***

The Board receives and processes applications from unions for a variation of the number of employees who must work during a work stoppage in order to maintain essential services.

***The Pay Equity Act***

If parties fail to reach an agreement on an issue of pay equity, within the time frames stipulated in the *Act*, any party may refer the matter to the Board for adjudication.

***The Public Interest Disclosure (Whistleblower Protection) Act***

Pursuant to section 28 of the *Act*, an employee or former employee who alleges that a reprisal has been taken against them may file a written complaint with the Board. If the Board determines that a reprisal has been taken against the complainant contrary to section 27, the Board may order one or more of the following measures to be taken:

- (a) permit the complainant to return to his or her duties;
- (b) reinstate the complainant or pay damages to the complainant, if the board considers that the trust relationship between the parties cannot be restored;
- (c) pay compensation to the complainant in an amount not greater than the remuneration that the board considers would, but for the reprisal, have been paid to the complainant;
- (d) pay an amount to the complainant equal to any expenses and any other financial losses that the complainant has incurred as a direct result of the reprisal;
- (e) cease an activity that constitutes the reprisal;
- (f) rectify a situation resulting from the reprisal;
- (g) do or refrain from doing anything in order to remedy any consequence of the reprisal.

***The Public Schools Act***

Certain provisions of *The Labour Relations Act* apply to teachers, principals, bargaining agents for units of teachers and school boards.

***The Victims' Bill of Rights***

Victims of crime may file applications with the Board relating to requests for time off work, without pay, to attend the trial of the person accused of committing the offence, for the purpose of testifying, presenting a victim impact statement or observing any sentencing of the accused person.

***The Worker Recruitment and Protection Act***

The Director of the Employment Standards Branch is empowered, on behalf of a foreign worker, a child performer or family member on behalf of a child performer, to issue orders to recover the amount of any prohibited recruitment fees or costs charged, directly or indirectly, by the employer or a person engaged in recruitment of the foreign worker or child performer and can also, by order, recover from an employer any reduction in wages or recover any reduction/elimination of a benefit or other term or condition of employment where the reduction is made to cover the costs of recruitment, all of which is contrary to sections 15, 16 and 17 of the *Act*. The Board's jurisdiction is triggered when a person affected by a director's order wishes to appeal an order of the director under any of these provisions. The Board hears the appeals pursuant to the provisions of *The Employment Standards Code*.

***The Workplace Safety and Health Act***

Any person directly affected by an order or decision of a safety and health officer may appeal the order or decision to the Director of Workplace Safety and Health. The director may decide the matter or refer the matter to the Board for determination. Any person affected by an order or decision of the director may also appeal to the Board to have the order or decision set aside or varied.

# MANITOBA LABOUR BOARD MEMBERS

In the year under review, the Board consisted of the following members.

## Chairperson

### **William (Bill) D. Hamilton**

Appointed as full-time chairperson in 2005, William Hamilton has been a part-time vice-chairperson since 2002. He holds a Bachelor of Arts degree from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Mr. Hamilton, for some years, has carried on an active practice as an interest and grievance arbitrator/mediator in Manitoba.

## Vice-Chairpersons

### **A. Blair Graham, Q.C.**

Appointed on a part-time basis in 2006, Blair Graham holds a Bachelor of Arts degree and a Bachelor of Laws degree from the University of Manitoba. He practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP with an emphasis on civil litigation, administrative law and labour arbitration as a chairperson. He was appointed a Queen's Counsel in December 1992, and inducted into the American College of Trial Lawyers in October 2004. He has been active as a chairperson in labour arbitration matters since 1997.

### **M. Lynne Harrison**

Appointed on a part-time basis in 2008, Lynne Harrison holds a Bachelor of Arts degree from Laval University, a Secondary Education Teaching Certificate from Laval University and a Bachelor of Laws degree from the University of Manitoba. She also serves as an adjudicator under *The Human Rights Code* (Manitoba). She practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP.

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

Appointed on a part-time basis since 1985, Diane Jones holds a Bachelor of Arts Honours degree from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. She is currently active as a chairperson in arbitration matters.

### **Arne Peltz**

Appointed on a part-time basis in 2002, Arne Peltz is a chartered arbitrator and carries on an active practice as an interest and grievance arbitrator/mediator in Manitoba. He has also served as an adjudicator under *The Human Rights Code* (Manitoba) and the *Canada Labour Code*. He was the director of the Public Interest Law Centre for 21 years and entered private practice in 2003. He now practices with Orle Barga Davidson LLP in dispute resolution, aboriginal law and civil litigation.

### **Colin S. Robinson**

Appointed as full-time vice-chairperson in 2003, Colin Robinson holds a Bachelor of Arts Honours degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. He was called to the Bar in 1995 and practiced primarily in the fields of labour and administrative law. He is also the vice-president of the Manitoba Council of Administrative Tribunals.

### **Michael D. Werier**

Appointed on a part-time basis in 2006, Michael Werier is a partner in the Winnipeg law firm of D'Arcy & Deacon LLP. He carries on a practice as an arbitrator/mediator in Manitoba and as a civil litigator. He is currently chairperson of the Manitoba Labour Management Review Committee and chairperson of the Board of Directors of the Workers Compensation Board of Manitoba.

### **Gavin M. Wood**

Appointed on a part-time basis in 2006, Gavin Wood holds a Bachelor of Laws degree from the University of Manitoba and a Masters of Laws degree from Columbia University in New York City. He is presently practicing as a sole practitioner under the firm name of Gavin Wood Law Office. He is currently active as a chairperson in arbitration matters.



## **Employer Representatives**

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

Appointed in 2000, Jim Baker is president and chief executive officer of the Manitoba Hotel Association (MHA). Prior to his employment with the MHA, he was a partner in a chartered accountancy firm for 20 years. He is an executive member of the Hotel Association of Canada and past chairperson of the Manitoba Tourism Education Council. He was co-chairperson of the athletes' villages during the 1999 Pan Am Games and has been active as a community volunteer. Mr. Baker currently is the chair of the Friends of the Elmwood Cemetery and a member of the Manitoba Employers Council.

### **Elizabeth M. (Betty) Black**

Appointed in 1985, Betty Black is a Fellow Certified Human Resource Professional and holds a certificate in Human Resource Management from the University of Manitoba. She has over 30 years' experience in senior human resource management roles in the private and public sectors in both union and non-union environments in the areas of manufacturing, hospitality, financial services and consulting. She is a member and past president of the Human Resource Management Association of Manitoba and has instructed in the Human Resource Management Certificate program at the University of Manitoba. She has served in voluntary leadership roles with the YMCA-YWCA of Winnipeg, the United Way of Winnipeg and numerous other community organizations.

### **Christiane Y. Devlin**

Appointed in 2002, Christiane Devlin has held senior management positions in human resources, integrating human resources within the business needs of companies in the communication and printing, agriculture, manufacturing, health care, retail co-operatives and transportation. She is currently the manager, Human Resources with the Kleysen Group. Ms. Devlin is bilingual and her human resource management experience includes unionized and non-unionized workplaces.

### **Robert N. Glass**

Appointed in 2008, Robert Glass is a labour relations/personnel consultant-negotiator with professional qualifications and extensive experience in labour/management relations including negotiation of contracts, collective agreement interpretation and an in-depth knowledge of organized labour, employment policy, hazard control and loss management. He has experience in the communications industry, government, health care and the construction industry. His educational background is from the University of Manitoba, University of Montreal, Safety Leadership Programs and Human Resource Professional Certification.

### **Colleen Johnston**

Appointed in 1993, Colleen Johnston is the manager, Human Resources for the Manitoba Liquor Control Commission and the president of Integre Human Resource Consulting. She is a graduate of the University of Manitoba with a Bachelor of Education degree and is a Fellow Certified Human Resource Professional. She is a past president of the Human Resource Management Association of Manitoba (HRMAM), a founding director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the Canada Labour Code in Ottawa. She has represented Canadian employers at the United Nations in Geneva and is currently an active member of the Designation Review Committee of the HRMAM, a member of the Board of Directors of CAA Manitoba and a member of the Institute of Corporate Directors.

**Paul J. LaBossiere**

Appointed in 1999, Paul LaBossiere is currently president of P.M.L. Maintenance Ltd. He is past co-chair of the Employers Task Force on Workers Compensation, a member of the Winnipeg Chamber of Commerce, past president, parliamentarian, and government affairs advisor of the Building Owners and Managers Association, a member of the Manitoba Employers Council and is a frequent international speaker on issues pertaining to the maintenance and service industries. He is a past member of the Board of Directors of the Building Services Contractors Association International (37 countries). He is the past board president of the Prairie Theatre Exchange (PTE) and a member of the board of the PTE Foundation Trust. His past affiliations include vice-chairperson and treasurer of the Winnipeg Chamber of Commerce and on the Advisory Committee for the Continuing Education Department at the University of Manitoba. He is a trustee of Opimian Vineyard Trust and board member of the Winnipeg Jazz Orchestra.

**Chris W. Lorenc, B.A., LL.B.**

Appointed in 2003, Chris Lorenc is currently president of the Manitoba Heavy Construction Association, president of the Western Canada Roadbuilders and Heavy Construction Association, founding member and chair of the Western Canada Transportation System Strategy Group and member of the Board of CentrePort Canada Inc. He has an extensive background in public policy writing related to trade and transportation, infrastructure, workplace safety and health. A lawyer by background, he graduated from the University of Manitoba with Bachelor of Arts and Bachelor of Laws degrees. He is a former Winnipeg city councillor having served for nine years between 1983 and 1992. During his tenure on council, he chaired a number of standing committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of business, cultural, community and hospital organizations.

**Harvey Miller**

Appointed in 2010, Harvey Miller is the executive director of the Merit Contractors Association of Manitoba. He holds a Bachelor of Arts degree from the University of Manitoba and a Master of Arts degree in Psychology from the University of Victoria. He has extensive senior management experience in both public and not-for-profit agencies, including the Worker Advisor Office and the Workers Compensation Board. He has served on numerous volunteer boards, and is a past president of the Winnipeg Mental Health Association and the Manitoba Biathlon Association.

**Yvette Milner**

Appointed in 1996, Yvette Milner is a safety and disability management consultant and president of On-Site Safety and Health Management Solutions, a consulting company specializing in assisting companies to manage injury and illness in the workplace. Past experience includes director of safety and disability management with Deloitte; president, Milner Consulting, a company specializing in safety and disability claims management; human resources coordinator, Manitoba Health; and assistant director of rehabilitation, Workers Compensation Board of Manitoba. Active in the Manitoba business community, she is involved with the Manitoba Employers Council and the Employers Task Force on Workers Compensation.

**Brian Peto**

Appointed in 2011, Brian Peto has over 37 years experience in the human resource field in the retail, manufacturing and financial services sectors. His experience has been at the senior human resource level and he has served on the Board of Directors of the Cooperative Superannuation Society, one of Canada's largest defined contribution pension plans. He is a graduate of the University of Winnipeg and Red River Community College. Mr. Peto is a former cabinet member of the United Way of Winnipeg and past president of the Human Resource Management Association of Manitoba.

**Darcy Strutinsky**

Appointed in 2008, Darcy Strutinsky concluded a lengthy career in senior healthcare human resource leadership positions in 2012. He provides human resource and labour relations consulting services to employers. He is a member of the Manitoba Labour Management Review Committee and a board member of the Children's Hospital Foundation of Manitoba.

**Denis E. Sutton**

Appointed in 1983, Denis Sutton has had extensive training in business administration and human resource management and has extensive experience in labour relations in both the private and public sectors. He has served as chairperson of the Industrial Relations Committee, Manitoba Branch of the Canadian Manufacturers Association, chairperson of the Western Grain Elevator Association Human Resource Committee, chairperson of the Conference Board of Canada, Council of Human Resource Executives (West) and is an active member of many labour relations committees and associations. He is presently employed as executive vice president of Human Resources at IMRIS Inc.

**Jim Witiuk**

Appointed in 2004, Jim Witiuk is currently director of labour relations for Canada Safeway Limited with responsibility for labour relations matters in Manitoba, Saskatchewan and Ontario. He sits on a number of trustee health and welfare and pension plans as a management trustee and is a member of the International Foundation of Employee Benefit Plans. He is a past member of the Employment and Immigration Board of Referees. He currently serves on the Manitoba Labour Management Review Committee, serves on that group's Arbitration Advisory Sub-Committee and is an active member of the Manitoba Employers Council. Mr. Witiuk is on the Board of Directors of MEBCO (Multi Employee Benefit Plan Council of Canada). He is a graduate of Carleton University in Ottawa.

**Mel V. Wyshynski**

Appointed in 2004, Mel Wyshynski retired from Inco Limited, Manitoba Division in late 2001 after a 40-year career in the mining industry. At the time of his retirement, he was president of the division and had held that position since 1997. He is also past president of the Mining Association of Manitoba Inc. He is actively involved in the Dauphin community where he sits on a number of volunteer boards and is associated with many community initiatives. In addition to this, he is involved with a number of organizations. In 2006, he was appointed a director of Smook Brothers (Thompson) Ltd.

**Employee Representatives****L. Lea Baturin**

Appointed in 2007, Lea Baturin has been employed as a national representative with the Communications, Energy and Paperworkers Union of Canada (CEP) since 1995. As a national representative, she deals primarily with grievance arbitration matters, collective bargaining and steward education in the industrial sectors of telecommunications, broadcasting and manufacturing. Her educational background includes a Bachelor of Arts degree and a Bachelor of Laws degree from the University Manitoba. Ms. Baturin received her call to the Manitoba Bar in 1981 and worked as a lawyer at Legal Aid Manitoba and at Myers Weinberg LLP before joining CEP as staff. She is a member of the board of the Manitoba Federation of Labour (MFL) and co-chairperson of the MFL Women's Committee.

