ISSN 0713—9608

Third Session — Thirty-Second Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

33 Elizabeth II

Chairman
Ms. Myrna Phillips
Constituency of Wolseley

MG-8048

VOL. XXXII No. 1 - 8:00 p.m., WEDNESDAY, 27 JUNE, 1984.

Printed by the Office of the Queens Printer, Province of Manitoba

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS
Wednesday, 27 June, 1984

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Ms. M. Phillips (Wolseley)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Mr. Cowan, Hon. Ms. Dolin, Hon. Mr. Kostyra, Hon. Ms. Hemphill, Hon. Mr. Uruski

Messrs. Ashton, Banman, Enns, Filmon and Johnston, Ms. Phillips

WITNESSES: Representations were made on Bill No. 22, An Act to amend The Labour Relations Act and Various other Acts of the Legislature, as follows: Messrs. Keith Godden and Bill Gardner, Winnipeg Chamber of Commerce,

Pastor Don McIvor, Seventh-Day Adventists Church in Canada,

Mr. Dennis Sutton, Canadian Manufacturers' Association,

Mr. Sidney Green, Manitoba Progressive Party,

Messrs. Blunderfield and Dennis Stewart, Prairie Implement Manufacturing Association,

Messrs. Al McGregor and John Pullen, Manitoba Food and Commercial Workers and Manitoba Federation of Labour

MATTERS UNDER DISCUSSION:

Bill No. 22 - An Act to amend The Labour Relations Act and Various other Acts of the Legislature.

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CLERK OF COMMITTEES, C. DePape: Committee come to order. Our former Chairman, Mr. Santos is no longer a member of the committee, therefore, we have to proceed with the election of new Chairman. Are there any nominations?

Mr. Kostyra.

HON. E. KOSTYRA: I nominate Ms. Phillips.

MADAM CLERK: Are there any further nominations? Seeing none, Ms. Phillips would you please take the Chair?

MADAM CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: In view of the number of delegations that are before the committee I would move that each presentation and any subsequent questions and answers be limited to a period of one hour.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairman, it always bothers members of the opposition when limitation of time is being imposed upon presentations from the public. Traditionally the committee has not curtailed or placed those kinds of inhibitions on presentations. I appreciate that this government did so on the last occasion when we had a number of public presentations on a particular matter. It is, I suppose, the will of the government, if they choose to do so. I just raise my objections. I think most presenters of briefs and of their positions will do so in a moderate time. What I am saying, Madam Chairman, is that if it becomes a problem then that's perhaps the time to deal with it.

MADAM CHAIRMAN: Any further comments? All in favour of the motion please say aye? Those opposed? The motion is carried.

We will start with presentations then.

The Minister has a few opening remarks.

HON. M.B. DOLIN: Just very briefly, I would like to express the pleasure that I have of the opportunity to once again discuss the provisions that are contained within Bill 22. I particularly look forward to the opportunity for review of the specific measures that are contained in the bill which, of course, is what will happen at this committee stage.

By now the members of the committee are aware of the lengthy and detailed consultation process that has led us to this stage. I have been meeting with members of the province's industrial relations community for well over a year; we have listened to their concerns and we have made changes where we felt it was appropriate, and I am pleased to see some key elements of Bill 22 have been introduced with the consensus of the industrial relations community.

Madam Chairperson, I look forward to a constructive discussion of the specific provisions of Bill 22, and I believe that the individuals and groups scheduled to appear before this committee share that optimism.

The introduction of labour legislation in this country is often surrounded by confusion, misunderstandings, fear, controversy. We saw it in Manitoba in 1972 but as has been the tradition, the experience of working with the act has proven the original fears to be unfounded.

We have in 1984 experienced very similar problems to those of 1972. I hope that through these hearings, and the discussion of specifics relative to Bill 22 that many of the misunderstandings and fears that are being publicly articulated will be put to rest, and I look forward to hearing the presentations.

MR. H. ENNS: Well, Madam Chairman we start off the committee hearing in a highly unusual way. The purpose

of the committee meeting tonight is to listen to public presentation. I hesitated to interrupt the Minister but I do hope that she and the government members will listen. Thank you.

MADAM CHAIRMAN: I'll call the first presenters - Messrs. Bill Gardner, and Mr. Keith Godden, Winnipeg Chamber of Commerce.

MR. K. GODDEN: Madam Chairperson, members of the committee, my name is Keith Godden representing the Winnipeg Chamber of Commerce.

First, I'd like to just comment on one of statements the Minister made. It's rather an interesting one, and one that has been given a number of times but this is a replay of what happened in 1972.

The first thing is, of course, we don't know what would have happened if something different had happened in 1972, if perhaps the concerns were then listened to. We don't know how much benefit that would have conferred.

Secondly, the circumstances are quite different now, and one of the major themes that I'm going to be talking about discusses the future rather than just the present.

First, I'd like to officially introduce some resolutions approved by the Winnipeg Chamber of Commerce at a special meeting on June 26, 1984. I will summarize these before reading them in detail. The first resolution - there's sections of the Bill which the Chamber supports. The second deals with sections the Chamber opposes.

These two resolutions have been formulated with the guidance of Mr. Bill Gardner Jr., barrister with the law firm Pitblado and Hoskin. Mr. Gardner will be giving an analysis of the bill later and will be pleased to answer questions of technical nature.

The last two resolutions are of a general nature and I will summarize with an overview of the rationale for the Chamber position.

The first resolution states the Winnipeg Chamber of Commerce supports the following sections of the bill:

Section No. 44, clarification of the board's power to decertify in cases of abandonment.

Section No. 61, somewhat similar provisions to Section 81 regarding ratification votes except the voting constituency may be restricted to union members and secret ballot procedure is not obligatory.

Section No. 69, a shift of emphasis from tripartite arbitration board to sole arbitrator.

Section 69(3), provision for ongoing consultation. (Note: that while the concept is a good one, the proposed method of implementation involving a coercive element is not preferable.)

Section 81, provisions requiring secret ballot strike votes with requirements to provide all members of the bargaining unit, not just union members, with reasonable notice of and reasonable opportunity to vote.

Section 83(1) and (2), possible increased use of mediation services.

Section 103(5), where parties cannot agree on an arbitrator or chairman, the board, previously the Minister, will make the choice from a list developed in consultation with labour and management.

Section 113(1) and (2), time limits for rendering of decisions following the conclusion of the hearing (30 days for sole arbitrators and 60 days for arbitration boards).

Section 113.4, introduction of grievance mediation. If the parties provide in the collective agreement for grievance mediation, the government will pay one-third of the cost.

Section 119(b), tenure for chair and vice-chairpersons ranging between five and seven years.

Section 120(2) and (5), board to have flexibility to sit in various numbers, but retain tripartite character in all cases, other than the chairperson sitting alone.

Section 121(1), board to have authority to set own rules and procedure.

Section 121.1(2) and (3), board to assume educational role in formulating and publishing general guidelines.

Section 121(6) and 21(3) and (4), board to encourage settlement of the proceedings.

That is the conclusion of the first resolution.

The second resolution states, the Winnipeg Chamber of Commerce opposes the following sections of the bill:

Section No. 1(t)(1), professional strike-breaking definition.

Section No. 1(u) and 47(1), definition of sale of a business.

Section No. 26, rules restricting decertification.

Section No. 36(1), application date conclusive.

Section 36(4), improper union conduct; the words "undue influence" have been dropped.

Section 38(1), the standing of an employer.

Section 69.2, deemed fairness provision.

Section 75(1), first contract legislation.

Section 109(2)(f), arbitrators' powers.

That is the end of the second resolution.

The next resolution is a general one which reads as follows:

The Winnipeg Chamber of Commerce calls on the Government of Manitoba to return to the publicly proclaimed policy of the Premier of Manitoba namely to improve economic performance by sincere attempts to achieve consensus as the foundation to progress and to refer those sections of the bill opposed by the Chamber for further discussion with the business community.

Finally:

The Winnipeg Chamber of Commerce calls on the Government of Manitoba to defer passage of the bill to enable the public to analyse the purpose, content and consequences of this far-reaching and complex legislation.

Just an overview in rational, the Winnipeg Chamber agrees with the government that an objective that we share is the economic development of the province. In particular, this will be characterized by the generation of more employment. Further, the government is on record as having predicted - in common with many other analysts - that the largest share of new jobs is expected to come from the small business sector. The

word "small" is not defined, but around a hundred employees is usually considered to be the top limit of a small business.

One important way to view this legislation is against its impact on small business. To introduce that subject, I would first convey, in simple terms, what the practical effect of the legislation is perceived to be by the small business person, not necessarily the same perception as a lawyer.

The legislation, in simple terms, will mean: first, an acceleration of union membership; second, more use of the first contract legislation; third, less collective bargaining; and fourth, less industrial harmony. Why would these things harm small business? The acceleration of union membership is accompanied by a belief that it will favour the large, well-organized union. The strength of that large union, with its legal departments and expertise, is daunting, if not intimidating, to a small employer. To protect their rights, more would have to engage professional advisors, so raising costs - clearly a negative factor. The flexibility often needed in small business in terms of employees switching jobs, switching skills, will probably be impaired.

It is expected that more use will be made of first contract legislation and this will give rise to fears that the resulting collective agreement will be less satisfactory than the one arrived at by collective bargaining. Even if the terms are the same, the process is inferior to one in which both parties agree to it.

The mandated clauses will further reduce collective bargaining, even when mandated clauses are those which most parties agree to readily. It's better left to the parties, since they can help to form the basis for an agreement.

Less industrial harmony. Harmony is achieved by balance. Our legislation has given us a balance between management and unions, which has served us well. I don't need to repeat, we all know the past history of the province's industrial relations compared with the national average was extremely good. A process which significantly changes that balance overnight will not help industrial harmony of the kind we need, which is that arrived at by negotiation between two balanced parties.

In conclusion, the economic outlook is uncertain. Employers, especially the smaller ones, have been struggling, literally struggling to survive in the hope of better times. We believe that parts of this legislation will cause uncertainty in the minds of employers and will cause the postponed or cancellation of relocation and expansion plans.

Lastly, the legislation, by making things easier for the union movement, will reduce a major incentive to innovate, adapt, and change as indeed we all must do if we're going to benefit from the rapid changes in the coming years.

That is the end of my presentation. I'll be pleased to take questions. If there is a technical question involving the law, I'll call upon my colleague, Mr. Gardner, to assist.

MADAM CHAIRMAN: Are there questions for Mr. Godden? Mr. Godden, do you have copies of your presentation?

