Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

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

12:20 p.m., Tuesday, June 8, 1976.

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MR. CHAIRMAN: Mr. William Jenkins.

MR. CHAIRMAN: We'll proceed with Bill No. 14, an Act to amend the Employment Standards Act. What is the will of the committee, to deal with it clause by clause or page by page?

A MEMBER: . . . clause by clause.

MR. CHAIRMAN: Okay. Clause 1--pass; Clause 2(32)(1)--pass; 32(2)--pass; 32(3)--pass; 32(4)--pass; Clause 2--pass. Clause 3--pass; clause 4--pass; clause 5--pass; Preamble--pass; Title--pass. Bill be reported.

Clause by clause on Page 15 - Clause 1--pass, clause 2--pass; Preamble--pass; Title--pass. Bill be reported.

Do you want to deal with 85 and then go to 83? 85 has only got three pages.

MR. GREEN: Fine.

MR. CHAIRMAN: Clause by clause or page by page?

MR. GREEN: Clause by clause.

MR. CHAIRMAN: Clause by clause. Clause 1--pass; clause 2--pass; clause 3 --pass; clause 4--pass; clause 5 3.1(1)--pass; 3.1(2)--pass; clause 5--pass. I understand on Clause 6 there is an amendment, is that correct? Oh, Clause 8, pardon me. Clause 6(d)--pass; (e)--pass; 6--pass. Clause 7 34.1(1.1)--pass; clause 7--pass. Clause 8 34.1(2)(a)--pass; sub 1--pass; sub 2--pass; (b)--pass; 34.1(2)--pass; 34.1(3)--pass; 34.1(3.1)--pass;

MR. SHERMAN: We're on the amendment.

MR. GREEN: After you pass 8.

MR. CHAIRMAN: Clause 8--pass.

MR. GREEN: I'm not acquainted with this, but the Legislative Counsel indicates that an amendment - I'll move it and then perhaps we can have its interpretation.

Bill 85 be amended thereto immediately after section 8 thereof, by adding thereto immediately after section 8 thereof the following section:

Subsection 34.1(4) am. 8.1 Subsection 34.1(4) of the Act is amended by striking out all the words of the subsection after the word "benefits" in the 4th line thereof.

MR. SHERMAN: We don't have anything to compare it with. Perhaps you could explain.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: 34.1(4) is in the old Maternity Leave provisions and it has at the end of it a provision that said: "Where the employee remains absent from work for a period of more than 10 weeks, the employer is not required to reinstate her." Of course, that's completely inconsistent with the new Maternity Leave provision so it has to be struck out, and those are the words that are being struck out.

MR. GREEN: It refers to the Maternity Leave provisions in the old Act.

MR. TALLIN: Yes.

MR. GREEN: Not in the bill.

MR. TALLIN: Not in the bill, no.

MR. GREEN: I wonder if you'd explain that once again what the difference is.

MR. TALLIN: The section being amended 34.1(4) had a provision at the end of it which said: "Where the employee remains absent from work for a period of more than 10 weeks following the actual date of delivery, the employer is not required to reinstate her," and that's inconsistent with the new provision, so it has to come out.

MR. GREEN: "That they must reinstate her."

MR. TALLIN: Well, there's no provision at all and the period after delivery is longer than 10 weeks now.

MR. CHAIRMAN: Any discussion on the motion as moved? New subsection 8.1--pass; 9 - subsection 34.1(9)--pass; clause 9--pass; clause 10--pass; clause 11--pass; Preamble--pass; Title--pass. Bill be reported.

Bill No. 83, The Workplace, Safety and Health Act. Clause by clause? Page

(MR. CHAIRMAN cont'd) . . . . .by page? Page by page:

MR. GREEN: Yes. Mr. Sherman has certain amendments that he wants to put so at least we can stop there.

MR. TALLIN: I'm afraid there are two sets of amendments and they don't necessarily fall in place, so we'll have to . . .

MR. CHAIRMAN: There are no amendments I see on any of these motions on Page 1. Pass Page 1--pass; Page 2--pass; Page 3--pass; Page 4--pass; Page 5--pass; Page 6, clause 9--pass; clause 10--pass; clause 11--

MR. SHERMAN: There's an amendment on 11(1), Mr. Chairman: That 11(1) be struck out. The reasons for moving the amendment are that we're not in agreement with the provision in the section that says that this new program would be chargeable to the Accident Fund under The Workers Compensation Act; as a consequence in checking with Legislative Counsel rather than moving the elimination of specific words that would have left in reference to the Consolidated Fund which is automatic I'm told, if there's no provision made, the logical procedure was for us to move that the section be struck out and therefore by definition the cost of the program would be paid for out of the Consolidated Fund.

MR. CHAIRMAN: The motion before the committee is that Clause 11(1) be struck out. Is there any discussion on the motion? Hearing none, all those in favour of the motion. I'm not calling for a hand showing. Shall the motion pass?

MOTION presented and defeated.

MR. CHAIRMAN: 11(1)--pass; 11(2)--

MR. SHERMAN: Mr. Chairman, I had a motion on 11(2) but of course it was related to 11(1), so it now becomes impractical. So I'll have to withdraw 11(2), it would only have applied had we succeeded in having 11(1) struck out.