**Robert P. Bayer**

Appointed in 2004, Robert Bayer had been a staff representative with the Manitoba Government and General Employees' Union (MGEU) since 1982. Previously, he was the executive director of the Institutional Employees' Union (1975-1982), and manager of human resources for the Canadian Broadcasting Corporation - Winnipeg (1965-1975). He retired from the MGEU in December 2007.

**Beatrice Bruske**

Appointed in 2007, Beatrice Bruske has been employed since 1993 as a union representative/negotiator for the United Food and Commercial Workers Union, Local No. 832 (UFCW Local 832). She has worked as a servicing representative dealing with grievances, negotiations and arbitrations. She worked as a full-time negotiator from 2004 to 2011. Currently, she is the secretary treasurer of her local and in this capacity is involved in the administration of the local. She also represents the UFCW Local 832 on the Manitoba Federation of Labour Executive Council and is a member of the UFCW Local 832 Women's Committee. She is a trustee on a number of health and welfare benefit plans. She graduated from the University of Manitoba with an Arts degree in Labour Studies.

**Irene E. Giesbrecht**

Appointed in 2002, Irene Giesbrecht was employed by the Manitoba Nurses' Union (MNU) as chief negotiator from 1978 until her retirement in June 2008. She is a founding member of the Canadian Federation of Nurses Unions. Previous to joining the MNU, she was employed as a registered nurse. She is on the Blue Cross Board of Directors. She provides health care/labour relations advice on a part-time consulting basis.

**Debra R. Grimaldi**

Appointed in 2010, Debra Grimaldi has been employed as a national servicing representative by the Canadian Union of Public Employees since 2000. As a servicing representative, she is actively involved in grievance processing, collective bargaining, conflict resolution and education of local unions. She is a graduate of the Labour College of Canada, class of 1989.

**Jan Malanowich**

Appointed in 1991, Jan Malanowich worked as a staff representative for the Manitoba Government and General Employees' Union from 1981 until her retirement in December 2007. She was actively involved in collective bargaining, grievance handling and a multitude of associated activities related to the needs of the membership. She is currently appointed as an employee representative on the Employment Insurance Appeal Board of Referees. She is also a founding member of the Workers Memorial Foundation.

**John R. Moore**

Appointed in 1994, John Moore was employed as the business agent, training coordinator and business manager for the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 254, from 1982 to 2007 and has been an active member for 42 years. He is also a current representative of the Trades Appeal Board of Manitoba. He also sits on the board for the College of Physiotherapists of Manitoba and on the Manitoba Building Standards Board.

**Maureen Morrison**

Appointed in 1983, Maureen Morrison has worked for the Canadian Union of Public Employees for many years, first as a servicing representative and then as equality representative. Her work is primarily in the areas of pay and employment equity, harassment and discrimination, accommodation issues, and other human rights concerns.

**James Murphy**

Appointed in 1999, James Murphy is the Canadian director of the International Union of Operating Engineers (IUOE). Prior to that, he was the business manager of IUOE Local 987. He was elected to that position in 1995, until his appointment as Canadian director in August 2011. He was a business representative for IUOE Local 901 from 1987 through 1995 and was the training co-ordinator for Local 901, from 1985 to 1987. He sits on the executive board of the Canadian Conference of Operating Engineers. He is the current president of the Allied Hydro Council of Manitoba. Prior to 1985, he was a certified crane operator and an active member of the IUOE since the late 1960s.

**Tom P. Murphy**

Appointed in 2011, Tom Murphy became part of the Canadian Auto Workers' (CAW) local union leadership in 1980 while employed at Bombardier in Thunder Bay. He became involved in collective bargaining in 1984, became the local union unit chairperson and vice-president in 1985, president of the local in 1992, appointed to CAW staff as a national representative in 1998 and appointed as the area director of Manitoba/Saskatchewan/Northern Ontario in 2007. He deals with grievance arbitration matters and collective bargaining.

**Sandra R.M. Oakley**

Appointed in 2008, Sandra Oakley has been employed by the Canadian Union of Public Employees (CUPE) since 1981. She has worked as a national servicing representative, dealing with negotiations, grievance arbitrations and other labour relations issues, and as an assistant managing director in the Organizing and Servicing Department of CUPE at its national office in Ottawa. Since October 2002, she has been the regional director for CUPE in Manitoba. She is a graduate of the University of Manitoba and the Labour College of Canada. She serves on the Children's Rehab Foundation Board of Directors and on the United Way Cabinet as deputy chair labour.

**Rik A. Panciera**

Appointed in 2011, Rik Panciera is currently employed as a national staff representative for the Canadian Union of Public Employees where he has served for the past fourteen years. As a staff representative, he deals with daily grievance and labour/management issues, as well as negotiates collective agreements. He also represents his peers as a regional vice-president for the Canadian Staff Union.

**Grant Rodgers**

Appointed in 1999, Grant Rodgers was employed for 33 years as a staff representative with the Manitoba Government and General Employees' Union (MGEU) and specialized for a number of years in grievance arbitration matters as well as collective bargaining. He holds a Bachelor of Commerce Honours degree from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board, director of the Winnipeg South Blues Junior "A" hockey team, and involvement with Big Brothers of Winnipeg. He retired from the MGEU in January 2008 and has since done some part-time labour relations consulting.

**Sonia E. Taylor**

Appointed in 2005, Sonia Taylor has been employed since 1991 as a union representative with the United Food and Commercial Workers Union, Local No. 832. She is actively involved in grievance handling, negotiations, arbitrations and organizing.

## **OPERATIONAL OVERVIEW**

### **Adjudication**

During 2011/12, the Board was comprised of a full-time chairperson, one full-time vice-chairperson, six part-time vice-chairpersons and 28 board members with an equal number of employer and employee representatives. Part-time vice-chairpersons and board members are appointed by Order in Council and are paid in accordance with the number of meetings and hearings held throughout the year. The Board does not retain legal counsel on staff; legal services are provided through Civil Legal Services of Manitoba Justice.

### **Field Services**

Field Services is comprised of the registrar, four labour relations officers, one board officer and one board clerk. Reporting to the chairperson, the registrar is the official responsible for the supervision of the day-to-day field activities of the Board. The primary responsibility of the registrar is the development and execution of the administrative workload as it relates to the various acts under which the Board derives its adjudicative powers. The registrar, in conjunction with the chairperson, vice chairpersons and panel members, is involved in the establishment of Board practice and policy. Applications filed with the Board are processed through the registrar's office, which ensures each application is processed efficiently, with hearings scheduled in a timely manner and in accordance with the *Manitoba Labour Board Rules of Procedure* and Board practice. The registrar, together with the board officers, communicates with all parties and with the public regarding Board policies, procedures and jurisprudence.

Reporting to the registrar are four "labour relations" board officers who are responsible for dealing with various cases and conducting investigations pertaining to the applications filed with the Board, under the varying statutes. They can be appointed to act as Board representatives in an endeavour to effect settlement between parties, reducing the need for costly hearings. The board officers act as returning officers in Board conducted representation votes, attend hearings and assist the registrar in the processing of various applications. They also play a conciliatory role when assisting parties in concluding a first or subsequent collective agreement and they act as mediators during the dispute resolution process. Also reporting to the registrar is a board officer, primarily responsible for processing all referrals from the Director of the Employment Standards Branch and who is involved in mediation efforts in an attempt to resolve the issues. The board clerk is primarily responsible for the processing of expedited arbitration referrals, and maintaining the Board's library of collective agreements and union constitution and by-laws files. Both the board officer and board clerk also attend Board hearings.

### **Administrative Services**

The staff of administrative services and field services work closely to ensure the expeditious processing of applications. Administrative services is comprised of the administrative officer and five administrative support staff. Reporting to the chairperson, the administrative officer is responsible for the day-to-day administrative support of the Board, fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures to ensure departmental and government policies are implemented.

Reporting to the administrative officer are four administrative secretaries responsible for the processing of documentation. Also reporting to the administrative officer is the information clerk who is responsible for the case management system and files and responds to information requests from legal counsel, educators and the labour community for name searches, collective agreements and certificates.

### **Research Services**

Reporting to the chairperson, the researcher is responsible for providing reports, statistical data, jurisprudence from other provincial jurisdictions and undertaking other research projects as required by the Board. The researcher summarizes and indexes Written Reasons for Decision and Substantive Orders issued by the Board and compiles the *Index of Written Reasons for Decision*.

## Library Collection

Copies of these documents can be viewed by the public in the Board's office or made available in accordance with the fee schedule.

- Texts, journals, reports and other publications dealing with industrial relations and labour law in Manitoba and other Canadian jurisdictions
- Arbitration awards
- Collective agreements
- Certificates
- Unions' constitution & by-laws
- Written Reasons for Decision and Substantive Orders
- Board orders and decisions

## Publications Issued

- *Manitoba Labour Board Annual Report* - a publication disclosing the Board's staffing and membership as well as highlights of significant Board and court decisions and statistics of the various matters dealt with during the reporting period. This publication may be obtained directly from the Board.
- *Index of Written Reasons for Decision* - a publication containing an index of Written Reasons for Decision and Substantive Orders categorized by topic, employer and section of the *Act* and is available on a subscription basis from Statutory Publications. The Index is updated semi-annually with the updates covering the periods of January - June and July - December.

The Board distributes full-text copies of Written Reasons for Decision, Substantive Orders and arbitration awards to various publishers for selection and reprinting in their publications or on their websites.

## Website Contents

<http://www.gov.mb.ca/labour/labbrd>

\*link to French version available

- Board Members\* (list and biographies)
- Forms\*
- Library\* (hours)
- Publications\* (list and links for convenient access, including previous annual reports)
- "Guide to *The Labour Relations Act*"\* (explanations in lay persons' terms of the various provisions of the *Act* and the role of the Board and Conciliation & Mediation Services)
- Information Bulletins\* (listing and full text)
- Manitoba Labour Board's Arbitrators List\* (list of arbitrators maintained pursuant to section 117(2) of *The Labour Relations Act*)
- Written Reasons for Decision and Substantive Orders (full text, English only, from January 2007 to present, with key word search capability)
- *The Labour Relations Act*\*
- Regulations\* (including *The Manitoba Labour Board Rules of Procedure*)
- Contact Us\* (information and links to the Government of Manitoba Home Page, other branches of Manitoba Family Services and Labour, LexisNexis Quicklaw and Statutory Publications)

## E-mail

[mlb@gov.mb.ca](mailto:mlb@gov.mb.ca)

E-mail service is available for general enquiries and requests for information.

**NOTE:** The Board does not accept applications or correspondence by e-mail.

If you wish to file an application, contact:

Manitoba Labour Board  
Suite 500, 5<sup>th</sup> Floor  
175 Hargrave Street  
Winnipeg, Manitoba, Canada R3C 3R8  
Telephone: (204) 945-2089 Fax: (204) 945-1296

## Information Bulletins

The Board produces information bulletins regarding its practice and procedure. The Board did not issue any new or amend any existing information bulletins during the reporting period. The following is a list of the current information bulletins.

1. Review and Reconsideration
2. *Manitoba Labour Board Rules of Procedure* – Regulation 184/87 R - Rule 28 (Part V – Rules of Board Practice)
3. The Certification Process
4. Financial Disclosure
5. Fee Schedule
6. Arbitrators List
7. Filing of Collective Agreements
8. Process for the Settlement of a First Collective Agreement
9. Objections on Applications for Certification
10. *The Employment Standards Code* - Appeal Hearings
11. Reduction of Deposits on Referrals to the Manitoba Labour Board under *The Employment Standards Code*
12. Exemption to Requests for Leave under *The Elections Act*
13. Extension of Time to File Documentation, Notice of Hearing and Request for Adjournment
14. Bargaining Agent's Duty of Fair Representation
15. Disclosure of Personal Information

The information bulletins are published in the Manitoba Labour Board's Index of Written Reasons for Decision and on the Board's website at <http://www.gov.mb.ca/labour/labbrd/bulletin.html>. Copies of the information bulletins may be requested from the Board by calling (204)945-2089 or by writing to 500 - 175 Hargrave Street, Winnipeg, Manitoba, R3C 3R8.

## SUSTAINABLE DEVELOPMENT

The Board strives to achieve the goals set out in the Sustainable Development Action Plan. In compliance with *The Sustainable Development Act*, the Manitoba Labour Board is committed to ensuring that its activities conform to the principles of sustainable development. The Board promoted sustainable development through various activities including recycling, paper management, use of environmentally preferable products and duplex copying.