MR. K. GODDEN: I have copies of the resolutions, which I'd like to table if I may, but I do not have the complete presentation.

MADAM CHAIRMAN: Was it Mr. Banman that had a question?

Mr. Banman.

MR. R. BANMAN: Thank you, Madam Chairman.

Through you to Mr. Godden, you mentioned in your earlier remarks, Mr. Godden, that consensus on the bill was important. How do you believe this could be achieved?

MR. K. GODDEN: I believe that if there's further discussion where the points of view could be developed, I think we've seen a process where the legislation only appeared on June 11th and until it appeared we didn't know the full scope of it. We had some idea of the general thrust obviously, but certain things appeared in that legislation that weren't discussed. So therefore there hasn't been a proper opportunity to debate those. I think that because of the complexity of the bill and the resulting difficulty of predicting what its effects will be, this is even more important that we have ample opportunity to debate the issues further.

MADAM CHAIRMAN: Mr.- my mind is going blank - Filmon.

MR. G. FILMON: How soon you forget, Madam Chairman.

Madam Chairman, I'd like to ask Mr. Godden, we're given to understand by the Minister, in response to some of the criticisms that have been laid forth on the Table of the Legislature, that your side, let's say the Chambers of Commerce, the major employer groups in this province, have had 18 months of consultation with the government on this particular legislation; you had an opportunity to appear before the Marva Smith Commission, for instance; that you were given first opportunity to see the White Paper when it was released; and that there's been ample consultation. What's your response to that?

MR. K. GODDEN: Yes, Mr. Filmon, there certainly has been a great deal of consultation, nobody denies that, but I think that at a lot of the time we spent in consulting on the wrong things, but several times some of us have said that we're concerned a year ago, and more, about the effect on investment. This is what we saw as the major threat. This was always answered by an answer of this kind that said, we realize, we appreciate, how important investment is. Some of us have business experience and certainly we will take this very much in view, and your concerns will be listened to, and we're both trying to achieve the same ends, and to a very large extent we were caught a little off guard on this and one of the reasons that we've not been so vocal is that we sincerely believed that these concerns were being addressed and that we were making this point.

MR. G. FILMON: Madam Chairman, to Mr. Godden: Were the proposals that were put forward to you in each of these opportunities for consultation, the initial

discussions with the Minister and the government, the appearance before the Marva Smith Commission, the White Paper, and now this legislation. Were the proposals put before you always the same, or were you being asked to address a moving target, so to speak?

MADAM CHAIRMAN: Mr. Godden.

MR. K. GODDEN: I can only speak on the latter part of the process that I was involved in, which basically starts from the publication of the compendium. When the compendium was announced and publicized, this was when the business community began to get concerned, when it read of some of the proposals that were included in that.

This was where I met Ms. Smith and discussed our concerns about investment and this is one point I would go over. She pointed to her office wall, where there was a clipping from a Quebec paper just touching on that very subject, of the concern of the Quebec Government's effects on investment, and she said, so there you are. We're aware of this, so don't worry, it will be taken care of.

Since then there have been a number of meetings, yes, but I think that we have to come back to the fact that some of the major points of the effect of this legislation on - I picked specifically the small business sector, not neglecting the others, but because it does illustrate the point. That has not, I don't think, ever been fully addressed.

MR. G. FILMON: Madam Chairman, what is your recommendation to this committee then? You've given us a series of resolutions on certain aspects of the legislation, in an overall sense. Are you asking for massive amendment to the legislation or are you asking for it to be withdrawn for reconsideration? Are you asking for further consultation that might bring together representatives of all of the groups, who have differing interests and differing viewpoints on this legislation, before anything is done?

MR. K. GODDEN: Mr. Filmon, I think that when you've had the opportunity to study the resolutions of the Chamber, it'll be apparent that there are a number of issues on which we have achieved consensus and which we approve of, so therefore our position is certainly, let's try and improve legislation.

However, when legislation reaches the point of seriously affecting the existing balance in such a delicate matter as management-labour relations, we say proceed extremely carefully and do not upset what we have had previously and let's talk further to see if we can find some other solutions to perhaps the union concerns. This may not be the only answer.

MADAM CHAIRMAN: Mr. Kostrya.

HON. E. KOSTYRA: Thank you, Madam Chairperson.

I'd like to also thank Mr. Godden for the presentation on behalf of the Chamber. You made mention of the compendium of presentations that were presented to the Labour Law Review. You are aware that that was merely a listing or a collection of all the presentations that were made to the Labour Law Review and they were not intended as government policy?

MR. K. GODDEN: I'm aware of that.

HON. E. KOSTYRA: I would also ask you, in terms of, you mentioned in reponse to a question from Mr. Filmon that the Chamber first became concerned when that document was published, that there was a number of items that were contained in that document that caused the Chamber concern.

I recall receiving representations, indeed, and having discussions with members of the Chamber and other organizations at that time. Was not the concern around a number of issues, key among those was any legislation in regard to plant closure or technological change?

MR. K. GODDEN: Yes.

HON. E. KOSTYRA: Are those contained in this bill?

MR. K. GODDEN: No, they're not.

HON. E. KOSTYRA: Thank you. In terms of the White Paper, are you aware of how many items that were contained in the White Paper that are not in the legislation?

MR. K. GODDEN: How many items that were in the White Paper that are not? I couldn't tell you a number, no, but I know that there was one particularly important subject that was not included, one outstanding subject was not included.

HON. E. KOSTYRA: You're aware of one, but are you aware that there's a number of items that were in the White Paper that are not in the legislation?

MR. K. GODDEN: I'm aware of that one particularly. I'n sure there are details as well, but I don't recall there being other major ones.

HON. E. KOSTYRA: One further question. In your presentation, you stated that there were a number of items that were contained in the bill that were not raised previously and I presume, when you mentioned previously, you mean the White Paper or the compendium of presentations. Could you elaborate which items are in the bill that have never been raised previously?

MR. K. GODDEN: Yes. Madam Chairperson, I have a list of six clauses which, although of a detailed nature, some of which have quite a significant effect on the legislation, Section 1(a), dealing with the transfer of business and the definition of sale; 1(t.1), definition of strikebreaker; 36(a), removal of undue influence as grounds for improper union activity; Section 38(1), removal of standing of employer to make representations to the board regarding employees' wishes; Section 75.1, removal of discretion by board in imposing first contract; 109(2)(f) arbitrator to have power "to do any other thing," as part of the powers of an arbitrator.

HON. E. KOSTYRA: That's all the questions. Thank you.

MADAM CHAIRMAN: Mr. Ashton.

MR. S. ASHTON: I'm wondering if the Chamber has done any comparison with labour legislation in other provinces on any of the particular items that you've taken a stand on.

MADAM CHAIRMAN: Mr. Godden.

MR. K. GODDEN: Yes, the Chamber has done that and my colleague, Mr. Gardner, would be happy to expand in detail on our findings.

MR. S. ASHTON: Are you aware, for example, of the fact that many of the items which are being opposed are in place in other provinces? One item in fact is in place in eight provinces.

MR. K. GODDEN: I'm aware that some of the items are, in principle, included in the legislation of other jurisdictions, but in some cases they have been changed again in a small way, but in a significant way. As an example of that, I would quote the strikebreaker definition, where two words were added to the definition in the Ontario act which very considerably widen the definition of strikebreaker beyond what we feel is a reasonable definition.

MR. S. ASHTON: I'm also wondering if consideration has been given to the fact that there are other items which were not included which are included in other provinces. For example, some of the plant closure legislation which exists in Ontario was not replicated here in Manitoba. The reason I ask that is because, surely when you're comparing investment opportunities, one has to look, not just at the particular item but also the fact that there are various other provinces which have these sections and have additional sections which aren't included in this act. Was that considered?

MR. K. GODDEN: Yes, this is recognized and I think that it's an endless debate if you begin to compare provinces with each other because so many characteristics are different. What we're really comparing is what the act was before the changes, what it is proposed it will be and relating this whole picture against what the kind of province we think we will be into in the years to come, which will be more rapid change than the past. Therefore, relating to parts of acts which may have operated perfectly satisfactory in the past is no guarantee that it's going to be adequate for the future.

MR. S. ASHTON: Are you suggesting then that some of the existing legislation should be changed back to the way it was, say, in 1972? I'm not quite sure of the thrust of your comments because I know . . .

MR. K. GODDEN: The thrust of my comments really is quite simple that I'm saying, given, most people agree that the rate of change - and I'm not just talking of technological change, I'm talking of social change and structural changes in industry - are likely to be more rapid in the future than they've been in the past, and now is not the time to try and stabilize the situation beyond what we have. We should be spending more time, I feel, in investigating what those trends of the future are.

MADAM CHAIRMAN: Ms. Dolin.

HON. M.B. DOLIN: Thank you, Mr. Godden. You noticed how formal I am tonight, I've been calling you Keith for weeks. I am pleased to hear you say that there were a number of areas of consensus, a number of areas in which we have consensus and I hope we keep that in the front of our minds and proceed from there.

I believe what Mr. Ashton may have been referring to, and this may be a technical question that you wish to refer to Mr. Gardner, I'm not sure; you are certainly free to do that if you wish, but I'm wondering if you did research Section 6(2), The Ontario Labour Relations Act (1975)? That seems to be the only area where you feel that the act is going to have the effect that you describe on small business and I'm wondering if you did research that section.

MADAM CHAIRMAN: Mr. Godden.

MR. K. GODDEN: I'll just clarify, Madam Minister. You're asking me, did we research the effects of Section 6(2)?

HON. M.B. DOLIN: No. Section 6(2), The Ontario Labour Relations Act is the certification process that you see before you in Bill 22. They've had it in Ontario since 1975 and I'm wondering, since that seems to be the area, it's not the Labour Board, it's not arbitration, it's not all of those things, we seem to have a good deal of consensus. The one area that seems to be the thorn, if you will, for you, is the certification or ease of certification, as you've called it and I'm wondering if you did research that and have any comments to make with regard to the industrial relations scene in Ontario and whether business there has been negatively affected by that section.

MR. K. GODDEN: I would prefer to refer that question to Mr. Gardner.

MADAM CHAIRMAN: Mr. Gardner.

MR. B. GARDNER: Madam Chairperson, might I have the question repeated?

MADAM CHAIRMAN: Ms. Dolin.

HON. M.B. DOLIN: The first thing we have to ask you to do, Bill, is speak into the microphone. We want your words recorded for posterity . . .