MR. CHAIRMAN: Agreed? 11(2)--pass. If there are no further amendments on that page, can we pass the page? Page 6--pass; Page 7--pass; Page 8--pass; Page 9--pass; Page 10--pass; Page 11--Mr. Green.

MR. GREEN: I'm advised by Counsel that these are administrative amendments, but I propose to move them and then again let them be explained if necessary by the Legislative Counsel which ought to be done.

First, dealing with 19(1). Well I guess we should pass everything up to 19(1).

MR. CHAIRMAN: Okay. We'll pass 18(2)--pass; 19(1), Mr. Green.

MR. GREEN: THAT subsection 19(1) of Bill 83 be amended by striking out the word "on" in the 3rd line thereof, and substituting therefor the word "or".

MOTION presented and carried.

MR. GREEN: The balance of the page, Mr. Chairman.

MR. CHAIRMAN: I think I have some more amendments here somewhere. Page 11, as amended--pass.

MR. SHERMAN: Page 12, clause by clause, Mr. Chairman.

MR. CHAIRMAN: Page 12, clause 20(4). Mr. Sherman.

MR. SHERMAN: I have an amendment, Mr. Chairman. I'd like to move that section 20(4) be amended by striking out all the words following the word "onus" in the third line thereof and substituting therefor the words "is on the person or party making the accusation to prove beyond a reasonable doubt that a case of non-compliance exists."

The reason for our amendment, Sir, is simply that we don't accept the reverse onus provision in this legislation, and we believe that in keeping with the basic principles of jurisprudence that the onus should be on the person laying the complaint to prove beyond a reasonable doubt that there is a case.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, I am not going to admit that my honourable friend for Fort Garry has got a real case in any of the others, but any case that he does have with regard to the reverse onus in the others, I do not think, I ask him to look at this, does not apply in this particular case. Because in this case they say that where a prima facie case of non-compliance with the code of practice is established the onus then goes to the accused. In other words, where a court of practice has admitted the evidence and a prima facie case of non-compliance with the code of practice is established, the onus is on the accused to prove that he has complied with the regulation.

(MR. GREEN cont'd) . . . . .Now, I will say to the honourable member that some of this is probably common law, but it's been put in the Act, it is not the kind of reverse onus provision that he's later going to object to. If he wants to make it on principle, yes, but I think that this is after the prima facie case is established which is almost a common law with regard to every other provision. So I guess we'll have a harder time of it later on, but I really don't think that the honourable members' objection is one that should be sustained.

MR. CHAIRMAN: 20(4) - Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I concede the point that the Minister raises, and I took that into consideration. The amendment is moved for the sake of conformity and consistency with the position that we've adopted on reverse onus generally, and I did not make the exception. So I would like to have the amendment stand and go to a vote.

MOTION presented.

MR. CHAIRMAN: There is a tie vote, and as Chairman, I cast the deciding ballot against the motion, with this proviso, that the honourable member has the opportunity in the report stage to move the amendment that he has proposed, that his motion is not killed. He has the opportunity in the report stage of moving such an amendment.

MR. SHERMAN: Thank you, Mr. Chairman. You would have to concede that we are narrowing the gap, Sir.

MR. CHAIRMAN: 20(4)--pass. There are no more amendments on that page. I believe. Page 12--pass; Page 13--pass; Page 14 - there is an amendment, I believe.

MR. GREEN: Mr. Chairman, again I believe this is technical. I would move that clause 28(1)(c) of Bill 83 be amended by striking out the letters and word "(b) or (c)" in the first line thereof and substituting therefor the word and letter "or (b)".

MR. CHAIRMAN: 28(1).

MR. GREEN: I gather that merely is a typographical error. Okay.

MR. CHAIRMAN: The motion has been moved. Any discussion on the motion? --pass. Page 14, as amended--pass.

MR. SHERMAN: Clause by clause, Mr. Chairman.

MR. CHAIRMAN: Clause by clause on Page 15. 28(2)--pass; 29--pass; clause 30.

MR. SHERMAN: I have an amendment on clause 30, Mr. Chairman. That Section 30 be amended by inserting a colon after the word "worker" where it is first used in the third line thereof, striking out all the words following the said word "worker" and substituting therefor the following: "(a) by delivering a copy thereof to the worker; or (b) where the worker cannot be found after reasonable inquiries have been made by sending a copy thereof by registered mail addressed to the latest known address of the worker for whom the order is intended."

The reason for the amendment, Mr. Chairman, is to make it consistent, Sir, with the same provisions that are applied in Sections 27 and 28 and that are applied in a section we haven't come to yet, 31, and to make the same conditions for communicating that kind of information apply to workers as apply to unions or employers.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, we have no objection to this. We do not know that it is practical, but we have no objection to this: "If the worker cannot be found after reasonable inquiries by sending a copy thereof by registered mail." I don't know the circumstances are of that kind of thing. It really relates to a worker doing something and if he cannot be found after reasonable inquiry he's not likely to be in the process of doing it. I'm not 100 percent familiar with the Act, let's just check it out. We have no objection to what is being suggested, but I want to know whether the honourable member really wants it. If a worker is not doing something that he is supposed to do, he is given an order and then he is required to do it, and the order has to be delivered to him. If he cannot be found, then it's not likely that he's going to be doing these things, and therefore I don't know what circumstances you would be sending a worker a registered letter if you can't find him at his last address to continue to wear his hat if he's not on the job to wear it. We have no objection to this, if you . . .