## FINANCIAL INFORMATION

<b>Expenditures by Sub-Appropriation</b>	<b>Actual 2011/12 (\$000s)</b>	<b>Estimate 2011/12 FTE</b>	<b>Estimate 2011/12 (\$000s)</b>	<b>Variance Over/(Under) (\$000s)</b>	<b>Expl. No.</b>
Total Salaries	1,282	16.50	1,306	(24)	
Total Other Expenditures	456		449	7	
Total Expenditures	1,738		1,755	(17)	



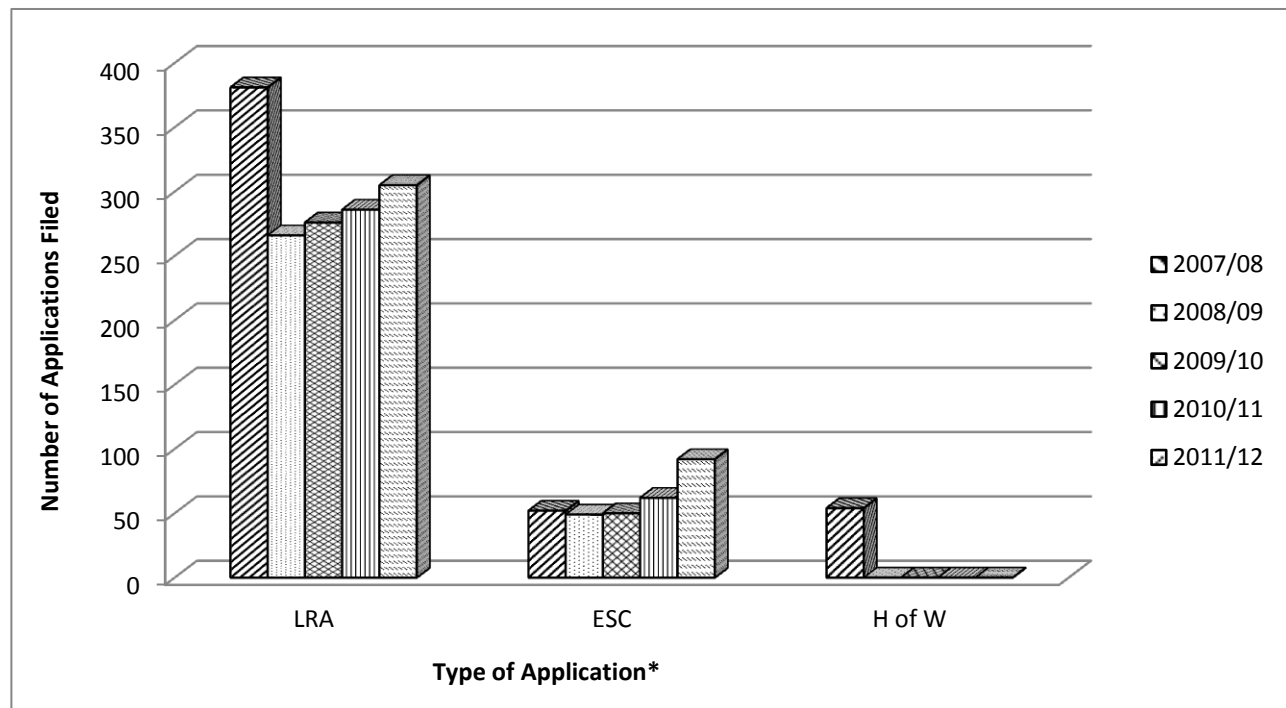
# PERFORMANCE REPORTING

## Summary of Performance

The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes and its decisions established policy, procedures and precedent and provided for a more sound, harmonious labour relations environment. The Board conducted formal hearings; however, a significant portion of the Board's workload was administrative in nature. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its board officers to mediate outstanding issues and complaints. The Board monitored its internal processes to improve efficiencies and expedite processing of applications or referrals.

The number of applications filed with the Manitoba Labour Board during the past 5 years (for the period April 1 to March 31) is indicated in the chart below, with hours of work applications shown separately from *The Employment Standards Code*.

**Manitoba Labour Board  
Number of Applications Filed**



### \*Types of Applications

LRA	Labour Relations Act
ESC	Employment Standards Code
H of W	Hours of Work Exemptions

*The Employment Standards Code* amendments effective April 2007 eliminated applications to the Board for hours of work exemptions.

Detailed statistical tables and summaries of significant Board decisions can be found beginning on pages 51 and 25 respectively.

## Program Performance Measurements

During the past reporting year, the Board continued its initiative to measure service activities and client responsiveness.

### Program Performance Measurements

April 1 - March 31

Indicator	Actual 2010/11	Actual 2011/12
Percentage of Cases disposed of	71%	74%
Number of hearings scheduled	303	337
Percentage of hearings that proceeded	33%	34%
Number of votes conducted	17	11
Median processing time (calendar days):		
<i>The Labour Relations Act:</i>	47	60.5
<i>The Workplace Safety and Health Act</i> <sup>1</sup>	189	66.5
<i>The Essential Services Act</i>	NA	NA
<i>The Elections Act</i>	NA	NA
<i>The Employment Standards Code</i>	124	124

"NA" - No applications processed in reporting period

<sup>1</sup> - The median processing time for applications filed under *The Workplace Safety and Health Act* in both fiscal years was based on the processing of less than five cases. The processing times are not necessarily indicative of the normal median processing times of the Board.

In addition to applications filed, and pursuant to *The Labour Relations Act*, the Board also received and filed copies of collective agreements and arbitration awards. In addition to the 3,126 collective agreements on file, there are 2,258 arbitration awards and 943 Written Reasons for Decision and Substantive Orders in the Board's collection. Copies of collective agreements, arbitration awards and Written Reasons are available upon request and in accordance with the Board's fee schedule. Copies of Written Reasons for Decision and Substantive Orders issued since January 2007 are posted on the Board's website.

## **Key Statistics in the Reporting Period**

- 532 cases before the Board (pending from previous period plus new applications);
- 394 (74 percent) of the cases before the Board were disposed of/closed;
- 193 applications scheduled for hearing;
- 115 hearing dates proceeded;
- Board conducted 11 votes;
- Issued 7 Written Reasons for Decision and 72 Substantive Orders;

## **Ongoing Activities and Strategic Priorities**

- Develop succession plan for key positions;
- Promote learning plans for staff;
- Conduct seminar for Vice-chairpersons and Board Members - scheduled for May 2013;
- Increase appointments of Board representatives to effect successful dispute resolutions without the need for formal hearings;
- Improve practices and procedures and to increase efficiencies;
- Expand information available on the website for ready access by the labour relations community, legal practitioners, educators and the public;
- Maintain accountability for allocated budget; and,
- Reduce median processing times.

## **Statistiques importantes pendant la période de référence**

- 532 cas ont été portés devant la Commission (demandes en instance depuis l'exercice précédent et nouvelles demandes).
- 74 % des cas portés devant la Commission (394) ont été réglés ou classés.
- Une date d'audience a été fixée pour 193 demandes.
- La Commission a tenu 115 audiences.
- La Commission a tenu 11 votes.
- La Commission a rendu sept motifs écrits de décision et 72 ordonnances importantes.

## **Activités en cours et priorités stratégiques**

- Élaboration d'un plan de relève pour des postes de premier plan.
- Promotion de plans d'apprentissage à l'intention du personnel.
- Organisation d'un colloque à l'intention des vice-présidents et des membres de la Commission – provisoirement prévu en mai 2013.
- Augmentation des nominations de représentants de la Commission afin de permettre le règlement de différends sans avoir recours à des audiences officielles.
- Amélioration des pratiques et des procédures et augmenter les efficacités.
- Diffusion de davantage de renseignements sur le site Web afin qu'ils soient facilement accessibles aux intervenants du secteur des relations du travail, aux professionnels du droit, aux éducateurs et au public.
- Respect de l'obligation redditionnelle pour le budget alloué.
- Réduction des délais moyens de traitement des demandes.

## **THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT**

*The Public Interest Disclosure (Whistleblower Protection) Act* came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The *Act* builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the *Act* may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counselling a person to commit a wrongdoing. The *Act* is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the *Act*, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the *Act*, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the *Act*, and must be reported in a department's annual report in accordance with section 18 of the *Act*.

The following is a summary of disclosures received by the Manitoba Labour Board for fiscal year 2011/12.

<b>Information Reported Annually (per section 18 of The Act)</b>	<b>Fiscal Year 2011/12</b>
The number of disclosures received, and the number acted on and not acted on. <i>Subsection 18(2)(a)</i>	<b>NIL</b>
The number of investigations commenced as a result of disclosure. <i>Subsection 18(2)(b)</i>	<b>NIL</b>

## SUMMARIES OF SIGNIFICANT BOARD DECISIONS

During the reporting period, the Board issued 7 Written Reasons for Decision and 72 Substantive Orders.

The full text of the Written Reasons and the Substantive Orders issued since January 2007 are available on the Board's website (<http://www.gov.mb.ca/labour/labbrd/decisions/index.html>) or from the Board's office, upon payment of the applicable copying fee.

### **Pursuant to *The Labour Relations Act***

#### **City of Brandon (Brandon Fire and Emergency Services) - and - Brandon Professional Firefighters'/Paramedics' Association, Local #803, I.A.F.F. - and - M.L.**

Case No. 56/11/LRA

April 7, 2011

**UNFAIR LABOUR PRACTICE - ARBITRATION** - Deferral - Exercising legislated rights - Union contended Employer's statement that Employee would be subject to disciplinary action if he did not provide medical certificate constituted threat to deny his right under *The Health Services Insurance Act* to select medical practitioner whom he wished and was contrary to subsection 17(a)(iii) of *The Labour Relations Act* - No facts were pleaded that Employer denied or threatened to deny Employee any pension rights or benefits to which he was entitled because he exercised right conferred upon him under any act of Legislature - Board satisfied application did not disclose any facts which arguably constituted a *prima facie* case under subsection 17(a)(iii) of the *Act* - Collective agreement provided doctor's certificate must be presented upon request - Any dispute of request that Employee provide medical certificate should be resolved pursuant to grievance procedure contained in collective agreement - Application dismissed - Substantive Order.

#### **City of Brandon (Brandon Fire and Emergency Services) - and - Brandon Professional Firefighters'/Paramedics' Association, Local #803, I.A.F.F.**

Case No. 86/11/LRA

April 7, 2011

**UNFAIR LABOUR PRACTICE - UNION - ARBITRATION** - Deferral - Interference - Union asserted Employer interfered with representation of its members by introducing, without Union's input, data entry policy which included disciplinary consequences for failing to meet accuracy expectations - Employer promulgating new policy did not, standing alone, constitute breach of subsection 6(1) of *The Labour Relations Act* - Union's concerns regarding manner Employer may have promulgated policy and how enforcement of policy may adversely affect Union members from disciplinary perspective could be raised in grievance and arbitration procedure - Board does not function as surrogate arbitration board - Matter ought to be deferred to grievance and arbitration process - Application dismissed - Substantive Order.

#### **City of Brandon (Brandon Fire and Emergency Services) - and - Brandon Professional Firefighters'/Paramedics' Association, Local #803, I.A.F.F. - and - W.R.**

Case No. 92/11/LRA

April 7, 2011

**UNION - ARBITRATION** - Deferral - Interference - Union filed unfair labour practice application asserting Employer acted contrary to subsections 6(1) and 17(b)(ii) of *The Labour Relations Act* by issuing verbal warning to union president for circulating e-mail to union membership regarding what was said and what took place during safety committee meeting attended by representatives of Union and Employer - Employee was given non-disciplinary warning for what Employer asserted were false statements - Held, regardless of whether or not Employee held office with bargaining agent, his alleged actions provided proper and sufficient cause for Employer's action and were consistent with collective agreement - Board

determined matters raised in Application could be adequately determined under provisions of collective agreement - Application dismissed - Substantive Order.

**Norway House Cree Nation - and - Pinaow Wachi Inc. Personal Care Home - and - Norway House Cree Nation Nurses Local 139 of the Manitoba Nurses' Union - and - Attorney General**

Case Nos. 318/08/LRA & 319/08/LRA

April 8, 2011

**JURISDICTION** - Constitutional - Indians - Health - Board dismissed applications for certification having concluded labour relations of Employers not within exclusive jurisdiction of Legislature - Union filed for review of decision which was granted and heard by expanded panel of Board - Expanded panel used functional test to inquire into nature, habitual activities and daily operations of Employers to determine whether operations constituted federal undertaking - Functional test conclusive - Essential nature of operations was health care which was not federal undertaking under section 91 of *Constitution Act, 1867* - Application for Review and Reconsideration allowed and matter referred back to original panel.

**Central Park Lodge - and - Canadian Union of Public Employees, Local 2039 - and - M.F.**

Case No. 244/10/LRA

May 9, 2011

**DUTY OF FAIR REPRESENTATION** - Contact administration - Failure to refer grievance to arbitration - Employee filed Application after Union advised grievance would not be submitted to arbitration as it lacked merit - Board found Union conducted meaningful and thorough investigation; attended grievance hearing and advocated on Employee's behalf; and, determined grievance should not be advanced to arbitration based on reasonable evaluation of relevant information and consideration of facts - Held Union exercised degree of care which person of ordinary prudence and competence would exercise in similar circumstances and could not be said to have failed to take reasonable care in representing Employee - Employee failed to establish violation of section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order.

**Y.W.C.A. Residence Inc. - and - Manitoba Government and General Employees' Union - and - S.S.**

Case No. 96/11/LRA

June 3, 2011

**DUTY OF FAIR REPRESENTATION - TIMELINESS** - Employee alleged union official pressured him to accept offer to settle grievances in May 2009 - Employee filed duty of fair representation application in March 2011 - Held Employee delayed filing Application more than 22 months following date when he became aware Union acted in violation of *The Labour Relations Act* - Employee explained delay by asserting he was seriously injured in automobile accident in March 2010 - Board found explanation inadequate - First, when accident occurred, Employee already unduly delayed filing complaint - Second, Employee did not establish he was medically incapable of filing application in timely manner - Application dismissed for undue delay - Substantive Order.

**B.M.D., All Seasons Roofing - and - J.R.J.F.**

Case No. 35/11/LRA

June 14, 2011

**TIMELINESS** - On February 8, 2011, Employee filed unfair labour practice application under subsection 7(h) of *The Labour Relations Act* - Alleged violations occurred from May 2008 to June 2009 and again in June 2010 - Subsection 30(2) of the *Act* provides Board may refuse to accept complaint where Employee unduly delayed in filing complaint which Board has interpreted to mean periods of six months or greater - Application dismissed for undue delay - Substantive Order.

**Golden Links Lodge - and - Manitoba Government and General Employees' Union - and - T.S.**

Case No. 71/11/LRA

June 14, 2011

**DUTY OF FAIR REPRESENTATION - TIMELINESS** - Union submitted Employee unduly delayed filing duty of fair representation application - Board's practice not to entertain duty of fair representation complaint filed six to eight months beyond events referred to in complaint unless satisfactory explanation provided - Board found Employee became aware of alleged violation at union meeting held September 21, 2010 and application was filed March 14, 2011 - Board satisfied key event was communication from Employer to Employee on November 16, 2010 that she was being removed from casual list - Both events clearly fell within six month guideline - Substantive Order.