MR. B. GARDNER: I promise.

HON. M.B. DOLIN: Okay, I'll try one more time.

I'm wondering if the Chamber researched The Ontario Labour Relations Act, Section 62. I think you are probably familiar with the section I'm talking about and I believe it came into force in 1975. That section is remarkably similar to the certification process presented in Bill 22, date of application system. I'm wondering if you did any kind of comparative study of the effect of

that section in Ontario as to what you are predicting for Manitoba?

MR. B. GARDNER: Madam Chairperson, with your indulgence, I'll read that section and see if we're on the same wave length.

This is the Ontario Act. "Where upon an application for certification the board is satisfied that any dispute as to the composition of the bargaining unit cannot effect the trade union's right to certification, the board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit, in effect, interim certification."

Is that the section or the subsection that . . .

HON. M.B. DOLIN: Yes, that's one of the problems you have raised in certification and there are others throughout the certification process. I won't take the time to point them all out because I don't want to take up your time with your hour of time for presentation. But I'm wondering if you did research the effect of The Ontario Labour Relations Act on the business community there, and compare it with what you are suggesting will happen in Manitoba with the imposition, as you call it, of Bill 22.

MR. B. GARDNER: Madam Chairperson, beyond researching it, I've lived it. I received my call to the bar in Ontario; I practised primarily in the area of labour relations; I practised in Ontario since 1976. I took my articles in part at the Ontario Labour Relations Board and was involved as an articling student in the relatively major - at least for Ontario - amendments that came in in 1975. Interim certification as such is not a problem in Ontario, nor would I anticipate it to be a problem in Manitoba, nor is one of the particular areas that the Chamber of Commerce at least has difficulties with.

The area with respect to the certification process that the Chamber of Commerce has the most difficulty with, is the proposed provision making the application date conclusive for all purposes, subject to a somewhat limited, somewhat automatically frustrated possibility to establish improprieties in the campaign process, in which case the board, if it can hear the evidence, or proposed would admittedly have a discretion to either dismiss the application or order the vote. The difficulty is the removal of the right of employees to change their minds, the right of employees to make decisions pro or con as to union membership subsequent to the application date. This is an obviously emotion-laden word, the disenfranchising of those employees who may not previously even have been aware, much less been approached, during an organizing campaign until they receive notice of it when the employer receives notice of it.

HON. M.B. DOLIN: Mr. Gardner, you are aware that those items did appear in the White Paper. We had lengthy discussions about exactly what you just explained.

MR. B. GARDNER: We did indeed, Madam Minister. We should distinguish, when we're going through this, that not everything in this bill that we don't like has come as a surprise and the proposal that the application date be conclusive subject to limited exceptions, has not come as a surprise. Certain things having to do with that have come as a surprise. One is the dropping of undue influence as prohibited conduct during an organizing campaign; the other is the section in the act which states that an employer has no standing before the board with respect to the determination of the wishes of the bargaining unit.

Now, what I suggest is going to be the effect of that, if I can give you a hypothetical situation - assume a certain union has engaged in inproprieties during a certification campaign and the standard way that happens when it does happen - and I'm not saying that it happens often - is that a union will put more than acceptable pressure upon the last few employees needed to take them from, say, 48 percent to 56 percent.

Now, one can obviously conceive of a situation where intimidation works so well that those employees are not prepared to come forward themselves and the employer may know of it. The employer may be able to adduce evidence to that effect, but if the employer has no standing, then the board in effect is going to have to say, well, I'm sorry, we have to disregard that evidence and the certification would go through.

HON. M.B. DOLIN: What I hear you saying is that intimidation of employees by other employees is something that will cause coercion or threats not to be able to be upheld before the labour board. I must say that I disagree with that. That's about all I can say because I think it's a point of view in the act.

MR. B. GARDNER: Madam Chairperson, with your indulgence, I'm not positive that is the sort of thing you can say there's just a difference of opinion. I would think, as an individual who, if you will, practises primarily on the business side, I would be quick to condemn those individuals, those corporations that seek to frustrate the principles of the act, that seek to undermine it by attempting to gain their objective through improper conduct.

I would suggest that where an employer or a business commits something that is improper, not only in the act but as understood by all moral people, then the interests of the entire labour community, into which I would include business, labour and government, are served if that evidence is brought forth and if the offender is called to account for what it's done. I would apply the same standard, regardless of who commits the unfair labour practice, regardless of who seeks to undermine principles that fair, thinking individuals - from whatever side of the street, if you will - support.

Now even the other things that are going into this bill in the area of certification and decertification, it would seem to me at the very least, that it behooves us to be reasonably sure, before the collective bargaining relationship is entered into, that that is a valid, reasonable and free choice, because, by God, it's going to take them a while to get out of it if it isn't. There's a year following certification; subsequent to that there's another year, essentially as of right through the route of an imposed first contract on the board, and that year does not have any open period, unlike other collective agreements.

Subsequent to that, if a legal strike is called, there is - according to the bill or at least according to the

only provision I can find in the bill - six months. I rather think the intention is that it be increased to 12, where applications for decertification - I'm prepared to be free and open. If I find something that you may wish in your interests, Madam Minister, to change, I'll point it out to you. There's, as I say, in the bill that 6 months, I rather think the intention, as expressed in the White Paper in the summary, is 12 months where there's no decertification. So we're looking at - effectively, if you will - at least 18 months from the date of certification. Now that's a long time to wait to remedy a mistake and mistakes do happen.

The point is this: if unions are to have, if you will, protection - if there's going to be increased focus on protecting newly-certified unions - we ought, I suggest, to be as sure as we possibly can that that choice is free, open and fairly reflects the wishes of employees.

I don't mean to stand up here and be all negative about this bill, because that would be unfair to it. There are many positive provisions in this bill. There are many things that were mutually recommended or achieved through consensus or people recognized they were good ideas, and they'll be supported and they are steps in the right direction. If time allows me, I'll touch on some of them because I think it's worth touching on them.

One of the provisions that has been taken out of the Ontario act is the 45-55 rule, if you will. Now that tends to provide a little bit of a margin of safety because you're not looking at a simple bare majority, you're looking at 55 percent, which is something more than a majority. It seems to me that a margin of safety is also in order here to ameliorate, if you will, the otherwise almost total crashing-down-of-the-door, come the filing of the application. Because in my experience - and it's starting to become fairly extensive - in small or medium-sized bargaining units, it is often attempted, by no means improperly and often successfully, to get into an automatic certification position in one day, sometimes in an evening. If you do the job right, that is indeed possible to do, but what that means is that almost automatically, with the best intentions in the world, some people are going to be left out and some people are going to go along with the crowd and may - and I say may - on sober second thought, which may only be with their families, think that perhaps it isn't the world's best idea.

Equally people who haven't been approached might wish, not unreasonably, to express their views as to unionization in general, that union in particular, or possible other alternatives. They will have no chance of effectively doing that if Bill 22, as proposed in this area, goes through.

Now I bring a somewhat personal element into this, because for the last eight years every once in a while I have to try to explain to those people what they can and can't do and I don't have a very easy time of it sometimes, particularly with individuals who are not entirely convinced that they really are living in a democracy, with trying to make them understand some of the general principles that work in the act. How I'm going to explain to somebody who was never even approached, that he's got no right to do anything, I'm not sure.

MADAM CHAIRMAN: Mr. Cowan.

HON. J. COWAN: One question for Mr. Godden. Mr. Godden could you take just a few moments perhaps to explain, in your opinion, your perception of the Manitoba Labour Relations climate at the present time?

MADAM CHAIRMAN: Mr. Godden.

MR. K. GODDEN: Yes, Madam Chairperson. We believe that the labour relations climate in Manitoba at the present time is generally healthy.

HON. J. COWAN: For what reasons would you say it's generally healthy? What criteria are you using?

MR. K. GODDEN: In terms of the numbers of days lost through disputes, going back over the last two years would be the yardstick I'm using.

HON. J. COWAN: And to what reasons would you subscribe that successful record or that general healthy condition? What are the driving factors that provide us with that sort of a climate?

MR. K. GODDEN: I think an extensive period of experience with the existing legislation is certainly a factor.

HON. J. COWAN: How would you describe the existing legislation in respect to the balance of power that it creates between labour and employers?

MR. K. GODDEN: We would feel that it is satisfactory.

HON. J. COWAN: Would you then suggest that it is a fairly equal balance that is written into the act between the rights and responsibilities of both employers on the one hand, and employees on the other?

MR. K. GODDEN: With certain reservations - yes.

HON. J. COWAN: What would those reservations be?

MR. K. GODDEN: The first reservation would be the absence of free speech on the part of an employer being unable to advise his employees of virtually anything concerned with organization.

HON. J. COWAN: But you would say generally there is a balance. You wouldn't be prone to say that the balance of power is almost completely on the side of labour?

MR. K. GODDEN: With that one exception - no I wouldn't.

HON. J. COWAN: In the presentation that was made by the Winnipeg Chamber of Commerce to this committee 12 years ago, on July 11th, 1972, and I quote when they were talking about Bill 81 they said "Bill 81" that is your organization at that time said "Bill 81" which was An Act to amend The Labour Relations Act or the Labour Relations Act itself "for the balance of power is almost completely on the side of labour."

What has made you change your mind over the past 12 years in respect to the balance of power that was written into that act?

MR. K. GODDEN: I think the passage of 12 years has seen some changes of attitude and as I've continually stressed in the past we're trying to look into the future, and it is against the requirements of the future that some of our principal concerns are.

HON. J. COWAN: Were you trying to look into the future when you formulated that presentation and that opinion in 1972?

MR. K. GODDEN: The conditions that existed 12 years ago are completely different from the conditions today. I don't think there's any relevance.

HON. J. COWAN: If the conditions are completely different perhaps there is not then a requirement or a need for different legislation.

MR. K. GODDEN: Possibly yes.

HON. J. COWAN: Thank you.

MADAM CHAIRMAN: I see no further questions. Mr. Godden and Mr. Gardner thank you very much for your presentation tonight.

MR. B. GARDNER: Madam Chairperson, I have a couple of other items that I'd like to bring up, if this committee will indulge me the time.

MADAM CHAIRMAN: That's agreeable with me, Mr. Gardner. You have 10 minutes left in total, if that's agreeable with the committee.

MR. B. GARDNER: I'll try hard, Madam Chairperson, to confine myself to 10 minutes. The immediate victims of that sort of time constraint will be comments that I had regarding positive aspects of the bill.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairman, I think members of the committee recognize that committee members took up a considerable amount of time in posing particular questions. We're also hearing from two persons in effect speaking of course for the Chamber, but surely we can be somewhat liberal if I can use the term with respect to time.