MR. SHERMAN: He could be a travelling worker.

MR. GREEN: Well, all right. I mean, we have no objection to this.

MR. CHAIRMAN: Section 30, the amendment as moved, any further discussion? Pass. There are no more amendments on Page 15. Page 15, as amended--pass; Page 16--pass; Page 17- Mr. Green.

MR. GREEN: Clause by clause, please.

MR. CHAIRMAN: Clause by clause. 36(2)--pass; 36(3)--pass; 37(1)--pass; (2)--pass; 37(3) - Mr. Green.

MR. GREEN: I move that subsection 37(3) of Bill 83 be amended by striking out the words "further appeal" in the fourth and fifth lines thereof and substituting therefor the words "question or review." So that instead of "is not subject to further appeal", there would be the words "is not subject to question or review in any court of law."

MR. CHAIRMAN: Mr. Dillen.

MR. DILLEN: Mr. Green just read the motion wrong. He used the words "question or review," while it's printed in the amendment "question on review".

MR. GREEN: What happened is the amendment was written wrong and I read the words right . . . I think that I should explain. I am saying some of these things as a lawyer, and I really don't want to mislead, so if I'm saying something wrong, Mr. Tallin, I would ask him to correct me. I guess this is to deal with any kind of review rather than merely an appeal. Now I do have to say that although there are these kinds of privative sections in much legislation, the courts have found through prerogative writs that they are able to interfere in cases where there is a denial of natural justice, where there has been an abdication or an usurpation of jurisdiction which should either not be abdicated or ursurped. I think that's right, Mr. Tallin? To my annoyance by the way.

MR. CHAIRMAN: Any further discussion on the motion? --pass. Page 17, as amended--pass; Page 18, 38(1) - Mr. Green.

MR. GREEN: This apparently is of some substance: That subsection 38(1) of Bill 83 be amended by striking out the words "a person against whom an improvement order is made" in the first line thereof and substituting therefor the words "any person aggrieved by an improvement order." That means not only the one against whom it has been made, but anybody who thinks that it is not acceptable. So it extends the grounds rather than limiting them.

MR. CHAIRMAN: Any discussion? 38(1), as amended--pass;

MR. GREEN: The balance of the page I think you can go.

MR. CHAIRMAN: 38(2)--pass; 38(3) - Mr. Green.

MR. GREEN: 38(3) is described as corrective rather than substantive: That subsection 38(3) of Bill 83 be amended by adding thereto immediately after the word "necessary" in the second line thereof, the words "with a reasonable time after the receipt of the Notice of Appeal." Should that be "within" a reasonable time. . .?

MR. TALLIN: Yes.

MR. GREEN: Now this one isn't even corrected and I'm correcting it. "Within a reasonable time after the receipt of the Notice of Appeal." 38(3).

MR. CHAIRMAN: The motion as moved, is there any discussion on the motion?

MR. GRAHAM: What would you consider a reasonable time?

MR. GREEN: That would have to be decided by somebody who has occasion to review it. Deciding what is a reasonable time is probably just as esoteric a consideration as deciding what is a reasonable man, that is what the courts are always trying to decide. If you have ever read A. P. Herbert, he will tell you that the supposed reasonable man is an impossible person to live with, he does not have a single, redeeming vice.

MR. CHAIRMAN: With that explanation, are there any more questions? The motion as moved --pass. Page 18, as amended--pass. Page 19, clause by clause. 39(5)--pass; 40(1)-- Mr. Sherman.

MR. SHERMAN: I don't have an amendment, I have a question to the Minister, Mr. Chairman. The Saskatchewan Plan which has been held up as something of a model in some of the discussions that we've had in this legislation includes the provision as I understand it that any workplace - and I stand to be corrected on this, but as I understand it, that any workplace with ten or more workers in it, it's compulsory. In this case we are asked to pass legislation which leaves the whole discretionary question up to the Cabinet and I am wondering why that course of action was elected by this government as the preferable one.

MR. GREEN: Mr. Sherman, I have the disadvantage of not being the Minister in this case, but I will try to answer it - the Deputy Minister is here and perhaps can fill in for me. I think that where you make it compulsory throughout you are dealing with situations where perhaps the employer is unprepared for it, the employees are unprepared for it, and they really don't know how to go about it. Where you have the option of declaring it when you are ready then you do not have like wholesale, inadvertent or really unwanted breaches of the law because they just haven't gone ahead. This gives you an opportunity to phase it into various places in such a way as will be either - not comfortable, but in such a way that it makes sense for the employer who is doing it and the employees who are involved. If we passed this bill and it just happened, theoretically everybody who didn't set up a committee is breaking the law, so I think that the honourable member should take to heart what they always say, is that we shouldn't always follow Saskatchewan.

MR. SHERMAN: I certainly won't challenge that suggestion, but doesn't the term "designate" in the section as it's written imply compulsion? What it implies is selective compulsion; in Saskatchewan it's non-selective compulsion.