**DUTY OF FAIR REPRESENTATION** - Internal Union Affairs - Failure to process grievance - Employee's name removed from casual roster - She filed duty of fair representation application alleging Union representatives displayed indifferent attitude and ignored her request for help - Application cited complaints regarding events which transpired at union meetings related to election of local officers - Held internal union matters could not form basis of duty of fair representation complaint because section 20 of *The Labour Relations Act* only addressed standards of care which bargaining agent must follow when representing rights of employee under collective agreement - Also, within limited provisions of collective agreement as it related to casual employees, Union did pursue Employee's concerns - Except for specific provisions, collective agreement clearly did not apply to casual employees - Accordingly, no *prima facie* right to grieve nor to take issue to arbitration - Application did not plead or disclose concise statement on which Employee relied and which facts, if proven, would result in finding Union acted in arbitrary or discriminatory manner or acted in bad faith, under section 20 - Employee failed to establish *prima facie* - Application dismissed - Substantive Order.

**CG Power Systems Canada Inc. - and - USW, Local 4297 - and - L.D.**

Case No. 64/11/LRA

June 21, 2011

**DUTY OF FAIR REPRESENTATION** - Contract administration - Delay in processing grievance - Settlement of grievance - Employee alleged Union breached duty of fair representation when it accepted settlement offer to resolve his unpaid suspension - Employee submitted process took too long and he was not advised of Union membership meeting at which Union resolved to accept settlement offer - Held, based on Board's knowledge and experience, five months to conclude settlement of grievance not unreasonable and not ground upon which Board could find violation of subsection 20(b) - Found that Union filed grievance immediately after suspension imposed; held number of meetings with Employer; advised Employee of terms of settlement; had difficulty contacting Employee to advise him of meeting - When matter was presented to and voted upon by Union membership, settlement proposal had been revised in that suspension would be removed from Employee's file and he would be paid - Union's conclusion that no valid ground to proceed to arbitration was reasonable because Employee was made whole and could not have achieved better result at arbitration - Held Employee failed to establish *prima facie* case - Application dismissed - Substantive Order.

**PRACTICE AND PROCEDURE** - Statutory declaration - Union submitted Application be dismissed on ground that statutory declaration sworn in support of Application did not satisfy Board's *Rules of Procedure* - Employee filed revised statutory declaration that was attached to new Application - Union submitted new Application constituted attempt to refile original Application - Board satisfied statutory declaration, as signed by Employee, was irregular as different person named as declarant - Board satisfied defect was technical irregularity and filing of new statutory declaration cured defect - Purpose of new Application was to perfect original Application, not intended to raise new grounds - Substantive Order.

**University Of Winnipeg - and - Public Service Alliance of Canada**

Case No. 105/11/LRA

July 12, 2011

**APPLICATION FOR CERTIFICATION - Rule 28 -** While agreement of Union and Employer on criteria which constituted satisfactory modification of Rule 28 of Board's *Rules of Procedure* was relevant consideration, agreement between parties not binding on Board - Board ruled, given unique and special circumstances relating to employment relationship, application of Rule 28 was modified for purpose of calculating employee support on date Application was filed - Any employee on list of names who were employed on date of Application and who had performed any work during three of six pay periods in twelve-week period prior to filing Application were included for determining support for Application - Applying modified formula under Rule 28, Board satisfied that at least 40 percent but fewer than 65 percent of employees in unit wished to have Union represent them - Majority of eligible employees who voted in representation vote wished to have Union represent them - Certification granted - Substantive Order.

**Manitoba Lotteries Corporation - and - General Teamsters Local Union No. 979**

Case No. 179/10/LRA

July 14, 2011

**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT -** Fragmentation - Unions filed three separate applications covering different groups of employees of Employer - Employer submitted that applications proposed bargaining units that were within scope of larger unit which had been recently decertified and which remained viable and only appropriate bargaining unit - It argued Unions attempting to fragment already appropriate bargaining unit - Board held "open field" was created when former unit ceased to exist and any bargaining agent was entitled to apply for unit of employees claimed to be appropriate for collective bargaining - Principles regarding fragmentation did not apply because bargaining unit no longer existed and employees affected by applications were unrepresented at time applications filed - Substantive Order.

**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT -** Community of Interest - Scope - Union applied for certification of surveillance technicians and surveillance supervisors unit - Board considered surveillance technicians and supervisors work independently, with little interchange with other staff - Also practice in gaming/casino industry was to separate surveillance units given nature of duties - Establishment of separate bargaining unit for surveillance technicians and supervisors was reflective of their distinct community of interest - Unit appropriate for collective bargaining - Certification granted - Substantive Order.

**Manitoba Lotteries Corporation - and - International Brotherhood of Electrical Workers, Local 435**

Case No. 182/10/LRA

July 14, 2011

**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT -** Fragmentation - Unions filed three separate applications covering different groups of employees of Employer - Employer submitted that applications proposed bargaining units that were within scope of larger unit which had been recently decertified and which remained viable and only appropriate bargaining unit - It argued Unions attempting to fragment already appropriate bargaining unit - Board held "open field" was created when former unit ceased to exist and any bargaining agent was entitled to apply for unit of employees claimed to be appropriate for collective bargaining - Principles regarding fragmentation did not apply because bargaining unit no longer existed and employees affected by applications were unrepresented at time applications filed - Substantive Order.

**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT -** Scope - Community of Interest - Union applied for certification of employees performing installation, maintenance, integrity and compliance of electronic gaming devices - Board determined that classifications of hotline technician and inventory clerk, given their daily interaction with gaming technicians, fell within proposed unit - Held



proposed unit constituted group of employees with sufficiently coherent community of interest - Board ordered ballots cast in representation vote be counted - Substantive Order.

**Manitoba Lotteries Corporation - and - Canadian Union of Public Employees, Local 5021**

Case No. 224/10/LRA

July 14, 2011

**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT** - Fragmentation - Unions filed three separate applications covering different groups of employees of Employer - Employer submitted that applications proposed bargaining units that were within scope of larger unit which had been recently decertified and which remained viable and only appropriate bargaining unit - It argued Unions attempting to fragment already appropriate bargaining unit - Board held "open field" was created when former unit ceased to exist and any bargaining agent was entitled to apply for unit of employees claimed to be appropriate for collective bargaining - Principles regarding fragmentation did not apply because bargaining unit no longer existed and employees affected by applications were unrepresented at time applications filed - Substantive Order.

**APPLICATION FOR CERTIFICATION - APPROPRIATE BARGAINING UNIT** - Scope - Union applied for certification of administrative and technical staff except for classifications included in certification applications filed at same time by IBEW and Teamsters - Since proposed bargaining unit included majority of classifications of recently decertified unit, Board satisfied that unit constituted "an" appropriate bargaining unit - Board ruled that the classifications of hotline technicians and inventory clerk properly belonged within bargaining unit IBEW proposed - Subject to that ruling, Board satisfied bargaining unit proposed in CUPE Application represented viable bargaining unit - Board ordered ballots cast in representation vote be counted - Substantive Order.

**ONE Contractors - and - Carpenters Union Local 343 - and - H.L.**

Case No. 43/10/LRA

July 14, 2011

**DUTY OF FAIR REPRESENTATION** - Arbitrary conduct - Reasonable care - Discharge - Employee discharged for allegedly making racial comments and assaulting co-worker - Board found Union official did not provide Employee with assistance in drafting discharge grievance; did not take any time to properly interview Employee; and hastily concluded he instigated incident without reviewing results of investigation and witness statements with him - Union's failures went beyond honest errors or even laxity and rose to level of failing to exercise reasonable care - Union dropped grievance on day it was filed and prior to Employer formally rejecting grievance - Union did not make reasonable effort to advocate for Employee or to persuade Employer to reduce or rescind penalty especially given clear evidence Employee victim of assault by co-worker - Manner in which Union communicated decision not to proceed with grievance left great deal to be desired - Union exhibited hostility towards Employee when he mentioned he might discuss matter with the Board - Cumulative effect of Union's conduct indicated failure on its part to exercise reasonable care - Application granted - Substantive Order.

**McAsphalt Industries Ltd. - and - International Union of Operating Engineers, Local 987 - and - Y.Y.**

Case No. 43/11/LRA

July 14, 2011

**DECERTIFICATION** - Voluntariness - Union submitted petition filed with decertification application did not represent true wishes of majority of employees - Employee who filed Application submitted evidence as to origination and preparation of petition - All signatories to petition, including Employee who signed petition and who was present when other employees signed, emphasized they understood what petition represented and that they signed voluntarily - Employee established, on balance of probabilities, that petition represented voluntary wishes of signatories - Conversely, Union did not submit any evidence that established Employer did anything that influenced employees who signed petition, or interfered with voluntary expression of their true wishes in relation to cancellation of certificate - Employee established

*prima face* case under subsection 50(2) of *The Labour Relations Act* - Ballots cast in representation vote to be counted - Substantive Order.

**Manitoba Lotteries Corporation - and - National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144 - and - K.B.**

Case No. 186/11/LRA

July 19, 2011

**VOTE - PRACTICE AND PROCEDURE** - On May 30<sup>th</sup>, Union posted notice of ratification vote or information meetings to take place on June 4<sup>th</sup> and 5<sup>th</sup> - Tentative collective agreement reached on June 2<sup>nd</sup> - On June 3<sup>rd</sup>, Union posted special notice meetings would be for vote - Employee, who attended meeting, filed complaint alleging Union failed to provide reasonable notice of vote - Held notice not indicating length of meetings was not deficiency; providing start time sufficient - Notice stating purpose of meeting may be either to ratify tentative agreement or information meeting was not misleading - Reasonable employee would be aware of significance of alternative purposes of meeting - Complaint dismissed - Substantive Order.

**Manitoba Lotteries Corporation - and - National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144 - and - V.B.**

Case No. 187/11/LRA

July 19, 2011

**VOTE - PRACTICE AND PROCEDURE** - On May 30<sup>th</sup>, Union posted notice of ratification vote or information meetings to take place on June 4<sup>th</sup> and 5<sup>th</sup> - Tentative collective agreement reached on June 2<sup>nd</sup> - On June 3<sup>rd</sup>, Union posted special notice meetings would be for vote - Employee, who attended meeting, filed complaint alleging Union failed to provide reasonable notice of vote - Held notice not indicating length of meetings was not deficiency; providing start time sufficient - Notice stating purpose of meeting may be either to ratify tentative agreement or information meeting was not misleading - Reasonable employee would be aware of significance of alternative purposes of meeting - Complaint dismissed - Substantive Order.

**Manitoba Lotteries Corporation - and - National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144 - and - V.C.**

Case No. 188/11/LRA

July 19, 2011

**VOTE - PRACTICE AND PROCEDURE** - On May 30<sup>th</sup>, Union posted notice of ratification vote or information meetings to take place on June 4<sup>th</sup> and 5<sup>th</sup> - Tentative collective agreement reached on June 2<sup>nd</sup> - On June 3<sup>rd</sup>, Union posted special notice meetings would be for vote - Employee, who attended meeting, filed complaint alleging Union failed to provide reasonable notice of vote - Held notice not indicating length of meetings was not deficiency; providing start time sufficient - Notice stating purpose of meeting may be either to ratify tentative agreement or information meeting was not misleading - Reasonable employee would be aware of significance of alternative purposes of meeting - Complaint dismissed - Substantive Order.

**City of Steinbach - and - International Union of Operating Engineers, Local 987 - and - G.R.B. (as representative of Objecting Employees)**

Case No. 38/11/LRA

July 26, 2011

**DECERTIFICATION** - Voluntariness - Employee satisfied onus that petition filed in support of Application seeking cancellation of certificate represented voluntary wishes of employees who signed petition - Circumstances of origination, preparation, circulation and signing of petition met requirements of Board - All signatories to petition understood what petition represented and they signed voluntarily - Conversely,

Union failed to satisfy Board petition did not reflect voluntary wishes of employees - Applicant established *prima facie* case under subsection 50(2) of *The Labour Relations Act* - Ballots from representation vote to be counted to determine issue - Substantive Order.

**City of Steinbach - and - International Union of Operating Engineers, Local 987**

Case No. 62/11/LRA

July 26, 2011

**DECERTIFICATION** - Employee filed application seeking cancellation of Certificate MLB-6705 (Case No. 38/11/LRA) - Union filed unfair labour practice application pursuant to Subsection 6(1) of *The Labour Relations Act* - Board satisfied Employer did not interfere with formation, selection or administration of Union or representation of employees by Union - Application dismissed - Substantive Order.

**Government of Manitoba, Manitoba Ombudsman - and - Manitoba Government and General Employees' Union**

Case No. 1/11/LRA

August 12, 2011

**APPLICATION FOR CERTIFICATION – ESTOPPEL** – Representation - Employer submitted Union represented it would not seek to certify employees when it agreed to exclude employees from collective agreement – Held estoppel could not be relied upon to prevent exercising of statutory right or to release party from statutory obligation – Substantive Order.

**APPROPRIATE BARGAINING UNIT** - Union filed application for certification for all employee unit in office of Ombudsman - Employer contested appropriateness of bargaining unit – Board held *The Civil Service Act* did not expressly limit or restrict Board's jurisdiction to deal with collective bargaining rights of employees in applied for unit; did not expressly contemplate there may be only one bargaining unit and one collective agreement for all employees of Province; did not contain any provision that would prevent group of previously excluded individuals from seeking to have Union represent them - Evidence did not support applied for unit not appropriate because employees may investigate decisions, acts or omissions of other members of Union - Suggestion employees would be compromised by association with Union was not reasonable - Board did not believe public would reasonably conclude employees' investigations would be compromised if Union was bargaining agent - Suggestion senior executives might be reluctant to provide highly sensitive information was conjecture and must not thwart right of employees to seek Union as bargaining agent - Board satisfied applied for unit appropriate for collective bargaining and ordered ballots cast in representation vote be counted – Substantive Order.

**APPROPRIATE BARGAINING UNIT** - Union filed application for certification for all employee unit in office of Ombudsman - Employer objected to particular unions representing employees - Board does not decide which union employees should choose - Board satisfied applied for unit appropriate for collective bargaining and ordered ballots cast in representation vote be counted – Substantive Order.