MADAM CHAIRMAN: Mr. Enns, it was my understanding when Mr. Godden made his presentation that he was going to refer to Mr. Gardner if there were technical questions. If Mr. Gardner would like to use the rest of his time to add to the presentation, I have no problems with that if the committee doesn't.

MR. B. GARDNER: If it's of any assistance, Madam Chairperson, from the view of technical requirements, I also hold office as Chairperson of the Labour Relations Committee of the Manitoba Chambers of Commerce and have been instructed by them to speak on their behalf. I had not intended to do so tonight, but I can take off my Winnipeg hat and put on my Manitoba hat if that gives me a little bit more time.

MADAM CHAIRMAN: Mr. Gardner, I have the Manitoba Chamber of Commerce on the list to speak. What I'm saying is that if you're prepared to take their spot on the list at their time and make your presentation then.

Mr. Filmon.

MR. G. FILMON: Mr. Chairman, Madam Chairman, I keep forgetting. If it will help at all . . .

MADAM CHAIRMAN: I'm so masculine looking I can understand it.

MR. G. FILMON: If it'll help at all perhaps I could suggest that Mr. Gardner appear as a private citizen then and he'll have the entire time limit at his disposal. — (Interjection) — Go ahead, if you guys want to be punitive go ahead.

MADAM CHAIRMAN: Mr. Gardner, do you understand that suggestion?

MR. B. GARDNER: I understand that suggestion, Madam Chairperson, and I'm more than willing to appear as such.

MADAM CHAIRMAN: All right, we'll put you on the list as a private citizen and you can return.

MR. R. BANMAN: Well, Mr. Chairman, I would make a motion that Mr. Gardner be accepted to make his presentation before the committee since he is here to do it right now.

MADAM CHAIRMAN: We do have a list, people's names are in order. I'd suggested at the beginning that Mr. Gardner could use up the rest of the time of the Chamber and he's suggesting he wants more time. A suggestion was made on how he could have a whole hour. To do that I would put him at the bottom of the list. There are also many other people that are waiting, who have their name on the list, who are expecting to speak in a certain order.

Mr. Filmon.

MR. G. FILMON: Madam Chairman, with the greatest of respect, his name is on the list and it appears up at the top.

MADAM CHAIRMAN: Mr. Filmon, he is on the list as part of the delegation of the Winnipeg Chamber of Commerce. I suggested that in that regard he had 10 minutes left of the time allocation for the Winnipeg Chamber of Commerce presentation.

Mr. Filmon.

MR. G. FILMON: Since the names were submitted in the order in which they asked to appear before committee, and in view of the fact that I'm sure that Mr. Gardner would not have been aware that limitations were going to be put on the presentations at the time he asked to appear, and I would suggest that his name

is up at the top and he ought to be able to appear with the full time limit that's been alloted by the committee. It's a decision of the committee that would not be known to him at the time that he applied to appear.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairman, I believe you have a motion before you, or rather before the committee, put by my colleague that Mr. Gardner now be heard.

MADAM CHAIRMAN: Are you calling the question?

MR. H. ENNS: . . . question.

MADAM CHAIRMAN: All those in favour of the motion, please say Aye; those opposed.

Continue Mr. Gardner.

MR. B. GARDNER: Thank you, Madam Chairperson.

I've dealt fairly extensively with comments regarding the certification process, and to a reasonable degree with the area of decertification. I would pick up then in the area of collective bargaining, and may I say, Madam Chairperson, that I invite questions and I invite individuals to interrupt me, to ask those questions as they may occur.

MADAM CHAIRMAN: That is not the way we usually proceed, but . . .

MR. B. GARDNER: I will certainly fit myself into the procedure of the committee, Madam Chairperson.

In the area of collective bargaining, and this will follow the form of the summary, a number of provisions are welcome and, in fact, present a good model for change in the area of labour relations. Examples of this are proposals for improved support of conciliation services and potential expansion of the use of mediation services.

The Conciliation Branch historically has functioned very well under a regime of less than ideal financial and other support.

The provisions contained in the bill and the White Paper to increase this support are welcome and have been generally encouraged by both sides of the labour relation's community.

These services focus upon achieving resolution, agreement and settlement, which after all is the basic intent of this act; and to the extent that certain portions of the bill focus on that area, they are supported not only by representatives of labour but also by representatives of business.

Other much needed changes include clear language, requiring secret ballot strike votes as a prerequisite to the commencement of a legal strike and the establishment clearly of the voting constituency for such votes as the entire bargaining unit.

Provisions designed to ensure reasonable notice of the vote and reasonable opportunity to vote are a forward and I suggest a progressive step. Somewhat similar provisions dealing with ratification votes, except to the extent that the voting constituency is limited to union members and a secret ballot is not required, but also containing provisions for reasonable notice and reasonable opportunity are appropriate and supportive.

Unfortunately, in this area, there is one particular and very serious problem and that lies in the area of first contract legislation. This is one of the things that has come as a very large and very nasty surprise to representatives of business and to me personally. Since the introduction of that legislation, it has been a constant complaint from representatives of government that access to first contract is too easy and the result is too attractive to bargaining agents. It was too easy, we argued, because it was effectively available as of right although the Minister had a discretion either to refer an application for an imposed first contract to the board, or to decline to refer it. In practice, to my knowledge, such discretion was never exercised when the applicant was a union. The applications simply were processed to the board where the board simply had a choice between proceeding to impose an agreement immediately or delaying such imposition for a period of up to 60 days.

The White Paper issued in April inferred and clearly was understood by myself as an individual that such discretion would be removed from the executive office and placed with the judicial branch, i.e., the Labour Board, and that from and after the coming into force of the new provisions, the Labour Board would have a discretion, if it considered it advisable, to proceed to settle the terms of a collective agreement, or if it did not consider that to be advisable to decline to do so.

The need for this sort of jurisdiction, I suggest, was clearly demonstrated in a previous case where the board without, in my opinion, jurisdiction to do this declined to impose a collective agreement where such application had been referred to the board because it found during testimony that the applicant union had either not bargained in good faith or had not made every reasonable attempt to achieve a collective agreement.

There are numerous other areas in this bill where a discretion is conferred upon the board to either do something or to decline to do it where it sees that one party or another has not behaved properly. The best example of this is in the area of decertification where an otherwise timely decertification - this is Section 41(4) - an otherwise timely application for decertification can be rejected by the board if it finds that the employer has frustrated the bargaining process or frustrated attempts of the bargaining agent to reach a collective agreement to reach a solution. That does not seem unreasonable.

But what is difficult to follow is why the same sort of reasoning would not apply in a situation where there is an application under 75.1 and the board finds that the applicant has not made every reasonable attempt to achieve a collective agreement, has not fulfilled its duty to bargain in good faith. Why should the board proceed then, in effect, to reward a wrongdoer for its offences? What makes the changes even more difficult to accept in this area is the removal even during the settlement phase of relative good faith or bad faith as a factor that the board can take into consideration. To give you a doomsday scenario, which I don't suggest is necessarily likely but is certainly possible, an applicant could merely go through the motions of collective bargaining, could cover all of the steps, go to

conciliation, sit down at the table and stare stonily across at the other side until all of the technical prerequisites have been satisfied, put the application into the board, sit out whatever delaying period the board attempts to achieve until finally the board is left with no choice under its jurisdiction but to impose a collective agreement; and not only to impose a collective agreement, but to impose a collective agreement on the same basis that they would if they found that the applicant had otherwise made a full attempt to achieve a collective agreement.

To me, and again, I think this goes beyond points of view. It just doesn't make any sense. We have seen very useful, very beneficial mutually recommended provisions come in to strengthen the Labour Board, to improve the financial support to the board, to insulate the board from the political process by granting limiting tenure to chair positions, all of which are excellent ideas. We have a board now and for the future, presumably, that the entire labour relations community can have confidence in. Expressions of confidence are found elsewhere in the bill, in areas that I've suggested, in other areas such as the clause which is known colloquially as the penalty certification clause, which really isn't a fair term, which again allows the board a discretion to certify in cases, which on the language of the bill seem appropriate.

It's possible to make a case regardless of where you come from, whether you're from business or from labour, that an employer who has attempted on purpose to chill the organizing process, who's identified the risks and the fines that can be handed out and decided that all of those penalties are worth it, you can make a case for the proposition that the clause that is proposed to go in Bill 22, which has existed in Ontario for a number of years, should be there so that you can provide an effective deterrent by imposing the very thing that the employer is most afraid of. That makes sense. It particularly makes sense if you've got a board that you have faith in, but it equally makes sense - very strong sense, I suggest - that if we have this confidence in the board, we should vest them with an appropriate discretion in appropriate areas which clearly includes something as important, something as potentially devastating to a collective bargaining relationship as an imposed first contract.

The history, and those who have done the research and people at this table have done that research, of B.C., the jurisdiction that first implemented first contract, is that with respect to the cases where it's imposed, it has not, by and large, achieved lasting relationships. In other words, if this process has to be used, it's already failed. The whole idea is deterrent, but deterrent doesn't work unless it works in both ways. If you make the process too accessible and you make the result too attractive, you're not going to deter bad faith. You're not going to promote good faith bargaining; you're going to have the effect of undermining it.

If you look at Ontario, and people are often looking at Ontario and fond of quoting those provisions, first contract legislation is unknown there. To take the worst recent case of employer interference and cold-blooded undermining of the collective bargaining process and the certification process, coming out of the Ontario board in 1979 - and I don't have to mention a name because everybody knows it - the board was asked to impose a contract in that case, declined to do so. That was 1979. That relationship has gone through three renewals. They're still functioning with each other. They happen to be on strike at the moment, but people do go on strike from time to time.

Since the date of that decision, there have been no unfair labour practice complaints coming out of there. They have achieved, without imposing a contract, a lasting relationship.

We would concede, I think, if we're realistic, that we're not going to achieve the removal of Section 75.1 altogether. What we urge upon the government and upon this committee is to provide a situation that makes sense. If someone has validly tried to achieve a collective agreement, hasn't been able to do it, notwithstanding the best of their efforts, other circumstances tending to indicate that there is some usefulness in imposing a contract, by all means do so, but do not leave the board without the ability to make a choice, without the ability to cover off the extremes of situations that you are obviously going to get. You will not do, in the long run, anyone a service, if the provision doesn't make sense.