MR. GREEN: The honourable member is perfectly right. I mean, if he is asking whether in principle this is subject to what he would term or what any one of us would term the possible abuse of discretionary power of an authority, and that Saskatchewan is not, then he's right. But you have to balance that with the fact that the fact that the Saskatchewan legislation, although not subject to that authority, makes a wholesale change which we feel we couldn't make without preparing the employer too. So we are, yes, we are asking the members to some extent to say that the government will behave properly, and if they don't we'll raise hell with them, but that is the difference, yes.

MR. CHAIRMAN: Any further discussion on 40(1).

MR. GREEN: They tell me that that's right.

MR. CHAIRMAN: Pass. 40(2) - Mr. Green.

MR. GREEN: Yes, Mr. Chairman, I would move that the committee shall consist of not less than four or more than 12 persons, of whom at least one-half shall be persons representing workers other than workers connected with the management of the workplace, and shall be appointed in accordance with the constitution of the union which is the certified bargaining agent or has acquired bargaining rights on behalf of those workers or where no such union exists shall be elected by the workers they represent.

I wonder if there would be any great objection if I changed that to "employees" rather than "workers". --(Interjection)-- All right.

MR. GRAHAM: Mr. Chairman, can we go back a clause to what Mr. Green was saying on the discretionary powers of the Lieutenant-Governor-in-Council. Would it not seem probably more fair to all the industry to do as what's suggested by the Member for Fort Garry and leave that section for proclamation at a time when the Lieutenant-Governor-in-Council feels that industry is ready for it?

MR. GREEN: . . . on the item has been passed. I can just by way of information tell the honourable member the fact that it may be that we are able to move into one sort of general sector and then into another general sector and into a third, and what you're saying is that until we can move into them all, we cannot proclaim it, and that is not our intention.

MR. CHAIRMAN: Just for Mr. Graham's information, the whole bill is subject to proclamation.

MR. GREEN: That's right. But he's still right, if we don't proclaim for a year and we leave this clause out, it's still going to mean that it's all or nothing, and that is not our intention.

MR. CHAIRMAN: Mr. Dillen.

MR. DILLEN: Just speaking to that, going back a little bit, I think we'll find that in the Province of Manitoba that there are some industries or occupations that are more hazardous than others that should be dealt with more quickly than those industries that are less hazardous and do not have a history of either health or occupational problems. So that I think that this discretionary power will be used, from my interpretation of the Act, with that kind of concept in mind, first of all dealing with those workplaces or

(MR. DILLEN cont'd) . . . . .occupations that create a greater hazard to the worker than others may.

MR. CHAIRMAN: 40 - we were all out of order here anyway, we should be back on 40(2). The motion as moved by Mr. Green. Any further discussion on the motion? --pass. There are no further amendments on that page. Page 19 - as amended --pass; Page 20, I don't see any amendments up to that . . .oh yes. 41(1)--pass; 41(2) - Mr. Green.

MR. GREEN: I would move that 41(2) of Bill 83 be struck out and the following subsection be substituted therefor:

Appointment of Representative

41(2) The worker (that means employee) safety and health representative shall be appointed in accordance with the constitution of the union which is the certified bargaining agent or has acquired bargaining rights on behalf of those workers; or if no such union exists, shall be elected by the workers he represents.

That's a companion piece to the other one.

MR. CHAIRMAN: If you just notice that Mr. Green read it correctly. You may have it as "Appointment of Representation", but it should be "Appointment of Representatives". 41(2), any discussion on it?--pass; 41(3)--pass; 41(4)--pass; 41(5)--pass; 42(1)(a)--pass; (b)--pass; (c)--pass. 42(2). . .

MR. SHERMAN: . . .on 42(2), Mr. Chairman, that Section 42(2) be struck out and the following substituted therefor:

Where in a prosecution under this Act or in a proceeding before the Manitoba Labour Board a worker claims that he was subject to a discriminatory action and where he claims that he did conduct himself in a manner described in clause 42(1)(a), (b) or (c), the onus is on the worker to prove beyond a reasonable doubt that the alleged discriminatory action was taken against the worker because that worker conducted himself in a manner described in either of those clauses; and that the decision by the employer or union as the case may be to take the alleged discriminatory action was influenced by that conduct on the part of the worker.

The reason for the amendment, Mr. Chairman, is the reverse onus provision with which we do not agree. We feel, as I have stated before, that in keeping with basic principles, that the onus should be on the person bringing the allegation to prove his or her case beyond a reasonable doubt.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, all I would admit to here is perhaps a little lack of sophistication in wording. What is suggested here is no different than is required by normal common sense provisions: Where a person is party to a contract and is fired, he proves the contract, he proves that he was fired and the defendant then has to prove just cause. And all that's being stated here is, that where a person is fired he cannot prove a negative, and all the employer would have to do in this case - and it's worked out that way before the Labour Board on the other one - is to prove the cause of firing. And if he can prove just cause, if he proves that he has had reasonable grounds for letting that employee go, which are not associated with the matters that are raised here, then that is the only thing that occurs. I don't think that an employer is in any different position than in many instances of our common law where the onus shifts.