Follow up to Interim Order – On August 17, 2011, the ballots cast in the representation vote were counted. Based on the results of the representation votes, the Application for Certification was dismissed (Dismissal No. 2011)

**CancerCare Manitoba - and - Manitoba Association of Health Care Professionals**

Case No. 17/11/LRA

August 12, 2011

**APPROPRIATE BARGAINING UNIT** - All employee unit - Geographic scope - Health care - Employer developed new facility in Brandon - Union applied for certification of all employees of Employer employed outside Winnipeg - Employer objected to certificate alleging, through voluntary recognition, parties agreed not to treat existing certifications as being limited to Winnipeg - Board held collective agreement defined to mean agreement in writing - Oral understandings to follow a particular collective agreement did not

constitute collective agreement - Board concluded no collective agreement in writing existed regarding employees employed at Brandon facility except for physics associate meaning Application properly before it - Not appropriate to certify Union for all employees outside of Winnipeg as Union signed up more than 65 percent of Brandon employees as members in good standing as of date of filing of application - Certification of all employee unit limited to Brandon facility constituted appropriate unit particularly when physicians, nurses, office and clerical staff were excluded - Certification issued - Substantive Order.

**St. Laurent Co-op Recreation Centre - and - International Union of Operating Engineers, Local 987**

Case No. 220/11/LRA

September 1, 2011

**UNFAIR LABOUR PRACTICE** - Coercion - Discharge - Exercising legislated rights - Employer suspended Employee for three months, then increased suspension to six months and after meeting with grievance mediator decided to dismiss Employee - Union asserted Employer's acceleration of discipline constituted intimidation, coercion and threat of dismissal and were designed to prevent Employee from exercising his rights under collective agreement - Such actions were in response to requests for union representation and services of grievance mediator - Held Union's contention that Employer improperly accelerated or increased level of discipline was matter to be addressed by arbitrator - As per subsection 140(7) of *The Labour Relations Act*, Board may refuse to hear any matter it considered could be adequately determined under arbitration provisions of collective agreement - Application dismissed - Substantive Order.

**Manitoba Lotteries Corporation - and - General Teamsters, Local Union No. 979 - and - National Automobile, Aerospace, Transportation and General Workers (CAW-Canada)**

Case No. 55/11/LRA

September 7, 2011

**REVIEW** - New Evidence - Natural Justice - Union requested Board review, vary, rescind or rehear certificate and interim order - Board dismissed review application as positions advanced by Union were recasting and resubmission of arguments advanced at hearing - Assertions Board denied Union natural justice flowed from Union's disagreement with Board's rulings regarding scope and nature of evidence allowed to be adduced - Board satisfied its rulings fell within its statutory jurisdiction to determine scope and ambit of hearing - Union neither furnished new evidence nor showed sufficient cause why original decision should be reviewed or reconsidered on a question of law or policy - Substantive Order.

**PRACTICE AND PROCEDURE - REVIEW** - Teamsters filed Application for Review of certificate MLB-6824 and Interim Order 1494 - Board did not accept CAW's position that Teamsters filed a review of an earlier review application for Order 1491 - Board was satisfied its disposition of the Order 1491 did not preclude Teamsters from filing application for review of Order 1494 as that order was issued following completion of a full hearing and specific rulings on evidence adduced at the hearing and factual and legal contexts were different - Substantive Order.

**Gordon Hotels and Motor Inns Ltd. - and - Workers United Canada Council**

Case No. 299/11/LRA

October 14, 2011

**SUCCESSORSHIP** - Union succession - Noting that Employer had no objection to issuance of declaration sought, Board declared, through succession of mergers, amalgamations and transfers of jurisdiction, Workers United Canada Council ("Union") became and was successor union to predecessor unions identified in Application - Union acquired rights, privileges and obligations of predecessor unions under *The Labour Relations Act* or under any collective agreement to which predecessor unions were parties - Union acquired rights, privileges and obligations of predecessor unions regarding any existing bargaining units of the Employer's - Substantive Order.

**City of Brandon (Brandon Fire and Emergency Services) - and - Brandon Professional Firefighters'/Paramedics Association, Local #803, I.A.F.F. - and - W.R.**

Case No. 125/11/LRA

October 24, 2011

**REVIEW** - New evidence - Board dismissed Union's unfair labour practice application as issues raised could be adequately determined through arbitration - Union filed application for review and reconsideration asserting new evidence was available within meaning of Rule 17(1)(a) of *Manitoba Labour Board Rules of Procedure* and, further, that an arbitrator could not grant relief claimed by Union in Application - Board noted documents filed with review Application were in existence and available at time original Application filed - Board re-affirmed that matters raised could be adequately determined under grievance and arbitration provisions as reinforced by broad definition of a grievance in collective agreement - Review Application dismissed - Substantive Order.

**CancerCare Manitoba - and - Manitoba Association of Health Care Professionals**

Case No. 294/11/LRA

October 27, 2011

**REVIEW - APPROPRIATE BARGAINING UNIT** - Board certified Union as bargaining agent for all employees of Employer employed in City of Brandon - Union requested Board rescind certificate and issue new certificate for bargaining unit encompassing all employees in Province of Manitoba - Union argued Board not empowered to vary description of bargaining unit and Board's jurisdiction limited to determining question as to whether or not bargaining unit proposed by Union was appropriate for collective bargaining - Held subsections 39(1) and 39(2) of *The Labour Relations Act* authorized Board to alter description of any proposed bargaining unit - Application did not reveal sufficient cause why Board should review or reconsider original decision - Application dismissed - Substantive Order.

**CancerCare Manitoba - and - Manitoba Association of Health Care Professionals**

Case No. 296/11/LRA

October 27, 2011

**REVIEW - APPROPRIATE BARGAINING UNIT** - New evidence - Board certified Union as bargaining agent for all employees of Employer employed in City of Brandon - Employer requested Board review and reconsider its decision submitting Board erred in determining that existing collective agreement was not a collective agreement within meaning of *The Labour Relations Act* in respect of employees in Brandon - Employer asserted certifying Union for unit already covered by a collective agreement between same parties was inconsistent with the *Act* - Held Employer's submissions were reiteration and reformulation of arguments advanced at original hearing - Disagreement with Board's findings on evidence submitted did not, standing alone, constitute grounds for varying, rescinding, or dismissing order - Application for Review and Reconsideration dismissed - Substantive Order.

**Red River Place Personal Care Home - and - International Union of Operating Engineers, Local 987 - and - M.G.**

Case No. 246/11/LRA

November 3, 2011

**DUTY OF FAIR REPRESENTATION** - Board ruled Employee unduly delayed filing her duty of fair representation application - Employee listed health issues, being ignored by Union, difficulty in obtaining legal advice, and time spent in obtaining advice from elected officials, as reasons for not filing Application with Board more promptly - Board not satisfied Employee demonstrated she was incapable of filing Application in timely manner - Delay was extreme, ranging from over three years from initial allegations to more than six months with respect to most recent allegation - Subsection 30(2) of *The Labour Relations Act* provided Board may refuse to accept complaint where its filing has been unduly delayed which Board has interpreted to mean periods of six months or greater - Application dismissed - Substantive Order.

**Manitoba Lotteries Corporation - and -M.R. (on behalf of Housekeeping Attendant & Industrial employees, Club Regent Casino) - and -CAW, Local 144**

Case No. 334/11/LRA

December 1, 2011

**DUTY OF FAIR REPRESENTATION** - Scope of duty - Employee alleged Union breached section 20 of *Labour Relations Act* when it negotiated certain terms and conditions of employment relating to general wage increases and sharing of tips - For remedial relief, Employee requested Board order wage increases of 2.9 percent over each year of agreement and order that tips be shared equally among all employees - Held section 20 restricted to disputes relating to rights of employees under collective agreement and did not apply to collective bargaining process - Board had no jurisdiction to award remedial relief requested as that would require Board to change terms of settlement concluded by the parties and ratified by employees - Employee failed to establish *prima facie* case that Union breached section 20 of the *Act* in any respect - Application dismissed - Substantive Order.

**VAW Systems - and - Sheet Metal Workers' International Association, Local No. 511 - and - T.K.**

Case No. 369/11/LRA

December 8, 2011

**REVIEW** - New evidence - Original Application seeking termination of bargaining rights dismissed for being untimely - Petitions or signatures filed with review Application did not constitute new evidence within subsections 17(1)(a) and 17(1)(b) of *Manitoba Labour Board Rules of Procedure* - Time limits which define when application to terminate bargaining rights can be filed are fundamental provisions - Failure to file within defined "open periods" goes to essence of Board's jurisdiction - Review Application did not question or challenge core finding of Board that original Application untimely - Employee's disagreement with original decision did not, standing alone, constitute grounds for varying or rescinding previous ruling or order of Board - Application for review dismissed - Substantive Order.

**Manitoba Government and General Employees' Union - and - Government of Manitoba, (Manitoba Infrastructure and Transportation) - and - G.A.Y.**

Case No. 130/11/LRA

December 14, 2011

**DUTY OF FAIR REPRESENTATION** - Discharge - Employee complained Union's decision not to pursue his dismissal grievance breached subsection 20(a) of *The Labour Relations Act* - Union found no evidence to disprove Employer's position its decision not to renew Employee's term was based solely on expenditure management exercise - In concluding not proceed to arbitration, Union also considered term positions did not have to be renewed nor did positions have to be renewed on seniority - Board satisfied decision was one that reasonably could be made - Application dismissed - Substantive Order.

**DUTY OF FAIR REPRESENTATION - TIMELINESS** - Union submitted Employee's duty of fair representation application should be dismissed for undue delay - Board held that, although Employee filed application almost six months after Union's Grievance and Appeals Committee decided grievance would not proceed to arbitration, that was not delay of sufficient length to dismiss Application on that basis - Substantive Order.

**L'Avenir Cooperative Inc. - and - C.S.**

Case No. 349/11/LRA

December 16, 2011

**UNFAIR LABOUR PRACTICE - TIMELINESS** - In prior decisions, Board concluded "undue delay" means delays of as little as six months - Employee delayed filing unfair labour practice complaint by more than 18 months after last occurrence of alleged unfair labour practices - Held Employee unduly delayed in filing Application pursuant to subsection 30(2) of *The Labour Relations Act* - Furthermore, Application did not reveal specific alleged violations of the *Act* by Employer following date of Employee's dismissal -

Application failed to present facts sufficient to establish *prima facie* violation of the *Act* - Application dismissed - Substantive Order.

**Granny's Poultry Co-Operative (Manitoba) Ltd., Hatchery Operations - and - United Food and Commercial Workers Union, Local No. 832**

Case No. 389/11/LRA

December 21, 2011

**SUBSEQUENT COLLECTIVE AGREEMENT - DUTY TO BARGAIN IN GOOD FAITH** - Breach of duty - Hard bargaining - Lockout - Board determined Union paying locked-out employees 100 percent of lost wages was matter of internal union policy and not evidence that Union bargaining in bad faith - Also Employer entitled to table best and final wage offer and take position that collective agreement would only be concluded if Union moved off its last wage proposal, but Union not accepting Employer's position not evidence of bad faith bargaining but only reflected hard bargaining by both parties - Parties having reached impasse on wages not sufficient basis to rule Union was not bargaining in good faith for the purposes of either subsection 87.1(3) or subsection 87.3(1) of *The Labour Relations Act* - Substantive Order.

**Manitoba Lotteries Corporation - and - CAW Local 144 - and - M.R. (on behalf of Housekeeping Attendant & Industrial) Club Regent Casino**

Case No. 400/11/LRA

January 3, 2012

**DUTY OF FAIR REPRESENTATION - REVIEW – JURISDICTION** - New evidence - Employee filed review application requesting Board review new documentation - Board satisfied documentation filed with review application did not constitute new evidence within meaning of Section 17(1)(a) and (b) of *Manitoba Labour Board Rules of Procedure* - Further, purported new evidence related to bargaining process and to ratification of collective agreement and that evidence was not relevant to Section 20 complaint - In any event, purported new evidence available at time original application filed - To accept review application would require Board to exceed its jurisdiction and award remedial relief by changing terms of settlement concluded by parties - Application dismissed – Substantive Order.

**Community Therapy Services - and - Manitoba Association of Health Care Professionals - and - D.C.**

Case No 184/11/LRA

January 10, 2012

**EVIDENCE – Admissibility** - Union objected to use of two surreptitious tape recordings Employee made of meetings with Union's counsel and business representative - Board ruled tapes inadmissible since allowing tapes would encourage parties to distrust each other and would prolong proceedings due to necessity to adjudicate applications for admissibility of taped conversations.

**DUTY OF FAIR REPRESENTATION - EVIDENCE – Privilege** - Union raised issue whether solicitor-client privilege applied to communications between Employee and Union's solicitor – Board ruled no substantive solicitor-client relationship between Employee and lawyer as Union retained counsel and paid professional fees incurred - However, Section 20 imposed statutory duties on every person acting on behalf of bargaining agent when representing rights of employee under collective agreement which encompassed union's counsel - To find statements made by either union's counsel or other union representatives was inadmissible because only union could waive "solicitor-client" privilege would prevent employee from asserting material facts in support of his complaint against bargaining agent or "any person acting on behalf of the bargaining agent" - Board ruled Union could not claim solicitor-client privilege in respect of evidence Employee may introduce regarding his dealings with Union's counsel.

**D.G. - and - United Food and Commercial Workers Union, Local No. 832**

Case No. 90/10/LRA

January 12, 2012

**UNFAIR LABOUR PRACTICE – REMEDY** - Closure of business – Union requested Board pierce corporate veil and declare Respondent to be actual employer and find Respondent, as an individual, committed unfair labour practices – Board satisfied Respondent, as directing mind of employer, regardless of corporate forms used from time to time, had failed to recognize Union as bargaining agent and had failed to recognize legitimacy of collective bargaining and arbitration process and had committed unfair labour practices - Accordingly, Board satisfied Respondent was responsible to comply with Order originally decided against corporate entity because section 63(1) of The Labour Relations Act required that either parties must commence collective bargaining or parties must “cause authorized representatives on their behalf” to commence collective bargaining - Board declined Union’s request to order Respondent pay \$2,000 to each union member under subsection 31(4)(e) of the Act as that claim for relief was speculative in nature – Substantive Order.