Staying just with the major things, the other clause which is a definite cause for concern and not a surprise is the provision 69.2 indicating that management will be obliged to act reasonably fairly, in good faith and in a manner consistent with the agreement as a whole, and requiring the introduction of that clause into a collective agreement and if it's not there, it's deemed to be there.

That sounds fine until you start trying to figure out what it means. The difficulty there is that under specific situations it's going to make the collective agreement less predictable, less easy to understand, and less likely to provide a valid guideline for the parties to conduct their affairs and to govern themselves. It is not, with respect, the equivalent to say, well, the bargaining agent is to be imposed with a duty of fair representation. That particular provision, while arguably appropriate, is, in and of itself, going to cause problems.

The experience of other jurisdictions, in particular the federal jurisdiction and Ontario, is that the vast majority of unfair representation cases are without merit and they are expensive. They are obviously of concern to the bargaining agent who doesn't want to be seen as acting unfairly to its members. They're often a concern to employers, but at least that provision is drafted with some care and some restraint. It isn't enough just to show that the union may have made the wrong decision or been negligent, you have to show that they've acted in a manner that is arbitrary, discriminatory or in bad faith.

Similar restraint in 69.2, in the drafting of that clause, might help. Good faith has always been required. Arbitrators - and I've sat on arbitration boards - we've never had any difficulties finding a requirement of good faith, irrespective of the absence of legislation or the absence of any particular provision in the collective agreement. We never, in my experience, have had difficulties considering the context of the collective agreement, and we have never had difficulties taking into account certain provisions of the collective agreement, which may not have been specifically brought to our attention in the grievance or during the presentation of the arbitration. That much, you don't

need legislation for. What reasonably or fairly is going to turn out to mean, I would suggest, exists at the moment in the cosmos. There is not enough jurisprudence on that, but if this goes in there will be soon. Parties, in their own interests, will test the limits of those provisions and if you combine it with another provision that is an equal cause for concern, the power of an arbitrator to do any other thing to achieve a final conclusion, what you're going to get is a situation where arbitrators can, within their jurisdiction, rewrite the collective agreement. Now that has always been understood to be an anathema in labour relations, because it makes it impossible for the parties to understand ahead of time what's going to happen.

It has always been understood in collective bargaining relationships that you reach your collective agreement and then you live by it. Once you've signed that agreement, you stick with it. You don't come back in the middle and say, oh yes, well, we may have agreed to that but this specific application is not reasonable or is not fair. All that is going to do, I suggest, other than make people like me wealthier, is provide more uncertainty and less predictability into the process.

You know, if you want to be ridiculous, it would be final and conclusive if an arbitrator ordered the parties taken out and shot, on the basis, well, I can do any other thing - this is some other thing. I know the maxims that tend to restrict a general clause like this into the context of what has gone before, but the use of these particular words are so wide that I think it's going to be very difficult. Some day when either the union or the employer, to their horror, finds a provision being rewritten on them and takes it up to the Queen's Bench, and the Queen's Bench judge takes a look at the provision and says, well, counsel, he can do any other thing. How can you say he's exceeded his jurisdiction?

The difficulty with some of the provisions - and this is a guess - is that they give the inference, they give the suggestion, of having been written perhaps in the last couple of weeks, perhaps as sort of a clean-up clause, when something occurs to the drafts person that hasn't occured to them before, because when we went through the labour law review process, we were talking mainly about concepts, not statute language and it hasn't been fully thought through. I don't mean to demean the people who have drafted this bill; I'm not certain of the time that they've had. I have a feeling that maybe it was a little short.

My difficulty is understanding why all of these provisions should be passed now. I would readily recognize that when you have a circumstance where there's a clear and immediate need, and I think arguably an example of that is the penalty certification clause, although I'm not necessarily joined in that feeling by some of my compatriots, at least there's an abuse that can be pointed to and there are examples that can be pointed to. Some of these other provisions do not address clear and immediate needs.

I would concede that the intention is that we look towards the 21st Century, but we've got fifteen and one-half years to go, and I would have thought that in certain areas it's time to take a considered second look. I would also think that if we're engaged in a modernization there are certain things that we've left out.

Again, taking a look at The Ontario Act, which is a useful model - Ontario's done relatively well by both sides of the labour-relations community. That act has for many years, with the recognition that the court of first resort should be the board, provided reasonable, rational and useful remedies in the area of strikes and lockouts, and I'm thinking of illegal strikes and lockouts.

Now this bill has gone to considerable effort to increase the focus on the Labour Board as the place you go to have your problem settled, to reduce the access of the parties to the courts where they wish to dispute a result. It has left out something that seems to me to make an enormous amount of sense. The most effective remedy that you can get in a situation where you believe there has been an illegal lockout or something constituting an illegal lockout or an illegal strike is injunctive relief. That is not available under the present act; it is not proposed to be made available under this bill. I'm not positive that I understand the sense of leaving that out. Why should you have to go to the courts as either a union or an employer to seek your most effective remedy which is the injunction to do this or stop doing that? Injunctive relief is something the board can grant in other areas, why not in an area as important as an illegal lockout or an illegal strike?

The final thing that I would like to bring up, and you may not believe me, Madam Chairperson, but I've skipped a lot of things that I was planning to say . . .

MADAM CHAIRMAN: You skipped the good stuff, did you?

MR. B. GARDNER: . . . is with respect to sale of a business. The proposals in Bill 22 dealing with that area are not unique to labour legislation. It exists in the federal jurisdiction; it exists at least to some extent in Ontario. It isn't something we dealt with in great detail. It's a very important question; it's a very important area. I would suggest, as a representative of business, that bargaining rights should not be lost except in clear situations which I would take, for example, to be situations where the businesses clearly cease to exist and people are perhaps taking over the lease of the building and where it was a foundry, it's now going to be a drugstore or an insurance agency to take something that's a really clear example.

However, while bargaining rights should be preserved and while there should be a focus on preserving bargaining rights, the same is not necessarily true of the terms of the collective agreement. In fact, a previous collective agreement negotiated under different circumstances, perhaps over a number of years, can be a real impediment to the chances in everyone's interests of a defunct, bankrupt, or otherwise failing business being revived. As you renegotiate contracts with suppliers, with customers, as you get into discussions regarding heat, light, rent and all of the other provisions that you take a very fresh look at when you're seeking to turn something around, so should the collective agreement receive scrutiny. It would be a mistake, I suggest, to in all cases where it's clearly appropriate that bargaining rights should flow to simply conclude automatically that the collective agreement should follow as well. That could run totally against the interests of the employees, the union, the would-be rescuer and in fact the entire province.

I would urge upon this committee and upon the government to take a fresh look at that area, to perhaps

put that into further review, to perhaps allow the parties, or representatives of the labour relation's community, a chance to work something out that makes sense for everybody. You know, to have bargaining rights and to have a collective agreement and to have a closed plant gets you nothing.

The final thing that I've been waiting desperately, since about June 12th, to say to somebody - and I'm going to take this opportunity - is that it was widely reported after the release of Bill 22 that the government had bowed to business pressure and dropped final offer selection. I would like to have a crack at trying to clear that up.

First of all, the government didn't bow to business pressure. I agree totally with the Minister of Labour when she states that was a decision reached in Cabinet, in consultation with caucus, in response to concerns expressed from both sides of the labour relation's community.

Secondly, it isn't dropped, it's merely put into the review phase for further discussion which I, for one, welcome.

Finally, business, at least those groups that I'm a member of or I represent, didn't urge that it be dropped. In the presentation made to the Minister of Labour by the Winnipeg Chamber of Commerce, and I can quote it from memory, referring to final offer selection, we wrote, "This concept is unquestionably innovative and potentially beneficial." In our recommendations, there was never a suggestion that it be dropped. We had difficulties with the proposed method of implementation. We had suggestions how it might be more evenly carried out, but we did not and do not now urge that it cease to be considered or be forgotten for all time. It's potentially a good idea and potentially something that can be worked out by the parties. My point, to a certain extent, is that as people reported that the dropping of final offer selection was a big concession to business, and here lo and behold business was not being suitably grateful, an impression may have been raised in the government that was exactly what was happening. I would appreciate that being cleared up because it just is not correct.

I thank you for your attention. Madam Chairperson you've been very good to me and I'll take any questions that anyone has the energy to ask.

MADAM CHAIRMAN: Are there any questions for Mr. Gardner? Seeing none, thank you very much Mr. Gardner.

MR. B. GARDNER: Thank you, Madam Chairperson.

MADAM CHAIRMAN: The next people on the list are the Seventh-Day Adventists Church in Canada - Pastor Don McIvor and Dr. Douglas Devnick.

May I ask, Sir, are you Pastor McIvor or Dr. Devnick?

MR. D. McIVOR: Madam Chairperson, I'm sorry that I'm going to have to speak for two people. Dr. Devnick was unable to be here tonight from Oshawa, and so, Madam Chairperson, Madam Minister, and members of the committee I'd like to introduce myself as Don McIvor, the President of the Seventh-Day Adventist Church, of the Manitoba-Saskatchewan Conference. I also Chair to the Board of West Park Manor here in Winnipeg. West Park is a personal care home. I chair the Board of Park Manor, which is also a personal care home, and also Chair the Board of East Park Lodge, which is to be an elderly person enriched housing unit, which will probably be the first of its kind in Canada. So I want to say that we're speaking about in dynamics that Winnipeg-Manitoba is going to be a first along this line.

Madam Chairperson, I want to apologize for something. I never had a copy of this law 'till just a few moments ago when the person that helps us out here handed this to me, so I've never seen a copy of this law, so if I'm a little bit out to sea forgive me, and I've just gotten through a 500-mile drive here from Saskatoon, so maybe I'm a little more tired than the learned lawyer that spoke before me.

I'd like to say one word though of appreciation. My being here was completely worked out through mail. That's a very awkward situation to find yourself in to be making telephone calls and trying to contact people and finding where you fit in to a program, so my schedule I feel was very nicely worked out by the group. I want to express apprecitation for those who helped fit me in the program tonight. I mean I know how awkward it is to go through all these things and I really appreciate the way that we were treated by telephone.

Now the only information I have is by phone and the reason I'm here is because of concerns that were expressed by people of the Seventh-Day Adventist Church who find themselves in an awkward position as far as this Labour Bill 22 is concerned.

Now am I right, Madam Chairperson, that on Page 42, and the top of Page 43, that that is the Labour Bill as it is being presented? I'm sorry that I have to ask this information, but I am not clear on . . .