The honourable member should be aware that if there are two people driving down the road at night with spotlights on, shining them into the woods, and carrying shotguns, they are presumed to be nightlighting; and then the onus shifts so that they could say what they were doing with these spotlights on their car, etc. That is only one feature of it. There are numerous features in the law. Here we have an employee who is dismissed, and what the Act requires is that the employer show cause for dismissal. That is the way it is worked out in the other sections. It wasn't working out much differently before. If the wording of the section had been "that where a worker who has been on a committee is fired, the employer shall show just cause for the dismissal", that's all that we would be saying here and the words "reverse onus" would be unnecessary. I'm sorry that they are used but they come to the same thing.

MR. CHAIRMAN: Motion as moved . . . Mr. Sherman.

MR. SHERMAN: Mr. Chairman, notwithstanding the existence in law of the

(MR. SHERMAN cont'd) . . . . .kinds of provisions that Mr. Green is referring to, the thing that we find distasteful is the assertion in much of this legislation that there shall be a presumption of guilt simply because of a condition or an accusation. We don't believe in the enshrinement of that concept of presumption of guilt, and it's really that terminology that we find most repugnant; and it's that terminology - and it appears again and again in labour legislation with which we're confronted - that has motivated us to take the position that we've taken on this question. I'm not disputing the facts that Mr. Green points to. That doesn't say I have to like them. I don't like the presumption of nightlighting that Mr. Green just referred to. My understanding of the system we live under is that it is perfectly all right to ask a person if he's nightlighting, but I don't think it should be presumed that he is nightlighting. That is a principle that - perhaps it's idealistic, but it's one we feel strongly about - in all this legislation there is the use of the term that there shall be a presumption of guilt, so that's the reason for our amendment and that's the reason for other amendments moved in this area and we would like to stand on that and vote on it.

QUESTION put MOTION lost.

MR. CHAIRMAN: 42(2)--pass. I don't believe there are any more amendments on Page 21. Page 21 as is--pass. 43(4) . . .

MR. SHERMAN: On 43(4) I have an amendment, Mr. Chairman. I don't wish to take up the time of the committee, but I suppose for the record I should read the amendment into the record. It's the same issue and doubtless we'll vote on it without prolonged debate.

The motion is THAT section 43(4) be struck out and the following substituted therefor:

MR. GREEN: Take it as read, Mr. Chairman.

MR. CHAIRMAN: Should we take it as read? Same division.

MR. GREEN: No, no. Same motion as was made before, so it's on the record that the motion is there.

MR. CHAIRMAN: Do you want to vote on it?

MR. SHERMAN: Yes please.

QUESTION put MOTION lost.

MR. CHAIRMAN: 43(4)--pass. Mr. Green. Well, maybe I'll go on. 43(5)--pass; 43(6)--pass; 43(7)--pass; 44(1)--pass; 44(2)--pass; 44(3) - Mr. Green.

MR. GREEN: 44(3), I'm told it's a technical change; That subsection 44(3) of Bill 83 be amended by striking out the words and figures "21(1) and 21(2)" in the last line thereof and substituting therefor the words and figures "22(6) and 22(7)".

MR. CHAIRMAN: Motion as moved, any discussion?--pass; Page 23--pass; Page 24--pass; 49(2). . .

MR. GREEN: Mr. Chairman, I move that subsection 49(2) of Bill 83 be amended by adding thereto immediately after the word "physician" in the third line thereof and adding thereto the words "or other qualified person".

MR. CHAIRMAN: Motion as moved, any discussion on the motion?--pass; Page 24 as amended--pass; Page 25, 50(3).

MR. GREEN: I move, Mr. Chairman, that subsection 50(3) of the bill be amended by adding thereto immediately after the word "case" in the second line thereof the words "or unless disclosed".

MR. CHAIRMAN: Motion as moved, any discussion on the motion?

MR. GREEN: Let's just see how it will read so we'll find out what we're talking about. "Unless disclosed in a form calculated to prevent the information from being identified as relating to a particular person or case as required by law, any information obtained by the chief occupational" --(Interjection)-- Oh, after the word "case" "or unless disclosed as required by law". Okay?

MR. CHAIRMAN: Any discussion on the motion?--pass; Page 25 as amended --pass; Page 26. . .

MR. SHERMAN: Clause by clause, Mr. Chairman.

MR. CHAIRMAN: Clause by clause. Clause 53(a)--pass; 53(b)--pass; (c)--pass; (d)--pass; (e) - Mr. Green.

MR. GREEN: I move that clause 53(e) of Bill 83 be amended by striking out the words "to delete or destroy" in the third line thereof and substituting therefor the words "delete or destroy or causes to be deleted or destroyed". So if you go to (e) it would say "under the Act or the regulations, or to delete or destroy or causes to be deleted or destroyed". I guess that's technical.

MR. CHAIRMAN: The motion as moved, any discussion?--pass; (f)--pass; (g)-- Mr. Sherman.