**Duffy’s Taxi 1996 Ltd. - and - CAW Union - and - W.S.**

Case No. 269/10/LRA

January 13, 2012

**UNFAIR LABOUR PRACTICE –** General Manager suspended Employee’s Driver Permit as a result of incident where Employee swore at another taxi driver over dispatch radio and then was verbally abusive to dispatcher – Employee filed unfair labour practice application submitting that Company had revoked his Driver’s Permit due to his involvement in a union organizing drive - Company denied it was employer - In alternative it submitted that decision to terminate Driver’s permit was based on Employee’s misconduct – Board found Employee was rude and belligerent on day in question and General Manager (GM) revoked driving permit based upon his history of disruptive and disrespectful behaviour and behaviour he exhibited on day in question - GM was prepared to reflect upon decision to revoke driver’s permit if Employee successfully completed anger management course - Such an offer, which Employee refused, did not suggest Company was seeking to adversely affect Employee’s employment by reason of his union activities - Application dismissed – Substantive Order.

**Structal Steel - and - International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers Local Union 728 and Robert Kuzubski - and - J.M.**

Case No. 348/11/LRA

January 13, 2012

**DUTY OF FAIR REPRESENTATION - *Prima facie*** - Employee alleged Union failed to represent him about complaint against Employer resulting in him having no choice but to ask for lay off - Board found Employee never asked Union to file grievance and when he raised incident with Union, he had already received lay-off - Given Employee wanted his “complaint” recorded by Union but only after he had requested lay-off and left worksite, Application did not plead or disclose concise statement of material facts, actions or omissions on which Employee could rely and, if proven, would result in finding that Union acted in arbitrary or discriminatory manner or acted in bad faith - Employee failed to establish *prima facie* case - Application dismissed.

**Bayview Construction and Rocky Road Recycling - and - Bayview Rocky Road Employees Association**

Case No. 406/11/LRA

January 13, 2012

**APPLICATION FOR CERTIFICATION - REVIEW** - Technical Error - Bar - Previous application - Union filed review application requesting Board to allow it to file new application for certification for same bargaining unit within 30 days of dismissal of first application - It relied on subsections 8(14) and 8(15) of the *Manitoba Labour Board Rules of Procedure* under which Board can waive standard six month waiting



period where prior application had been rejected for technical error or omission - It submitted error associated with timing of seasonal layoffs and miscommunication within Union regarding number of layoffs and status of workforce - Held application for certification dismissed as Board not satisfied union had support of required percentage of employees - Failure to meet threshold requirement of subsection 40(1) of *The Labour Relations Act* could not be characterized as technical error or omission - Application for Review and Reconsideration dismissed - Substantive Order.

**Garda Canada Security Corporation Inc. - and - United Food and Commercial Workers Union, Local No. 832 - and - F.D.T.**

Case Nos. 263 & 264/10/LRA

February 8, 2012

**UNFAIR LABOUR PRACTICE - *Prima facie*** - Employee had not established *prima facie* case that Union violated sections 8 and 19 of *The Labour Relations Act* as those sections had no relevance to assertions made against Union - Employee fell well short of establishing *prima facie* violation by Union of section 20(b) - Union addressed issues with respect to transportation, discipline and payroll irregularities - While Employee dissatisfied with timeliness and results, no facts were presented which constituted arbitrary, discriminatory or bad faith conduct by the Union.

**UNFAIR LABOUR PRACTICE - *Prima facie*** - Employee maintained Employer violated sections 7 and 17 of *The Labour Relations Act* - Allegations that those disputes were anything more than disagreements under collective agreement were without foundation and did not amount to unfair labour practices - Pursuant to section 140(7) of the *Act*, exercised its discretion to refuse to hear matter which could be determined under arbitration - Fact that Employee disciplined or conduct was investigated did not, standing alone, constitute unfair labour practice - Section 32(2) of the *Act* provided that nothing in *the Act* affected right of employer to suspend, transfer, lay-off, or discharge an employee for proper and sufficient cause - Employee did not establish *prima facie* violation of the *Act*.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - J.P.**

Case No. 383/11/LRA

February 14, 2012

**EVIDENCE – Hearsay** - Employee filed documentation which included unedited Facebook comments of various individuals - Board determined hearsay Facebook comments did not add to fundamental allegations in Application.

**COLLECTIVE AGREEMENT - VOTE – Ratification –** Employee filed vote complaint alleging Union gave insufficient notice of information meetings and of vote; vote did not adhere to normal procedures; some polls were at information meetings which allowed no reasonable time for assessment of offer; and, attendance at and information about polls was difficult for bus drivers as opposed to inside workers leading to vote results being skewed and not reliable polling of membership intent – Board noted Employee admitted he was aware of vote and attempted to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - J.H.**

Case No. 384/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging Union deviated from past voting practices; posted limited information about vote; offered small opportunity to attend information meetings; had reduced polling venues and hours; gave no time to reflect on deal offered as voting done immediately after information session; and, made no attempt to contact or inform employees on holidays - Employee noted collective agreement passed by slim majority and believed result skewed by vote irregularities - Board noted Employee did not allege he was unaware of vote and did not allege he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - B.M.**

Case No. 387/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging Union failed to provide drivers with appropriate notification of ratification vote and failed to provide members with reasonable opportunity to vote - Board noted Employee did not allege he was unaware of vote and did not assert he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**DUTY OF FAIR REPRESENTATION – VOTE – Ratification –** Employee filed vote complaint alleging violations of a various sections of *The Labour Relations Act* including section 20 – Held Section 20 did not apply to collective bargaining process itself because bargaining process, of which ratification is integral part, did not involve representing rights of employees under collective agreement – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - J.R.**

Case No. 388/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint submitting he was on holidays at time of vote and was not aware of vote - He also submitted voting and meeting schedules were posted in improper and unfair manner because procedure for voting was changed from past practice - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was

satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - N. M.**

Case No. 391/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging vote was unduly fast-tracked as it was announced and concluded within one-week; opportunities to vote differed from past procedures; close vote cast doubt on result; and certain drivers, including those on vacation, had no access to voting - Board noted Employee did not allege he was unaware of ratification vote nor did he claim he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**DUTY OF FAIR REPRESENTATION – VOTE – Ratification –** Employee filed vote complaint alleging violations of a various sections of *The Labour Relations Act* including section 20 – Held Section 20 did not apply to collective bargaining process itself because bargaining process, of which ratification is integral part, did not involve representing rights of employees under collective agreement – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - B.M.**

Case No. 392/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging Union failed to provide members with sufficient notice of ratification vote and raised issues regarding content of settlement agreement - Board noted Employee did not allege he was unaware of vote or he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Assertion other employees were denied right to be informed and to vote was speculative - Employee objecting to and disagreeing with terms of settlement not basis for complaint under section 70 - Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**DUTY OF FAIR REPRESENTATION – VOTE – Ratification –** Employee filed vote complaint alleging violations of a various sections of *The Labour Relations Act* including section 20 – Held Section 20 did not apply to collective bargaining process itself because bargaining process, of which ratification is integral part, did not involve representing rights of employees under collective agreement – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - B.M.**

Case No. 395/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging Union failed to provide members with reasonable notice of vote and reasonable opportunity to vote - Board noted Employee attended a meeting and exercised right to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Assertion other employees were denied right to be informed and to vote was speculative - Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**DUTY OF FAIR REPRESENTATION – VOTE – Ratification –** Employee filed vote complaint alleging violations of a various sections of *The Labour Relations Act* including section 20 – Held Section 20 did not apply to collective bargaining process itself because bargaining process, of which ratification is integral part, did not involve representing rights of employees under collective agreement – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - G.T.**

Case No. 396/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging Union failed to provide drivers with appropriate notification of ratification vote and failed to provide members with reasonable opportunity to vote - Board noted Employee did not allege he was unaware of vote and did not assert he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**VOTE – PRACTICE AND PROCEDURE –** Employee filed vote complaint and attached list of 31 bus operators whom he asserted did not have opportunity to vote and had asked that he represent them – Held claim to represent employees not sustainable under the *Act*.

**DUTY OF FAIR REPRESENTATION – VOTE – Ratification –** Employee filed vote complaint alleging violations of a various sections of *The Labour Relations Act* including section 20 – Held Section 20 did not apply to collective bargaining process itself because bargaining process, of which ratification is integral part, did not involve representing rights of employees under collective agreement – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - C.B.**

Case No. 397/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging Union failed to provide members with reasonable notice of vote and that Union changed voting time and procedures from past practice which led to lower voter turnout and acceptance of contract which had been rejected on two prior occasions - Board noted Employee did not allege he was unaware of vote and did not claim he was unable to vote -

Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - J.S.**

Case No. 398/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaint alleging Union did not follow past practice on how votes were conducted; many drivers did not know about vote; and Union did take proper time to get out vote information - Board noted Employee did not allege he was unaware of vote and did not claim he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Assertion other employees were denied right to be informed and to vote was speculative - Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**City Of Winnipeg, Transit Department - and - Amalgamated Transit Union, Local 1505 - and - D.P.**

Case No. 399/11/LRA

February 14, 2012

**VOTE – Ratification –** Employee filed vote complaining that due to the late start of his shifts he was unable to vote - Held posted notices were clear - Purpose of mass meetings and how employees could obtain information and could vote were clearly defined - Provided bargaining agent reasonably met requirements of section 69 of *The Labour Relations Act*, low voter turnout could not be fulcrum for determination under section 70 as *Act* prescribes acceptance or rejection of collective agreement determined by majority of employees who actually cast ballots - Employees being on vacation or absent from work did not affect validity of vote – Fact voting venues and times changed from previous occasions not determinative of complaint - Beyond reasonableness standard, *Act* did not prescribe fixed criteria or rules for conduct of votes - Board was satisfied reasonable notice of vote was given and employees had reasonable opportunity to cast vote - Employee's complaint dismissed – Substantive Order.

**AEG Live Canada Ltd. - and - IATSE, Local 63**

Case No. 202/10/LRA

February 27, 2012

**APPLICATION FOR CERTIFICATION - EMPLOYER -** Union filed application for bargaining unit of stagehands employed by concert promoter - Held manner in which stagehands were hired, disciplined, supervised, directed, and controlled during exceptionally brief period of their engagement, lead inexorably to conclusion promoter not employer - Made little labour relations sense to grant certification where union would be required to negotiate with entity that did not hire, discipline, control or direct employees in meaningful manner - Such conditions unlikely to yield viable collective bargaining relationship - Application dismissed.

**EMPLOYEE** - Union filed application for bargaining unit of stagehands employed by concert promoter - Stagehands did not operate own business for profit, took on no financial risk, had no responsibility for investment or management, did not hire helpers, did not provide equipment beyond basic tools and required direction in helping to set up stage - Held stagehands were employees and not independent contractors.

**City of Brandon and B.D. - and - Brandon Professional Firefighters'/Paramedics' Association and W.R. - and - All Employees Represented by the Applicant Union as Employed by the City Of Brandon**

Case No. 41/12/LRA

March 14, 2012

**PRACTICE AND PROCEDURE - REMEDY** - Interim Order - Reinstatement - Union sought Board to exercise its power to make an Interim Order under Section 31(2) of *The Labour Relations Act* to reinstate employee pending outcome of proceedings - Board satisfied unfair labour practice complaint not frivolous and vexatious and Union advanced arguable case - Board exercised its power and ordered employee to be reinstated - Substantive Order.

**City of Winnipeg Transit Department - and - Amalgamated Transit Union, Local 1505 - and - R.I.**

Case No. 70/12/LRA

March 19, 2012

**REVIEW** - New evidence - Board satisfied exhibits attached to review application did not constitute "new evidence" as all were available to be filed in support of original application - In Review Application, Employee again raised issue of Union's prior practice when conducting votes - Board specifically addressed that issue in dismissal order - Review Application did not raise sufficient or any cause why Board should review original decision either on a principle of law or on a matter of policy - Application for review dismissed - Substantive Order.

**University of Manitoba - and - Association of Employees Supporting Education Services - and - N.V.**

Case No. 1/12/LRA

March 23, 2012

**DUTY OF FAIR REPRESENTATION - JURISDICTION** - Scope of Duty - Arbitration - Employee alleged Union failed to perform due diligence for not challenging proper salary range for new job classification - Union filed grievances regarding Employee's placement on salary scale which were resolved to Employee's satisfaction - Filing and satisfactory resolution of grievances did not reveal arbitrariness or bad faith by Union - For Board to award remedy Employee claimed to revise the salary range would require Board to order amending collective agreement - Section 20 did not apply to collective bargaining process such as negotiation of salary range for new classifications - Employee failed to establish *prima facie* case Union breached section 20 - Application dismissed - Substantive Order.

**DUTY OF FAIR REPRESENTATION** - Scope of Duty - Employee claimed Employer failed in its duty of due diligence - Section 20 restricted to claims bargaining agent failed in its duty of fair representation and was not forum for complaints against employer - Substantive Order.

**TIMELINESS** - Undue Delay - Union contended Employee unduly delayed filing application as he was aware of facts pertaining to application for two years - Board declined to dismiss for undue delay as Union final communication to Employee that grievances were dismissed was six months before application filed - Substantive Order.

**Burntwood Regional Health Authority and T.L. - and - Manitoba Nurses' Union**

Case No. 291/11/LRA

March 30, 2012

**JURISDICTION - ARBITRATION** - Deferral - Employer submitted that Union had elected to use grievance arbitration provisions set out in collective agreement and, as a result, Board did not have jurisdiction to hear matter - Board found grievances referred to in Application were either partially completed, were completed pending receipt of decision from arbitrator or had been advanced to arbitration board to be scheduled for hearing - Application and three most recent grievances addressed same or essentially same matters - Given nature of remedial relief claimed in grievances, Board satisfied arbitration forum may adequately determine substance of matters raised in Application - Board declined to hear Application and deferred matters to grievance and arbitration provisions - Substantive Order.