In other words I'm talking about (a) through (e)?

MADAM CHAIRMAN: I'll have the Minister answer your question, Sir?

HON. M.B. DOLIN: If you're looking at Section 68(3) - yes, on Page 42, and Page 43 of the bill I believe.

MR. D. McIVOR: And that's on Page 43 (a) through (e), Madam Minister?

HON. M.B. DOLIN: Yes, it begins I believe on the bottom of Page 42 and continues (a) through (e) on the next page.

MR. D. McIVOR: Thank you very much.

The part I am particularly interested in addressing is Section (a) on the top of Page 43, Section (a). I'd like to read it as I understand it.

"(a) the employee is a member of a religious group which has as one of its articles of faith the belief that members of the group are precluded from being members of, and financially supporting, any union or professional association; and

(b) the employee has a personal belief in those articles of faith;"

Now the thing that has caused me concern, and many of those who are members of our church a sincere concern, is that one little sentence which includes

"precluded from being members of." Now my understanding is that in a free a democratic society that the members of this society have a degree of choice, freedom of choice, and freedom of conscience.

I followed with some interest the proceedings that took place recently south of the border when on a federal level they brought in the freedom of conscience clause in this matter of employee-employer relationships. This was passed at the federal level and we find in some of our provinces that we have a little more latitude than what is being spelled out in Section (a) here.

I want to tell you just briefly what the problem is. First of all, we don't feel that as a church we have a mandate to be anti labour. We don't feel that's a part of our philosophy or religious teaching and so as I look at this where it says "precluded from being members of" what's happening here is that we're taking away the freedom of choice from the employee on the grounds of his or her commitment to a church and on the grounds of their personally having a conscience relationship to this.

Now I feel that an employee should not have to choose subjectively whether to belong to a labour union or to a church. I feel that's an unfair position to place an employee in, that he has to choose between his church or a labour union. So for us as a church, and I'm speaking as an administrator of a church, for us to write in to our - how is that spelled out here again - articles of faith that if you belong to a labour union, I'm putting it the other way now, then you should be precluded from membership in our church, we feel that would be wrong. We feel it's also wrong for us to tell our church members that they are precluded from belonging to a labour union.

Now we have a teaching, a very open and forthright teaching, that we have shared many times with labour unions, the fact that we sharply differ with the labour unions over the methods they use to obtain their ends. We have teachings along this line; our members are made aware of these teachings. We carry these teachings forward in different ways, but when the final decision is made, we feel it has to be the member of the church making their decision whether they feel conscienciously impelled to do such a thing in regard to their membership in a labour union.

Madam Chairperson, I have just a brief recommendation that I would like to table as a substitution for (a) and (b) here, if that's permissible.

MADAM CHAIRMAN: That's fine. The Clerk will take your paper.

MR. D. McIVOR: Madam Chairperson, I would like to further state that the principles that are enunciated in (a) and (b) are somewhat also enunciated in other provinces within the country of Canada and so the intent is not new. Can I take just a moment until members have a copy in their hand?

MADAM CHAIRMAN: Yes, certainly.

MR. D. McIVOR: I want to press through this, Madam Chairperson, to give others the chance to speak.

Madam Chairperson, I want to say again that this was written down without us having time to contact our legal counsel. It was written down strictly by laymen and so you will understand that this doesn't have all the finesse that it should have under the circumstances.

Under 68(3)(a) then, we are recommending that this would be much more palatable and yet probably the same end would be accomplished. Under (a), the employee is a member of a religious group and as a matter of conscience, based on religious training or beliefs, is opposed to belonging to a trade union or financially supporting it, and (b), an employee has a personal belief in these religious teachings and is committed to them.

Madam Chairperson, that's all I have to say and I'm open to any questions that anyone would like to have.

MADAM CHAIRMAN: Thank you very much, Mr. McIvor. Are there questions from the committee?

Mr. Banman.

MR. R. BANMAN: Thank you.

Pastor McIvor, in your presentation you make it very clear that your church does not have, within its constitution or prerequisite of membership, something which, when a person joins your church, prohibits him or her from joining a union. Is that right?

MADAM CHAIRMAN: Mr. McIvor.

MR. D. McIVOR: Yes. Would you re-word that question for me again?

MR. R. BANMAN: In your church constitution, there is no clause which states that an individual that becomes a member of your church cannot or should not be a member of the union?

MR. D. McIVOR: Yes, Madam Chairperson, we do have a definite teaching on this matter, that we disagree with the - how would I put it - methods that unions use to get agreements and what have you, wages and what have you, and we teach that these kind of pressures should not be brought to bear upon agreements between employers and employees and we have a definite teaching on this; but we do not have, as is stated here, something that says that if you join a union, then you're now in bad faith with the church. See, we don't go to that extent and we don't want to be caught in the position of telling people what they should do if they don't feel, after all the teaching, that they conscienciously must adhere to that.

MR. R. BANMAN: In essence what you're saying is that a member of your church, under this legislation which is proposed, would not be able to really present the employer or the bargaining agent or the board with a document showing that, here it says that I cannot belong to the union because that is the teachings of my church. What you're saying is that it would be up to the individual's personal beliefs and personal conviction that he or she shouldn't belong to the union.

MR. D. McIVOR: No, what I am saying, Mr. Banman, is that the individual should, with the support of the church, if he is conscientiously convicted, have a right to make this appeal. I think that what I'm saying here

is I feel that the unions and management move in an orderly fashion under law and for just any individual to suddenly stand up and say, well, I'm conscientiously opposed because it's against my conscience, I feel that he's walking on pretty thin ice there; but when we have an organization that has definite teaching regarding this, definite teachings in regard to conscience and relationships of worker to employee, that then the employee should be allowed to make his decision and that if he wants to make a positive decision, that he would like to follow the teachings of the church and follow his conscience, we will stand by that employee, go before the labour unions and plea on behalf of the employee, as well as him making his own plea. Is that helpful, Mr. Banman?

MR. R. BANMAN: Sounds fair enough to me, Madam Chairman.

MADAM CHAIRMAN: Ms. Dolin.

HON. M.B. DOLIN: I have just one question. I'm wondering and I realize that you say you didn't have a lawyer write this. It is certainly drafted, I think, in a way that presents your position very clearly, but I'm wondering if you are aware that the point that you are making has not been changed from the previous act to this, that the change that has been made in the amendments is that the Labour Board is now involved, rather than just the union making the decision about whether to include or exclude the member. That is the point of change and I don't know if you're aware of that. That's why I wanted to clarify it.

MR. D. McIVOR: What I am aware of, Madam Minister, is that I just had an employee, who is a Seventh-Day Adventist, of a large corporation within the confines of Manitoba, this week make me aware that he had made his appeal and he had been turned down, because he'd made his appeal on conscientious grounds and he said, well, there was no place where we could point to in our church, saying that you're going to be forced not to do this or to do it.

HON. M.B. DOLIN: Are you saying that what you agree with - I'm trying to separate out where the point of disagreement occurs, I guess, the manner in which unions bargain, is that acceptable to your church, to your faith?

MR. D. McIVOR: All right, I guess where we differ with the labour unions is not with bargaining, but it's with striking which sometimes can go on beyond what's even within law, which opens up unsavory situations, and we disagree with the use of collective force in order to obtain personal gain.

HON. M.B. DOLIN: Would a member of your faith, who belonged to a union that had binding arbitration, would that be a satisfactory membership in the eyes of your members?

MR. D. McIVOR: The teaching of the Seventh Day Adventist Church is from our long relationship with labour unions that we ask that our members not belong to labour unions. In every province across here, as far as I know, in all of the experiences I have had, especially I should say subjectively lately I've had this appear many times before the Labour Board in Saskachewan on behalf of our members, and on the strenghth of the teaching of the church and of the conviction of the individual, they were awarded what you're seeking to come to here, but it doesn't quite state that the belief that members of the group are precluded from being members of. You see, that's the part that I feel is vicious, to preclude somebody from being a member of a union. That's a little bit too strong.

I feel that it's much nicer to say that an employee is a member of a religious group and as a matter of conscience, based on religious training or beliefs, is opposed to belonging to a trade union or financially supporting it. I know it's a fine line, but the problem is that it's causing problems to some of our members who, as I say, as a church we refuse to be caught in the net of being anti-union. We don't go out and campaign against labour unions or something like that.

But on the other hand, I faced the same thing during World War II in a little different arena, but I was called into the Navy, to serve in the Navy. I asked to serve as a non-combatant. Well a non-combatant goes where the shells are flying and everything else, but you don't carry a gun. That is the teaching of my church - non-combatancy.

However, we did have young men that in spite of that teaching went out and carried rifles and fought in other ways instead of serving as I did, you know, partly in the medical part and then different parts of it, but it was not said that they should now be excluded from church membership. I mean, it was a matter of conscience with them. They made the final decision and I feel that with this slight change here, the decision rests with the individual and if he cannot make that board to understand that he is a member of a religious group, you know, and that he has these convictions personally and the religious group that he belongs to has this kind of conviction, well then, of course, if you can't prove that then there would be a reason for him being excluded from it.

HON. M.B. DOLIN: Just one last question and I must say that I share your views on the analogy you just gave.

I wonder if you have a solution, or if you have in fact a case that you might tell us of the way in which an employee, who is a member of your faith, determines what benefits, what wages, etc., he or she will get from the employer if they are not a member of that particular bargaining unit.

MR. D. McIVOR: Yes. You're talking about a mechanism that can be used . . .

HON. M.B. DOLIN: If a person is excluded from the bargaining unit, I would assume that they are then excluded from any of the benefits gained by that bargaining unit, any of the benefits of representation and so on. How does that employee fare?

HON. D. McIVOR: Madam Minister, in order to belong to a church you have to be willing to make sacrifices,

and we just had one of our workers demoted substantially from a much better paying job just to stand by his convictions as a Seventh-Day Adventist. We feel that if a person has a right to be a member of an organization, they also have a right to make sacrifices to belong to that organization. It is true that we might say, well, that's unfair, but we also have to admit that there is nothing that's more fair in this world today than freedom. At whatever cost, I feel that it's worth it.

That's why I'm merely making this plea, that people be able to make in a sensible way a judgmental approach to boards, and if they can't convince a board that they're convinced themselves and that they have a church that has principles that they're willing to stand by and even make sacrifices to do it, then the board has a right to turn that aside.