MR. SHERMAN: I have an amendment, Mr. Chairman, that Section 53 be amended by adding immediately at the end of subsection (g), following the word "regulations" the following: "or (h) contravenes the spirit of this Act by bringing a complaint against another person alleging contravention of one or more provisions of this Act and is subsequently found upon investigation by the Manitoba Labour Board or the director or persons acting under their authority for the enforcement of this Act, to have brought the complaint against the person without reasonable cause and with frivolous or fraudulent or malicious intent". And it would then pick up on the concluding two lines of the section "is guilty of an offence" etc.

What the amendment does, Mr. Chairman, is insinuate another category of offence into the seven categories that are already listed there. It makes an eighth category. The reason for it is that I believe that it's only realistic to protect both sides of the workplace community against the possible vindictive actions of the other. I don't think it takes a great amount of imagination to conceive of situations where an employer has it in for a particular worker or where a worker has it in for a particular employer. Unfortunately, as much as we might like to feel that workers are perfect and employers are perfect, some of them are flawed, and this provision is designed to protect against the kind of action that could be, at the very least, embarrassing and could work a hardship on a worker's right to work or on an employer's right to carry on his business; or at the worst could result in a heavy penalty. There could be contrived situations which people were using for one reason or another to make things difficult for other people. This provision is designed to protect against misuse of the rights that are granted under this legislation and simply to enshrine the fact that people have to act with reasonable cause in every case.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Well, Mr. Chairman, if the complaint is made and it is accepted, then by definition that will not have been an improper complaint; if it is rejected, then presumably a person has made a complaint which hasn't been sustained, which does not mean that it is not a reasonable complaint to have made. The person making the complaint is always in the last analysis subject to discipline by his employer if he makes an improper complaint, and in one of the provisions of the Act it is directly stated so, the provision with regard to frivolous complaints about unsafe conditions. If an employer is reasonably certain that what he is doing doesn't relate to a person making legitimate complaints but misusing the Act and wishes to stand on that position, he will stand by it, and if he is right he will be found so by a court. What theoretically could happen, what the honourable member says, is if the employer feels that somebody has been doing something really maliciously and that it hasn't had anything to do with reasonable grounds for believing that something was the case or not, he has an authority to say, I'm not going to have that person under my employ. Then you could say, well, he could be prosecuted for that because the Act provides for prosecution. Prosecution takes place, and the employer in showing just cause indicates that this wasn't a reasonable complaint, this man tried to harass me for one reason or the other reason or a third reason; and the employee will remain dismissed, which is his punishment, and the employer will have been vindicated, all of which will be decided at whatever form this comes to. I'm not sure whether the form would be in that case the Labour Board or court - well, I am told that it is the Labour Board.

But we can't, Mr. Chairman, have a statute which tries to encourage the fact that we want people to feel free about talking about unsafe conditions and put in that statute a worse intimidation than the employer intimidation, that if they do complain that they're liable to prosecution. So the ultimate result of a man causing trouble and not complaining - and I can tell the honourable member I'm not speaking hypothetically, a

(MR. GREEN cont'd) . . . . .former colleague of his in the House, his and mine, the former member for Thompson was dismissed by INCO for what they said was running around raising frivolous safety issues; it went to an arbitration board, INCO was found correct, and the result of it was that the man was dismissed, which he then says is the best thing that ever happened to him. But nevertheless he was dismissed. So I think to put this in would be to defeat one of the - to use the honourable member's words, "it contravenes the spirit of the Act".

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, if I could respond to that. Mr. Green cites a situation, I'm sure there are many that existed in the past. What we're dealing with here is a situation and a condition that is going to be brought about as a new condition as a consequence of this legislation, and by the time the malicious or vindictive or frivolous action, whatever you want to call it, may have been so determined as malicious, vindictive or frivolous by any adjudicating body, by that time the employer may and his other employees may have suffered loss of work, loss of business opportunity through stop-work order, through improvement orders, through actions of that kind that are already provided for in this legislation. So I don't think that the analogy - and the Minister doubtless can cite analogies that would be more applicable - I don't think the analogy he cites is applicable under this legislation, because damage could already be done to the economic welfare of that company by the action of that person or vice versa, damage could have been done to the economic welfare of the worker by the action of his employer before anybody gets any adjudication, so it seems to me that that kind of activity should carry with it a punitive condition.

MR. CHAIRMAN: Mr. Dillen.

MR. DILLEN: Mr. Chairman, anybody that has spent his life in the workplace understands that where a collective agreement is in effect, or even where there is not one, but moreso in the case where there is no collective agreement, that a decision by the - you know, up until the inclusion of this portion of the Act - by the employer to discharge an employee for a frivolous act is permanent, it's complete; and using Mr. Sherman's words, the economic hardship is complete and permanent on that individual as well, and he understands it and he recognizes it in a responsible fashion.

Where a collective agreement is in effect, the worker if he is discharged suffers economic loss immediately. So in effect he is fined until the procedure for taking that case to arbitration, and if he remains unemployed or is unable to find alternative employment which is the case in most one-industry communities, the worker then suffers that economic loss until his case comes before an arbitration board, which is contrary to everything else in law. You know, in the case of a person who goes before a judge, the worker is not found guilty and penalized and then goes to the judge to have the decision reversed, which is the case for a worker. And we understand what conditions we have to work under, that any frivolous act that is taken by any worker has that kind of deterrent built into it because he knows that if the employer decides to discharge, which he may well do, on whether it's a frivolous case or not, that employee suffers economic loss immediately and does not have that economic loss reversed until it comes before an arbitration board, or in this case the Labour Board. So that he is found guilty and he is fined through loss of earnings, which is contrary to all of the other laws that we have in the province. The worker understands and realizes that that is the system that he is operating under, and I don't believe that under this Act you're going to have frivolous objections made to any conditions that exist.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Well Mr. Chairman, I don't know where the Member for Thompson has been when he talks about economic loss and penalty in that respect. Let's get a few facts straight first.