**PRACTICE AND PROCEDURE** - Res Judicata - Employer submitted Union had elected to use grievance arbitration provisions and Board did not have jurisdiction to hear matter - Held principles relating to res judicata only applied when another tribunal had already issued decision and party to that earlier proceeding sought to re-litigate same matter before another tribunal - Board satisfied jurisdictional argument not applicable because no prior decision had been made by another tribunal - Substantive Order.

***Pursuant to The Employment Standards Code***

**5256951 Manitoba Ltd. t/a The Boat Finders - and - W.S.**

Case No. 198/10/ESC

April 6, 2011

**INDEPENDENT CONTRACTOR** - Employer disputed Order of Employment Standards Division that he owed wages to alleged Employee - Employer submitted Employee was contract driver - Held Employer provided general direction and control over performance of Employee's duties as evidenced by Employer providing necessary equipment and information to perform duties required - Board considered Employee went for four years without having deductions made or T4 issued, but that was not determinative of issue - On balance of probabilities, conduct of parties was more consistent with employer/employee relationship - Claim for wages allowed.

**Kildonan Ventures Ltd. t/a Kildonan Auto & Truck Parts - and - B.W.**

Case No. 262/10/ESC

April 28, 2011

**NOTICE** - Discharge versus quit - Employer appealed Order for wages owing alleging Employee failed to report for work despite receiving phone call from manager advising of next three shifts and letter delivered by company's driver stating if he did not report by certain date, Employer would assume he quit - Employee denied receiving phone call or letter - Board found evidence did not establish Employee had any subjective intention to quit or that his objective conduct at time supported conclusion that he quit - Employer did not provide documentation evidencing delivery of letter nor was driver called as witness - Employee did not refuse to report for work or quit; employment terminated without notice or wages in lieu of notice - Appeal dismissed - Substantive Order.

**D.M.J. and M.G.C. trading as D & M Cartage & Crossdocking - and - P.G.**

Case No. 333/10/ESC and 334/10/ESC

April 28, 2011

**VACATION PAY** - Calculation - Employee alleged that he was not paid all vacation pay owing to him - Having regard to his length of service, Employee entitled to vacation allowance calculated at 4 percent of wages earned in last 22 months of employment as per subsection 96(2) of *The Employment Standards*

Code - Employee entitled to \$2,139.86 vacation allowance and had been paid \$2,177.60 in vacation wages - Accordingly, he was paid all of vacation allowance owing - Appeal dismissed - Substantive Order.

**Brookside Auto Body Ltd. - and - A.G.**

Case No. 308/10/ESC

May 3, 2011

**NOTICE - EMPLOYEE LAY-OFFS** - Employer disputed Order for six weeks' wages in lieu of notice submitting Employee laid off and refused another position at lower pay rate at time of lay-off and two more times during next two months - Board not satisfied Employee offered alternate position or refused to accept such position as no documentation corroborating alleged offer submitted to Board - Board noted Record of Employment (ROE) identified reason for issuance to be shortage of work as opposed to quit or terminated - No additional or amended ROE was issued indicating Employee refused alternate position - Subsection 23(1) of *Employment Standards Regulation* provided that employment of employee who is laid off for one or more periods exceeding eight weeks within 16-week period deemed to have been terminated - Subsection 23(2) of *Regulation* provided that employee deemed to have been terminated entitled to wages in lieu of notice - Therefore, Board determined Employee was entitled to 6 weeks' wages in lieu of notice - Substantive Order.

**Brousseau Bros. Ltd., t/a Super Lube - and - C.J.**

Case No. 137/10/ESC

May 26, 2011

**WAGES - EXCLUSIONS** - Management - Overtime - Employer claimed Employee, as manager, exempt from standard hours of work and overtime - Held while Employer testified Employee hired, fired and set sales targets, there was little evidence he carried out those functions - Board found Employee, despite job titles, was primarily technician who ordered parts, dealt with customers, and sent in reports of hours worked by staff - Employer had not met onus to establish Employee was performing management functions primarily.

**WAGES** - Overtime - Calculation - Board satisfied bonus was "incentive pay" based on Employee performing well and generating sales and was not payable at Employer's discretion as per subsection 18(3)(c) of *Employment Standards Regulation* - Held wages for overtime purposes should include bonus which was performance related.

**NOTICE - DISCHARGE** - Resignation - Employer submitted Employee left phone message with instructions to lay him off and deduct money he owed off his severance pay - Employee countered that after he yelled at an employee he spoke with operations manager who told him to take time off - Next contact he had with Employer was voicemail in which Employer stated he was not sure there was a point in planning on having Employee return - Employee testified he had been fired in that message - Employer issued final cheque that indicated \$900 deducted for money it alleged Employee took without authorization and \$1200 deducted for advance paid to Employee at beginning of stress leave which was to be paid back when he returned to work - Board found that from Employer's voicemail any reasonable person would conclude Employer fired Employee and Employee had no intention to resign as he was suffering from health issues - Held Employer terminated Employee's employment without notice - Employee entitled to six weeks' notice - As to \$900, Employee gave detailed evidence as to how he received funds from shop managers as payment for services rendered - Employer did not report matter as theft and Employer could have called managers as witnesses to dispute Employee's evidence - Board found Employer provided \$1,200 to Employee without expectation of repayment - Amounts should not be subject to deductions from the sum owing to Employee - Employer's appeal dismissed and Employee's claim upheld.



**Detail Woodwork Ltd. - and - W.K.**

Case No. 111/11/ESC

June 15, 2011

**NOTICE - DISCHARGE** - Threats and ultimatums - Employer demanded Employee rectify deficiency in his work on his own time and without compensation - If he refused then his employment was terminated - Employee refused to work for no wages and removed himself from workplace given Employer's instruction - Held issuing ultimatum to employee that he perform work for no wages, failing which he would suffer termination of employment was contrary to subsection 4(1) of *The Employment Standards Code* - Employee reasonably concluded his employment was terminated and did not voluntarily terminate his employment - He was entitled to two weeks' wages in lieu of notice - Substantive Order.

**United Messenger Co-op Ltd. - and - B.S.**

Case No. 144/11/ESC

September 30, 2011

**INDEPENDENT CONTRACTOR** - Board determined Employee was not performing services as a person in business on his own account - Relationship between Employer and Employee properly characterized as employer-employee relationship - Therefore, Employee entitled to receive \$4,823.36 in vacation wages and general holiday wages as reflected on the Statement of Adjustment prepared by the Employment Standards Division - Substantive Order.

**Sterling O & G International Corporation - and - Director, Employment Standards Division**

Case No. 98/11/ESC-AP

October 13, 2011

**ADMINISTRATIVE PENALTY – JURISDICTION** - Employer appealed Notice of Administrative Penalty – Director of Employment Standards submitted Employer failed to file timely appeal and bank account was garnished to satisfy penalty – Held Board had no jurisdiction to extend time to file an appeal – Substantive Order.

**ADMINISTRATIVE PENALTY – REMEDY - PRACTICE AND PROCEDURE – Service –** Employer appealed Notice of Administrative Penalty arguing he did not receive Order - Employment standards officer went to Employer's home to effect personal service – Home did not have two doors nor mailbox - Officer wedged Order between door and frame in compliance with director of Employment Standard's directive that service could be accomplished by placing document in mailbox or between doors – Held officer did not follow directive because Order was neither left in mailbox nor between doors - Board was not satisfied Employer validly served with Order – Board's jurisdiction on merits of appeal of penalty limited by Section 138.2(6) of *The Employment Standards Code* to confirm or revoke penalty - Notice of Administrative Penalty revoked and Appeal allowed – Substantive Order.

**The Great-West Life Assurance Company - and - D.B., D.T. and M.A.**

Case Nos. 189/10/ESC, 190/10/ESC and 191/10/ESC

November 14, 2011

**WAGES** - Call-in pay - Shifts less than three hours - Employer's on-call policy provided that information technology professionals were compensated minimum of one hour for calls received - Relying upon subsection 51(1) of *The Employment Standards Code*, Employees believed they should be compensated for minimum of three hours - Held Legislature allowed scheduled periods of less than three hours - Employer's policy of paying employees who receive calls during the on-call period for minimum of one hour or actual time worked if call exceeded one hour constituted a "scheduled period of less than three hours" consistent with subsection 51(2) of the *Code* - Employer paid all wages owing - Employees' appeals dismissed - Subsections 51(1) and 51(2) of the *Code* considered.

**3422640 Manitoba Ltd. t/a Greencut Environmental Services - and - Director, Employment Standards Division**

Case No. 237/11/ESC

November 24, 2011

**ADMINISTRATIVE PENALTY – JURISDICTION** - Reduction - Notice of Administrative Penalty for \$7,500 issued to Employer for 15 separate incidents for alleged failure to pay general holiday pay – Employer requested Board's Chairperson reduce deposit required - Employer noted no individual orders had been issued ordering payment of general holiday pay – Held subsection 138.2(6) of *The Employment Standards Code* limited Board's jurisdiction on merits of administrative penalty appeal in that Board must confirm or revoke penalty - Board did not have jurisdiction to vary penalty or to set it aside and make new order - Fact that individual employee had not filed complaint or that Employment Standards Division had not issued specific order for unpaid wages did not affect right of Director to issue Notice of Administrative Penalty – Application dismissed – Substantive Order.

**K.K.K.H. t/a Wok House - and - K.B.**

Case No. 171/11/ESC

December 29, 2011

**WAGES** - General holiday pay - Entitlement - Employer submitted that it paid Employee for hours worked on a general holiday at rate of time and one half and payment of additional five per cent holiday pay was not warranted - Held Subsection 25(1) of *The Employment Standards Code* provided that an employee who worked general holiday entitled to be paid for hours worked at overtime wage rate and holiday pay for that day - Board satisfied Employee entitled to receive overtime wages and general holiday wages - Substantive Order.

**WAGES** - Overtime - At time of hire, Employee provided hand-written statement to Employer she was willing to accept straight time payment instead of overtime - Employee testified she was advised by Employer that document had to be signed to commence employment - Board found Employer could not rely on hand-written statement - Subsection 3(3) of *The Employment Standards Code* prevailed over any agreement that provided an employee less wages than provided under the *Code* - Subsection 4(1) provided agreement to work for less than minimum wage, or under any term or condition contrary to the *Code* or less beneficial to employee than required by the *Code* not defence in proceeding or prosecution under the *Code* - Therefore, hand-written statement afforded no defence to Employer - Employee entitled to overtime wages - Substantive Order.

**Life Science Association of Manitoba Inc. - and – J.F.**

Case No. 200/11/ESC

January 18, 2012

**WAGES - EVIDENCE** - Credibility - Overtime - Authorization - Employment Standards Division dismissed Employee's overtime claim ruling no evidence Employer authorized or condoned overtime - Employee appealed arguing Employer was aware of hours he was working; that his duties could not be completed by one person in normal work week; that, after his termination, his position had been split indicating amount of responsibility involved - Board found job was not split, rather one individual continued doing core functions Employee had performed and when second individual hired, it reflected new and separate position - Claim for hours worked must be assessed against fact that claim was only advanced to Employer after termination of employment - Employee's failure to raise overtime issue at any time with Employer was not reasonable nor did it engender confidence in reliability and accuracy of hours claimed - Documentation submitted in support of overtime claim contained errors and discrepancies and included hours during which Employee was not performing duties on behalf of Employer and many of hours claimed were for tasks done at home - Board accepted evidence of executive director that she never authorized, expressly or by reasonable implication, overtime hours - Employee had not met onus to establish, on balance of probabilities, that hours claimed as overtime were either accurate or reflected time actually worked - Appeal dismissed.

**Portage Chrysler Dodge Jeep Inc. - and - R.C.**

Case No. 303/11/ESC

February 7, 2012

**NOTICE** - Quit alleged - Employer tabled offer to Employee to relocate - Employee asked for 24 hours to consider offer - Next morning he e-mailed owner, declined offer and asked owner to call him - Few minutes later, owner replied "This is unfortunate since the offer presented was fair and in line with your skill set. I will commence separation documents immediately since it appears this is the direction you wish to take" - Employee told co-worker he was no longer employed and handed in his keys and uniform - Director of Employment Standards ordered Employer to pay wages in lieu of notice - Employer disputed payment asserting Employee quit - Held e-mail response from owner reasonably viewed to be notice employment terminated - Employee did not intend to quit - Appeal denied - Employee entitled to eight weeks pay in lieu of notice - Substantive Order.

**Mercury Publications Limited - and - K.G.**

Case No. 314/11/ESC

March 6, 2012

**NOTICE** - Wilful misconduct - Working for Competitor - Employer filed appeal of Order to pay wages in lieu of notice arguing Employee broke fiduciary responsibilities by working as editor for competitive publication - Board noted act or omission wilfully done if done voluntarily and intentionally - Employee not fulfilling production quota not wilful misconduct within the meaning of section 62(1)(h)(i) of *The Employment Standards Code* - Specific written rule against untrustworthiness, conflict of interest or unfair competition not required because accepted practice in publication industry was writer for one employer can write freelance for another publisher provided work did not interfere or compete with employment obligations to primary employer - Being editor materially different from writing articles - Given Employee's years of experience, he was aware he should not engage in competitive activities and accepting editorship of competitor wilful in nature - Employee not entitled to wages in lieu of notice - Employer's appeal allowed - Substantive Order.

**Quality Design Inc. -and - J.B.**

Case No. 313/11/ESC

March 26, 2012

**NOTICE** – Wilful misconduct – Employer claimed section 62(1)(h)(i) of *The Employment Standards Code* exempted it from requirement to provide six weeks' notice as Employee acted in manner not condoned by Employer when he left work without permission, did not report absence and did not provide doctor's note for an absence – Held Employer condoned failure to provide doctor's note due to Employee's misunderstanding note needed for one day's absence – Board noted general manager who gave dismissal notice not aware Employee sought and received permission from immediate supervisor to leave work early and he had called supervisor to report absence and gave reasons for it – Ruled Employees actions could not be characterize as "wilful misconduct" and entitled to wages in lieu of notice – Appeal dismissed – Substantive Order.