But I believe with this very simple approach of coming through with the religious training and beliefs - if I had the time I could have tabled all of this, our actual teachings on it, you know. What they are, they're straightforward and simple. You can see that by these other labour boards that I've had to appear before that they've never to this point once turned us down, so our relationship is good. I feel very comfortable with it and when I was working down in the United States I had sometimes before this conscience clause thing was brought in down there, I had to deal directly with labour leaders eyeball to eyeball, and when they could come to an understanding of our situation, there was only one experience in all the experiences I had that I felt that I could point to as being negative, because they saw that we were willing to sacrifice, to hold to our position, they saw that we appreciated freedom of conscience and it wasn't just a passing fancy or something to gain advantage, because it is a disadvantage.

So that's why I put this under (a) that the employee is a member of a religious group. No. 1, he should be a member, and as a matter of conscience, based on religous training or beliefs, is opposed to belonging to a trade union or financially supporting it, all the rest of it, of course, then takes over, and (b), that the employee has a personal belief in these religious teachings and is committed to them.

HON. M.B. DOLIN: Thank you very much for presenting your view to us. I appreciate it.

MADAM CHAIRMAN: Thank you, Mr. McIvor.

Next delegation on the list is Messrs. Jack Benedict and Dennis Sutton, the Canadian Manufacturers' Association.

Mr. Sutton, I'd just like to clarify, the two of you are presenting together as a joint presentation I presume?

MR. D. SUTTON: Actually, Mr. Ken Holland, who is the Chairman of the Manitoba Branch of the Canadian Manufacturers' Association was supposed to be here tonight. Mr. Benedict is I believe our First Vice-Chairman and you can ask him any questions if you like. I'll be making the presentation.

MADAM CHAIRMAN: It's a joint presentation though between the two of you, which will be an hour?

MR. D. SUTTON: It won't be an hour.

MADAM CHAIRMAN: Thank you.

MR. D. SUTTON: Madam Chairperson, Honourable Ministers, Members of the Committee, the Canadian Manufacturers' Association is pleased to have this opportunity to respond to Bill 22, which is the end result of the Labour Law Review which has been ongoing over the past year.

Throughout the entire process, the Canadian Manufacturers' Associaton has maintained the position that such changes are not desirable nor necessary in Manitoba.

The Canadian Manufacturers' Association cannot understand why the government wants to change The Labour Relations Act, which has been and is presently providing a framework for a labour relations record, envied by other provinces, both east and west of Manitoba.

We believe this bill will serve as a deterrent to harmonious labour-management relations, individual freedoms and rights and the potential to attract new additional and outside investment to the province. We can ill afford to convey such a perception during this fragile stage of recovery.

We cannot accept the changes being put forward in the government's 91-page bill, as ones which streamline the process.

The bill is long, detailed and complex. Recognizing that the act will not come into force until January 1, 1985, we urge the government to take the time to reconsider the contents of the bill and study its impact as presented by the business community of Manitoba.

Bearing the above in mind, we wish to address the specific concerns and clauses of Bill 22 which are of our greatest concern. It is our sincere desire that the government address these areas and amend them accordingly.

In consideration of those being addressed, our areas of concern will be presented in the order in which they are found in Bill 22, An Act to Amend The Labour Relations Act.

AREAS OF SPECIFIC CONCERN

Section 1, under DEFINITIONS

Section 1(c.a), the definition of a Business.

We urge the government to modify this definition so that it does not have the very broad, far-reaching implications which presently exist.

Section 1(i) DEPENDENT CONTRACTOR

It is the government's intention to delete this definition. The removal of this clause will cause confusion in the whole area and result in less predictability. We seek that this clause remain as stated in the present act.

Section 1(t.1) PROFESSIONAL STRIKEBREAKERS.

This clause has been referred to as being "right out of The Ontario Labour Act." With respect, we must point out that this is not the case as the words "one of" have been added before the words "whose primary objects." These two words vastly broaden the scope of individuals who may be considered Professional Strikebreakers, when in actual fact they are not. We

recommend the words "one of" be deleted frm the proposed definition.

Section 10(4) RESTRICTIONS ON CHANGES OF CONDITIONS AFTER TERMINATION OF COLLECTIVE AGREEMENT

By extending the time limit by six months relating to the above-mentioned topic, the incentive to achieve a collective agreement has been reduced for both parties. This does little to enhance labour harmony and the collective bargaining process in Manitoba. The time interval should remain at six months as opposed to the proposed 12 months.

Section 14.1 Insurance Schemes

To allow unions to pay premiums on benefits during work stoppage is certainly open to abuse, which can only result in exorbitant premium cost increases, which most employers would refuse to incur over the long term. At the very least, employees who are actively involved in work stoppage should not have access to wage loss programs which are designed and intended to substitute for wages lost as a result of being unable to work. Such amendments must be made to reflect the above.

Section 15, ACT OF UNIONS

Clause 15(d), the proposed new clause has left out of the phrase "undue influence" as it relates to union activities, thereby permitting such actions to take place without the union being deemed to have committed an unfair labour practice. This additional power which unions would have at their disposal is not healthy nor desirable. The words "undue influence" should be placed back into this clause with such actions deemed as an unfair labour practice.

Sections 21 and 22 DUTIES OF INVESTIGATOR AND APPLICATION FOR REMEDY

With the present Sections 21 and 22 of the act being repealed and the proposed sections substituted, all time limits are removed for raising allegations of unfair labour practices being committed. This in theory may seem harmless, but in practice leaves such applications for remedy open to abuse. The present time limit is reasonable and useful in dealing with such issues in a timely manner and should therefore remain unchanged.

Section 24(2) DISRUPTION OF OPERATIONS

In the present act such actions now covered under the above-mentioned section are deemed to be an unfair labour practice. We believe that such actions cannot be condoned in the workplace and for this reason should continue to be deterred, deeming the disruption of operations as an unfair labour practice.

Section 32, DISCRETIONARY CERTIFICATION FOR UNFAIR LABOUR PRACTICE

This clause, when taken at face, allows the board to automatically certify when it is satisfied that an employer has committed an unfair labour practice. Such a ruling may not represent the true wishes of employees which could be ascertained by ordering a vote. In such cases then, we would recommend that the board order a vote to determine if the union in question should be certified as the bargaining agent for the employees in the unit.

Section 36 WISHES OF EMPLOYEES AND MEMBERSHIP

We do not favour the abolishing of the minimum $1 membership fee. This being the case, we strongly recommend that if such an amendment is passed, a random sampling be conducted by the board to ensure that employees were knowledgeable of the implications of signing a membership card. In addition, all employees should be entitled to a grace period, say seven days, to change their minds and withdraw their names as union members. Once again, undue influence should be included as valid reason for the board to dismiss an application or order a vote under Clause 36(4).

Section 38(1) STANDING OF EMPLOYER ON CERTIFICATION APPLICATION

With regard to this section, we must say, with all due respect, that the exclusion of one party in labour relations does little to accomplish harmonious relations between the parties.

It is our understanding that in other jurisdictions, from which many of the proposed changes found in Bill 22 were adopted, the employer does in fact have the status which in this clause is being denied. We urge the governmenmt to strive for consistency in this regard and amend this clause accordingly.

Sections 46 to 50 MERGERS AND SALE OF BUSINESS

The proposed amendments have far-reaching implications to present Manitoba employers who are considering expansion as well as outside firms considering locating operations in Manitoba. With this in mind, we recommend that these sections be reviewed and amended to ensure that they do not act as barriers to such investment, but at the same time, preserve the rights of appropriate and legitimate bargaining agents.

Section 58 INFORMATION AS TO EMPLOYEES AND INFORMATION DURING COLLECTIVE AGREEMENT

We are opposed to the expansion of information which is proposed in the revision of these clauses, as they relate to employers providing the cost of all benefits. Such a requirement is an infringement on confidential and in many cases, competition-related information, which could harm an employer's position in the marketplace. Historically, employers have negotiated benefits, not costs. This approach should not be tampered with.

Section 69 - LEGISLATIVE PROVISIONS RELATING TO FINAL SETTLEMENT, JUST CAUSES, FAIRNESS, AND CONSULTATION

The imposition of Section 69 of Bill 22 attacks the basic principles of labour relations and collective bargaining. Under no circumstances should clauses, especially ones dealing with such basic principles as just cause and consultation, be legislated into collective agreements. It is through the negotiation of such areas that parties develop a sound and mature relationship upon which they can develop further co-operation. To have clause language imposed is simply another form of third party intervention which does not facilitate harmonious relations. We encourage the government to resist legislating any clauses into collective agreements and allow the process which has worked successfully over the years to continue to operate.

Section 75 - DISPUTE RE: FIRST AGREEMENT

The Canadian Manufacturers' Association has been opposed to first contract legislation since its

introduction and believes that such legislation in fact impedes the collective bargaining process.

Without prejudice to our stated position, we believe that the amendments proposed to this section will improve the process with one major exception. Throughout our discussions regarding this matter, we have encouraged the government to give the board the same discretion the Minister has, which includes having the ability not to proceed with imposing a first contract. To date you have chosen to disregard our advice in spite of the fact that all other jurisdictions with such legislation include this option. We urge the government to amend this section accordingly. If left as proposed, we will end up with legislation which will allow contracts to be settled where in fact one or both of the parties have not bargained in good faith.

Section 109(2) - REMEDIAL AUTHORITY OF ARBITRATORS

We are concerned about and opposed to the far-reaching implications of sub clause (f) in this section which allows an arbitrator to "do any other thing necessary to provide a final and conclusive settlement."

This language must be changed and/or clarified so that it is clear that an arbitrator does not have the power to go outside the terms and conditions found in a collective agreement in order to reach a settlement. To allow this situation to exist will destroy the predictability of administering a collective agreement and attack the very process and spirit under which collective agreements are reached.

Section 113.5 - REFERRAL OF GRIEVANCE TO BOARD

We believe that this section, Expedited Arbitration, will result in more disputes being settled by a third party, which in labour relations has not proven to be satisfactory over the long term.

It may be a hard fact to accept, but the present arbitration process, with its high costs in terms of real dollars and time expended by all parties, acts as a real deterrent to going through arbitration to resolve disputes. The parties therefore sit down and hammer out a solution they both can live with which goes further towards improving industrial harmony than a decision by a third party that neither labour nor management is willing to live with. We encourage the government to follow through with their amendments in 113(1) to 113(5) which places time limits on the present system of arbitration and stop there.

In summary and conclusion, once again, The Canadian Manufacturers' Association would like to assure the Government of Manitoba that we, too, are dedicated to a valued quality of life for all those who work and live in the Province of Manitoba.