In today's society with the generous social assistance programs, the unemployment insurance and that, to many workers it would be an economic benefit to be dismissed, it is not a penalty, and I think if you look you will find that there are many, many businesses where workers are, I would suggest, looking for any excuse to be fired so that they can seek other employment of their own choosing; in the meantime, because they are dismissed, immediately unemployment insurance is available to them. So in

(MR. GRAHAM cont'd) . . . . .that respect I don't see any penalty such as is suggested here by the Minister of Mines and Natural Resources and the Member for Thompson. I think that if you want to impose a penalty on one side there should be a penalty imposed on the other side for actions of a like nature, and I suggest that dismissal in today's society is not a penalty at all.

MR. GREEN: Mr. Chairman, I don't know where the honourable member has been, but I have struggled with dismissal cases for people who have been dismissed under collective agreements and have tried to become reinstated and sometimes particular cases have lasted a year before reinstatement took place, and sometimes the reinstatement is without loss of pay and the Arbitration Board considers they're doing the man a favour by reinstating. And the greatest percentage of the employees in this country want their jobs, do not want to live on social assistance, and if the honourable member considers it such a bonanza, I suggest that he try it and he'll find out how fast he wants to come off. I don't know where the honourable member has been, Mr. Speaker, but you know, from time to time we argue about the different positions on how either political people or political parties regard their fellow man, and I am going to take the honourable member's remarks about how he regards employees in this country and publish them in the Union Centre, because anything that they have against me or against what the New Democratic Party has done will be far overcome by just letting them see what the attitude of working people is by the Honourable Member for Birtle-Russell.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I was interested in Mr. Dillen's remarks, and I defer to his considerable experience in this area, but I say that he is idealistic, and that's maybe not a bad thing. But he says that all workers know by the terms of their collective agreement, if they have a collective agreement, that they cannot engage in these frivolous actions without penalty; they will lose their employment, and that's a severe penalty. And I go along with that. But I say to Mr. Dillen that all citizens of Canada know that if you commit murder that there's a penalty, that doesn't stop people - and it might not even stop everybody around this table, given the right circumstances or given the right provocation, from committing murder. So I just can't accept the argument that simply because they know about this that it would never happen, I say that it's possible that it could happen. You could conceive of situations where somebody was going to quit anyway, or an employer was going to pack up a business anyway, and there were particular agitations and grievances that one or the other had against the other for some period of time and he was determined to disrupt that person's economic life in some way. And simply on that basis, I believe that it's in the best interests of both sides of the coin that there be a condition in here that enshrines the fact that these actions have to be undertaken with reasonable cause.

MR. CHAIRMAN: Mr. Green.

MR. GREEN Mr. Chairman, we have decided to look at both ends. You've seen briefs represented here with regard to what an employee can do if he sees an unsafe condition. We've wrestled with that ourselves; we've said we cannot create a situation where a person can say that there's an unsafe condition and the plan has to stop until that is determined, which is perhaps - well it may not happen in Saskatchewan, but it may be the result of the Saskatchewan Act. We haven't yielded to that type of thing, and we have left there to be a certain amount of responsibility on the person who says that the place is unsafe and responsibility on the foreman who chases him to work. Both people know that they can be seriously hurt if they are merely behaving irresponsibility, we've tried to cover that; but Mr. Chairman, there is no way in which we can suggest that a person who raises a safety question will know that he is subject to prosecution - where there is no collective agreement, it's even worse. The Act gets him reinstated. I want some expert in the Labour Department to tell me where there is no collective agreement how I can keep a man reinstated in his employment even if he is reinstated by this Board. I want to know how I can keep him reinstated because I've wrestled for that for 20 years and I've not found a way.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Well Mr. Chairman, all I think we have to do is look at the

(MR. GRAHAM cont'd) . . . . .statistics in the labour field, that the young person today entering the labour market in the first two years of employment on the average changes jobs five times. In the entire labour force today, with the exception of probably the well established industries where they have a very good seniority promotional system, there is a high degree of mobility in labour today, that they do change jobs frequently; and what I suggested previously, if it is investigated I think you will find that in many cases that possibility exists and in fact it does occur on numerous cases, so that I fail to see the penalty that has been suggested here by the Minister and by the Member for Thompson. I don't think that that is as great a penalty as they would like to make us think it is. And when we're dealing with a piece of legislation that has decisions to be made on both sides, I think those decisions should be very fair, and if there is cases of frivolous action and that is all that this amendment suggests, it's only in cases where it is proven that it is frivolous that there is any possibility of a question of a penalty arising. But it appears that that is not acceptable to some here and I don't think that they have so far justified their reasoning for that.