**NOTICE** – Calculation - Board advised wages in lieu of notice calculation based on average hours worked per week and not on 40-hour work week as Employee contended – Substantive Order.

**Sakastew, Inc. - and - C.C.**

Case No. 258/10/ESC

March 27, 2012

**INDEPENDENT CONTRACTOR** - Contract of Services referred to the Employee as an independent contractor – After she was laid off, Employee filed claim for unpaid wages, vacation wages, general holiday wages, wages in lieu of notice, and overtime wages - The contract – Board noted while description or characterization of relationship in written contract was factor to consider, it was not

necessarily determinative - Reference in contract to fixed amount for complete applications and percentage of settlement awards not determinative of status as definition of wages in *The Employment Standards Code* included commission - Board satisfied that from time contract entered into to time of lay-off, Employee was "employee" within meaning of *Code*, and not independent contractor and entitled to receive \$8,212.26 in unpaid wages, overtime wages, general holiday wages, vacation wages, commissions and wages in lieu of notice – Substantive Order.

**B.B., D.A. and W.A., being Directors of Sakastew, Inc. - and - C.C.**

Case No. 259/10/ESC, 260/10/ESC and 261/10/ESC

March 27, 2012

**DIRECTOR'S LIABILITY** - Board determined Employee entitled to receive \$8,212.26 for unpaid wages, overtime wages, general holiday wages, vacation wages, commissions owing and wages in lieu of notice - Section 90 of *The Employment Standards Code* provided director of corporation jointly and severally liable with corporation to an employee or former employee for the unpaid wages that were earned or became due and payable within last six months in which person was director of the employee - Subsection 90(2)(a) provided that wages did not include wages in lieu of notice - Board ruled that Director jointly and severally liable with the Employer to the Employee for \$7,880.06 wages, overtime wages, general holiday wages, vacation wages and commissions – Substantive Order.

**Pursuant to *The Workplace Safety and Health Act***

**KDR Design Builders Inc. - and - Director, Workplace Safety and Health**

Case No. 52/11/WSH

May 4, 2011

**APPEAL - REMEDY** - Mootness - Improvement Order issued stating unguarded excavation being carried out adjacent to area where public or worker not usually engaged in the work may pass - Company submitted excavation 25 feet behind property line and not reasonably practicable to consider excavation that far back as adjacent - Company sought as remedial relief clear indication of what fair and reasonable course of action would be for future excavations - Held remedy sought not remedy that Board should grant because each appeal must be decided on facts relevant to that appeal only - Board does not issue general declarations of "fair and reasonable" standards to be followed in undefined factual situations which may arise - Given excavation was backfilled within one week of issuance of Order, any real dispute which may have existed had disappeared as a "live controversy" - Issue moot - Appeal dismissed - Substantive Order.

**The Kinetic Machine Works Ltd. - and - Director, Workplace Safety and Health**

Case No. 317/11/WSH

December 9, 2011

**TIMELINESS** - Director expressly brought 14-day appeal period to attention of Company - Company, within appeal period, sent letter of expressed intention to appeal decision - By e-mail exchange with Director three months later, no doubt Company well aware of process and had received relevant information and appeal documents from Board - However, appeal not filed until further delay of three months - Held Company did not act diligently when it learned of 14-day time limit either or after it became aware of precise procedures to follow - Appeal dismissed - Substantive Order.

**REMEDY - APPEAL** - Grounds - Company challenged legitimacy of requirement in legislation and asserted legal obligation ought to rest on manufacturers to install safety equipment - Board could not rewrite provision of legislation - Seeking such relief does not constitute arguable ground of appeal - Appeal dismissed - Substantive Order.

## SUMMARIES OF SIGNIFICANT COURT DECISIONS

**Sterling O & G International Corporation –and - Director of Employment Standards Division**  
**Court of Appeal of Manitoba**  
**MLB Case No. 98/11/ESC**  
**Docket No. AI 11-30-07673**  
**Heard by Justice Freedman**  
**Delivered February 17, 2012**

The Director of the Employment Standards Division issued a notice of the Administrative Penalty for the Employer's non-compliance with a Production Order to produce certain records and information by January 24, 2011. The Board was not satisfied that the Employer had been properly served with the Production Order. As a consequence, it could not be satisfied that the Employer was aware of the issuance of the Production Order and ordered that the penalty be revoked. The Director sought leave to appeal the order the Board made setting aside the Administrative Penalty. The Director raised two issues. First, did the Board err when it revoked the Penalty without considering as relevant that the Employer had become aware of the Production Order in March 2011? Second, did the Board err in its interpretation of section 136 of The Employment Standards Code which related to service of documents? The Director argued that the Board disregarded relevant facts that arose after the date when, by the Production Order, the documents were to have been produced.

Held: The Board clearly knew when the Employer became aware of the Production Order, but concluded that the overriding consideration was that the Employer did not become aware of it until after the Penalty was issued. The court failed to see how the later awareness of the Production Order could somehow validate the Penalty, since it could not be sustained under section 138.1(1) of the Code. If the Board did disregard that evidence, it was not unreasonable for it to have done so. On the issue of whether the Board erred in its interpretation of section 136 of the Code, which related to service of documents, the Director was seeking leave to appeal, not the final decision of the Board, but the observations of the Board on alternative methods of service. There is no discrete right to appeal, with leave, the reasoning of the Board leading up to its final decision. The only matter that may be appealed, with leave, was the final decision itself. The Director conceded that the Production Order was not served on the respondent prior to the issuance of the Penalty. Therefore, the Director was challenging a decision, the essential foundation of which he ultimately accepted. The Court ruled there was no reasonable prospect of the Director successfully challenging the Order. Leave was denied.

**Rural Municipality of Springfield - and - MGEU**  
**Court of Queen's Bench of Manitoba**  
**MLB Case Nos. 107/10/LRA & 257/10/LRA**  
**Docket No. CI 10-01-69255**  
**Heard by Justice Dewar**  
**Delivered March 1, 2012**

The Employer applied for judicial review of a decision of the Manitoba Labour Board which certified the Union as the bargaining agent for a unit of firefighters. The Employer contended that the Board made its decision without addressing the Employer's position that the suggested bargaining unit was not appropriate for collective bargaining because the firefighters were only casual employees. In support, it relied upon a prior labour board decision in which a panel of the Board, although certifying a group of substitute teachers, expressed reticence about stand-alone units of casual employees being candidates for collective bargaining. The Employer requested the Board review its decision. One of the objections the Employer raised was that the Board's decision did not reflect any analysis on the issue of "substantial employment connection" and again cited the prior decision. The main ground of judicial review argued by the Employer was that it was entitled to have its position properly assessed by the Board, and an important argument the Employer advanced was not addressed, or not addressed properly.

Held: In its response to the application for review, the Board wrote that it did consider the prior case when it made its decision. In the first decision, the Board specifically referenced the fact that the firefighters were, in essence, casual employees. Therefore, the Board used those factors as well as the others which it had initially articulated to determine whether the firefighters were "employees", as well as the fact that the firefighters had a community of interest, in order to justify its decision that the proposed unit was an appropriate unit for collective bargaining. Upon a review of the first decision and the review decision read in light of the record before the court, the Board, certainly after receiving the Employer's application for review, if not before, was sufficiently aware of the position which the Employer advanced and simply did not agree with it. Not only did the outcome the Board pronounced fall within the range of reasonable outcomes, the Board's reasons logically supported it. The application for review was dismissed.

**STATISTICAL TABLES**

**TABLE 1**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT***  
**(April 1, 2011 – March 31, 2012)**

Type of Application	Cases			Disposition of Cases					Number	Number
	Carried Over	Cases Filed	Total	Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Take Action	of Cases Disposed	of Cases Pending
Certification <sup>1</sup>	16	33	49	26	6	7	0	0	39	10
Revocation	3	11	14	10	2	2	0	0	14	0
Amended Certificate	0	25	25	18	2	1	0	0	21	4
Unfair Labour Practice <sup>2</sup>	23	39	62	1	17	22	0	0	40	22
Board Ruling	22	6	28	3	0	1	0	0	4	24
Review and Reconsideration	4	18	22	2	15	1	0	0	18	4
Successor Rights	1	2	3	1	0	1	0	0	2	1
Termination of Bargaining Rights	0	2	2	0	1	0	0	0	1	1
Changes in Work Conditions (Sec.10(1)) <sup>3</sup>	0	0	0	0	0	0	0	0	0	0
Changes in Work Conditions (Sec. 10(3)) <sup>4</sup>	0	1	1	1	0	0	0	0	1	0
Duty of Fair Representation (Sec. 20)	6	12	18	1	9	0	0	0	10	8
Permit for Union Visit (Sec. 21(2))	0	0	0	0	0	0	0	0	0	0
Access Agreement (Sec. 22)	1	0	1	0	0	1	0	0	1	0
Business Under Provincial Law (Sec. 58.1) <sup>5</sup>	0	0	0	0	0	0	0	0	0	0
Ratification Vote Complaint (Sec. 69, 70)	0	14	14	0	14	0	0	0	14	0
Minister Requires Ratification Vote (Sec. 72.1)	0	1	1	0	0	0	1	0	1	0
Religious Objector (Sec. 76(3))	1	6	7	4	0	1	0	0	5	2
First Collective Agreement (Sec. 87(1))	0	3	3	2	0	0	0	0	2	1
Subsequent agreement (Sec. 87.1(1))	0	1	1	1	0	0	0	0	1	0
Appoint Arbitrator (Sec. 115(5))	1	13	14	5	0	8	0	1	14	0
Disclosure of Union Information (Sec. 132.1)	0	0	0	0	0	0	0	0	0	0
Referral for Expedited Arbitration <sup>7</sup>	20	118	138	-	-	-	-	-	123	15
<b>Totals</b>	<b>98</b>	<b>305</b>	<b>403</b>	<b>75</b>	<b>66</b>	<b>45</b>	<b>1</b>	<b>1</b>	<b>311</b>	<b>92</b>

1 On August 29, 2008, the Board dismissed applications for certification in cases 480/07/LRA and 522/07/LRA. The dismissals were reviewed by an expanded panel of the Board. On April 8, 2008, the expanded panel determined the original panel should rehear the cases. After rehearing the matter, the panel granted certification on April 8, 2011. The number of certification cases carried over and the number granted, as shown above, include the two certificates in cases 480/07/LRA and 522/07/LRA.

2 An unfair application opened in 2009/10 was reclassified to section 20 case type. As a result, carried over figures do not match pending figures in the 2010/11 annual report.

3 When an Application for Certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the Application is disposed of.

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

5 Business coming under provincial law is bound by collective agreement

6 Extension of Time Limit for expedited decisions

7 See Table 3 for a breakdown of statistics relating to applications for referral for expedited arbitration.



**TABLE 2**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES**  
**(April 1, 2011 – March 31, 2012)**

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending	Vote Conducted but not counted
Certification	6	986	3	2	1	0	0
Revocation	4	245	3	0	0	1	0
Termination of Bargaining Rights	1		0	0	0	1	0

**TABLE 3**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION**  
**(April 1, 2011 – March 31, 2012)**

Cases Carried Over	Referrals Filed	TOTAL	Cases Where Mediator Appointed	Disposition of Cases						
				Settled by Mediation	Settled by Parties	Arbitration Award Issued	Declined to Take Action	Withdrawn	Cases Disposed	Cases Pending
20	118	138	54	48	23	4	20	28	123	15

**TABLE 4**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE***  
**(April 1, 2011 – March 31, 2012)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
31	92	123	55	24	0	79	44

**TABLE 5**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY AND HEALTH ACT***  
**APPLICATION FOR APPEAL OF DIRECTOR'S ORDER**  
**(April 1, 2011 – March 31, 2012)**

Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
2	4	6	2	2	4	2

**TABLE 6**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT***  
**(April 1, 2011 – March 31, 2012)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0	0

**TABLE 7**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT***  
**(April 1, 2011 – March 31, 2012)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0	0

**TABLE 8**  
**STATISTICS RELATING TO BOARD HEARINGS**  
**(April 1, 2011 – March 31, 2012)**

During the reporting period matters were heard involving applications or cases. <sup>1</sup>	Scheduled Hearings	Actual Hearings	Percentage of Actual to Scheduled
Number of hearings <sup>2</sup>	337	115	34%

1 A "matter" may deal with one or more applications. For example, a matter could involve one application for unfair labour practice or a matter could involve an unfair labour practice and a related application for certification.

2 A hearing can be either a full or half day.

**TABLE 9**  
**FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED**  
**(April 1, 2011 – March 31, 2012)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<b><u>Pending from Previous Reporting Period</u></b>				
Nil				
<b><u>New Applications from Current Reporting Period</u></b>				
United Food & Commercial Workers, Local 832	Integrated Messaging	April 5, 2011	Board imposed first collective agreement	Expiry June 1, 2012
United Food & Commercial Workers, Local 832	Fort La Bosse School Division	August 15, 2011	Board imposed first collective agreement	Expiry October 12, 2012
International Union of Operating Engineers, Local 987	Town of Lac du Bonnet	February 10, 2012	Pending	

**TABLE 10**  
**SUBSEQUENT AGREEMENT LEGISLATION REVIEW OF CASES FILED**  
**(April 1, 2011 – March 31, 2012)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<b><u>Pending from Previous Reporting Period</u></b>				
Nil				
<b><u>New Applications from Current Reporting Period</u></b>				
United Food & Commercial Workers, Local 832	Granny's Poultry Co-Operative (Manitoba) Ltd., Hatchery Operations	December 6, 2011	Board imposed collective agreement	Expiry October 3, 2012