MR. CHAIRMAN: The motion as moved. Is there any further discussion on the motion? Mr. Sherman.

MR. SHERMAN: I just ask the Minister, Mr. Chairman, whether he doesn't consider a stop-work order to be a substantial penalty, and if the stop-work order may have resulted from actions which are subsequently found to have been manipulated.

MR. GREEN: Mr. Chairman, I consider a stop-work order to be a problem. I also say that we have seemed to agree, and this is in the industry itself, that safety is a first. And if there are conditions which require a stop-work order - and they're pretty stringent before you can get a stop-work order, that has to be paramount - but if this man brings a frivolous complaint, which is possible, it certainly doesn't have the effect of working with scaffolding that's going to break.

QUESTION put, MOTION lost.

MR. CHAIRMAN: 53--pass; 54(1)(a)--pass; (b)--pass; 54(b)(1)--pass.

MR. SHERMAN: Before. . . just a question, Mr. Chairman, to the Minister. Just how legal is it to impose penalties of this kind on people who have no recourse to the courts? And I'm asking a legal question. I'm not a lawyer, the Minister is; how legal is it to be able to impose penalties like that when a person cannot resort to the courts?

MR. GREEN: Mr. Chairman, I can't give the honourable member an assurance. There is - this is a court That is the answer. There's other ones by the Labour Board, so the question would still apply.

MR. SHERMAN: Is this not a decision by the Labour Board?

MR. TALLIN: No, this is on summary convictions.

MR. GREEN: There are others on the Labour Board, your question still has relevance. As to whether we have tried to contravene the BNA Act by establishing a court, there's a case right now with the Clean Environment Commission of that kind. They are answered both ways. If the legislation is ultra vires, it won't have the effect that you say.

MR. CHAIRMAN: 54(1)--pass; 54(2), there is an amendment.

MR. SHERMAN: Yes, labour relations.

MR. CHAIRMAN: Someone has an amendment here, I don't know who.

MR. SHERMAN: 54(2).

MR. CHAIRMAN: Yes.

MR. SHERMAN: Well 54(2) is now rendered inapplicable, Mr. Chairman, because it would only apply had we passed the amendment I moved on 53.

MR. CHAIRMAN: Okay. 54(2)--pass; 54(3)--Mr. Sherman.

MR. SHERMAN: 54(3), I have an amendment to move, Mr. Chairman: THAT Section 54(3) be amended by striking out all the words after the word "exceeding" in the 9th line thereof and substituting therefor the following, "six months". The reason for the amendment would be obvious. It may not be acceptable but it would be obvious. We feel the penalty is too severe. I recognize that it says: "for a term not exceeding two years", but that means the term can go to two years. We simply feel, Sir, that that penalty is too severe, considering the fact that the penalties already prescribed in 54(1)(a) and (b)

(MR. SHERMAN cont'd) . . . . . could be imposed. They could be imposed and then the prison term or penitentiary term of two years could be imposed on top of that.

MR. GREEN: Okay, Mr. Chairman.

MR. SHERMAN: Oh, there may be a printing error there. Maybe it should be 3rd line instead of 9th line. Anyway it doesn't alter the effect.

MR. GREEN: No, no problem.

MR. CHAIRMAN: The motion as moved. Is there any further discussion on the motion?--pass; 54(4) - Mr. Green, I believe you have an amendment here.

MR. GREEN: 54(4). THAT subsection 54(4) be amended by adding thereto immediately after the figure "3" in the 3rd line thereof the word "he", "3 he", 54(4).

MR. CHAIRMAN: Any discussion on the motion as moved?--pass; Page 27.

MR. GREEN: Clause by clause, Mr. Chairman.

MR. CHAIRMAN: 55--pass; 56(1) - Mr. Sherman.

MR. SHERMAN: 56(1), I have an amendment, Mr. Chairman. THAT 56(1) be amended by striking out all the words after the word "be" in the 4th line thereof and substituting therefor the following - and that amendment I can read into the record or it can be accepted and taken as read - I'll read it into the record. Substituting the following: "For the person or the union alleging that such an offence has taken place to prove beyond a reasonable doubt that it was practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement; and that there was a better practicable means than was in fact used to satisfy the duty or requirement."

MR. GREEN: The same argument, and the same division.

MR. CHAIRMAN: Can we take the same argument and the same division?--agreed?--pass. Then 56(1)--pass; 56(2)--pass; 57 - Mr. Green.

MR. GREEN: 56(3) THAT Section 56 of Bill 83 be amended by adding thereto at the end thereof the following subsection:

56(3) - Subsection 1 applies mutatis mutandis to an appeal under 37(2) and subsection 39(1);

This means that the same things apply as they are applicable, with the necessary changes to make it applicable to the other section. Is that right?

MR. CHAIRMAN: 56(3)--pass; 57--pass; 58--pass; 59--pass; 60--pass; Preamble--pass.

MR. SHAFRANSKY: I just wanted to find out - I was here a little late - 15(2) on the Advisory Council.

MR. GREEN: It's passed.

MR. SHAFRANSKY: It has already passed?

MR. GREEN: No changes.

MR. SHAFRANSKY: No changes.

MR. CHAIRMAN: Title--pass. Bill be reported.

Committee rise.