It is for this reason that we come forward today in a final attempt to convince you that many aspects of Bill 22 will serve as a deterrent to harmonious labour management relations, will infringe on individual employees' freedoms and rights, and will do little to encourage manufacturers to establish facilities in Manitoba.

We thank you for this opportunity to provide input which has been presented in sincerity and with the conviction of our beliefs.

We urge the government to address our concerns and follow through with the required changes in the interest of the Manitoba economy and all Manitobans.

Thank you.

MADAM CHAIRMAN: Thank you, Mr. Sutton.

Mr. Filmon.

MR. G. FILMON: Thank you, Madam Chairperson. I'm wanting to just ask two very brief questions of Mr. Sutton. He has presented us a very orderly group of concerns and the suggested remedies immediately following the concerns, and I compliment him on that sort of orderly presentation. But there are two cases in which he has presented a concern without a suggested remedy and I wonder if The Canadian Manufacturers' Association does in fact have a suggested remedy.

In Section 1(c.1) he urges the government to modify the definition of business so that it does not have the very broad far-reaching implications which presently exist. Does he have a suggested definition for that clause?

MADAM CHAIRMAN: Mr. Sutton.

MR. D. SUTTON: Not specifically. The concern we have there is that in fact, with the present proposed definition, it could be implied to include such things as volunteer organizations and that may be an extreme, but as in some other areas of the act I think a lot of the concerns and issues have been raised due to the vast or wide opening of interpretation and uncertainty. We feel that this is one area where it should be narrowed. I personally haven't looked at that proposed . . .

MR. G. FILMON: Madam Chairperson, the second area is with regard to the sections on mergers and sale of business. The comment that has been made is that the proposed amendments have far-reaching implications to present employers considering expansion as well as outside employers considering location here and the recommendations that the sections be removed and amended to ensure that they don't act as barriers to such investment, I am sure that's an objective all of us here in the committee and in the Legislature share and, at the same time, preserving the rights of appropriate and legitimate bargaining agents. I'm wondering if he has a suggestion on some amendments to those clauses that might achieve that end result.

MR. D. SUTTON: Again, not specifically, but I can possibly elaborate somewhat on what our concerns are.

The present legislation, with the interpretation of the board, has I think adequately dealt with this section and I believe also, through federal rulings, it's been adequately dealt with. The concern is that some employers who are considering moving into Manitoba, setting up, not just exclusively manufacturing operations, but any operations, have been concerned and possibly scared off because things such as facilities that were previously occupied by a unionized operation could be deemed to impose a collective agreement upon them.

As I'm sure recent rulings have determined, it's a very complex area and again I think it's one that should

be looked at and reviewed and given the time it merits because of its importance to Manitoba.

MR. G. FILMON: No further questions, Madam Chairman.

MADAM CHAIRMAN: Mr. Banman.

MR. R. BANMAN: Just coming back very briefly to the definition of business. Really, what you're saying, that now of course incorporates things like a co-operative day care centre or a self-help centre that employs some people, and that was basically your concern with regard to that voluntary aspect of it.

MADAM CHAIRMAN: Any further questions? Thank you, Mr. Sutton.

MR. D. SUTTON: Thank you.

MADAM CHAIRMAN: The next delegation is Mr. Frank Steele from The City of Winnipeg. Is Mr. Steele not here?

Mr. Sidney Green, Manitoba Progressive Party.

MR. S. GREEN: Thank you very much, Madam Chairman. I appreciate your courtesy, I sincerely do. Thank you for having properly identified me.

Madam Chairman, I feel that in speaking to this bill it's necessary first of all to establish one's credentials because I note that the Minister has talked about people who have opposed her legislation as being uninformed people. She's also mentioned with respect to an advertisement that appeared in the paper by people who oppose her legislation as being crazy. So I say to the Minister that I wish to exchange the complement, that the legislation is crazy, and the people who propose it are uninformed.

Given the necessity of having informed people I wish to try to use the time that is afforded to me this evening to inform the uninformed Minister and her uninformed advisers as to the defects in this legislation. I also want to indicate, Madam Chairman, that I am appearing here essentially because I feel that employees' rights are being hurt by this legislation and are being hurt in an indelible way.

I find it unusual that some of the positions that I will be pursuing will have been put by the Chamber of Commerce and the Manufacturers' Association because I have found that frequently they are for free collective bargaining when their ox is being gored but are not for free collective bargaining when the union ox is being gored. So I hope that the Chamber of British Columbia, and the Canadian Manufacturers' Association, take the trouble to go to British Columbia and make an assault on that government for interfering with free collective bargaining in exactly the same manner as is being interfered with in the Province of Manitoba, by this government, because the legislation in British Columbia has its counterpart in the Province of Manitoba. Both are guided by the same ideological base - namely for the government to interfere with the free collective bargaining process at the behest of either one of the parties to the process or the other.

I can say, Madam Chairman, who also has told people that if they agreed with the '72 and '76 legislation, and they should agree with this legislation, that she is misinformed about the 1972 and 1976 legislation; that she obviously doesn't understand it; that she needs to be informed; and that between 1972 and 1976 one can trace the legislation and see that step by step, with one rather important exception which I have to live with, it was in favour of more freedom of the parties, more free collective bargaining, and less government involvement. Several periods were abolished, the appointment of conciliation boards was virtually abolished, and the parties were virtually left on their own.

There was one important change and that was the inclusion of a compulsory checkoff once there had been a collective agreement. I expressed my misgivings with it at the time but being the compromising person that I am I went along with it. But I have seen, Madam Chairman, that I was right in the first place and that, too, should have been left to free collective bargaining.

In any event, Madam Chairman, I want to assure the members of this committee that I am informed, even by their definition, that I was a member of a trade union; that unlike many of today's organizers I walked on a picket line; I went on strike; I taught labour law at the University of the Province of Manitoba for seven years; I was paid by the Manitoba Federation of Labour to represent them when they required representation for many years; I was the Labour critic of the New Democratic Party between 1966 and 1967; I was heavily involved in the drafting of much of the labour legislation that existed between 1972 and 1977; I personally drafted, and this can be established through the legislative counsel, the two sections of the Queen's Bench Act which I insisted not be put into the Labour Act because they were not labour legislation, they were pieces of legislation which were designed to protect the rights of everybody in society.

Interestingly enough, Madam Chairman, between 1977 and 1981 there were virtually no changes to The Labour Relations Act because Mr. MacMaster was from the labour movement, because seven years of even-handed treatment had produced good industrial relations, that contrary to the Canadian Manufacturers' Association and the Chamber of Commerce, those provision in the Queen's Bench Act which are unique to the Province of Manitoba - namely that a court cannot enjoin somebody to work, and that a court cannot stop somebody from walking down the street with a sign carrying information unique to Manitoba and almost unique to the North America, did not result in industrial chaos in the Province of Manitoba. Indeed they resulted in a greater measure of freedom to the parties and with freedom comes responsibility. With the taking away of freedom comes irresponsibility and that is what is sought in this legislation.

So, Madam Chairman, I suggest to you that when you said that you tried throughout the Province of Manitoba to find people who were experienced in labour law to draw these sections of the act, you didn't ask me. I suggest to you, Madam Chairman, that I am a person experienced in drafting labour legislation in the Province of Manitoba; that there was no need to pay $70 an hour or $600 a day, I don't know what the fee was, to bring people from outside to draft this legislation; that I have drafted such legislation; that I had, and this is immodest but it's part of demonstrating

that I am informed, and that the Minister is uninformed, and that she brings in crazy measures, so that she should hear what it sounds like when it is said the other way. Hear what it sounds like - crazy, because it disagrees with her and she knows it all. Well she doesn't know it all. She is more misinformed, more uninformed than the people that she says are uninformed.

I am, Madam Chairman, therefore someone who is here on the basis of trying to protect the free collective bargaining situation, which is being assaulted by this government more than any government in Canada, including the Province of British Columbia, and the pendulum swings, Madam Chairman. Once you make the assault, then the treasure that you are trying to protect ceases to be a treasure. How do you, in opposition, say to the Conservative Minister who will be urged and as I remember it, will accept the urgings, of their pressure groups to say we should stop a right to strike in these circumstances? How can you say, at that stage, but the right to strike, the freedom - what is a strike? - the freedom for a group of people to say we will not work, unless we are satisfied with our terms and conditions of employment. How can you say that is sacred when you have made a greater assault on that freedom than anybody else has ever done in the past, and any Conservative administration has ever done in the past, than any Liberal administration has ever done in the past? It will be impossible to stem the tide and there has never been a more apt time to say that he who sows the wind will reap the whirlwind, and what you and Bennett are doing in this country are exactly the same thing. For the Minister to say that this is nothing but a continuation of the good that was enacted in 1972 and 1977 is, with respect, crazy and misinformed.

Now, Madam Chairman, I think it's also necessary to go through a brief history - and I'm going to try to be brief - of why this legislation is here. It's not here because any of these provisions are good or thought to be wonderful. It's here because of something internal that happened in the government party. In 1976, there was a strike; and it was a terrible strike; and it was a strike at Griffin Steel; and it was brought about by a irresponsible organizer who decided that he has an employer by the throat; and that he can use his position to get great advantage. He decided to go on strike on the expression, no compulsory overtime in the Province of Manitoba, and the government, quite properly, said this is a matter to be settled by collective bargaining and within the NDP there was an uproar. There was, Madam Chairman, walking in the Legislature, the President of the party, now a Cabinet Minister, another person who is now a Cabinet Minister, saying, "One, two, three, one, two, three, we've been screwed by the NDP," and they demanded legislation, saying that there would be no compulsory overtime in the Province of Manitoba.

We've been here - those people who rode to power over the back stabs of their colleagues are here - they've been here for three years. They haven't enacted no compulsory overtime in the Province of Manitoba, which was the great cry as a result of the Griffin strike. Then at two successive conventions, the NDP got up and said that we will enact anti-scab legislation. When there is a strike no employer will be able to hire people during the continuance of that strike. I, who had been for free collective bargaining throughout all those years, said that if you do that you'll have to pass essential service legislation because you won't be able to have a strike in a hospital, or a police strike, or a strike anywhere that is an essential service and tell the government that they can't hire people while there is that strike.

In answer to that, the present Attorney-General, who at that time was aspiring to kick somebody out - said baloney. He didn't say balderdash. He said baloney. But there is no anti-scab legislation here, Madam Chairman, and for three years they passed it at two conventions, and the Premier of this province went up to the labour seminar of the NDP and said - if I am elected leader I will have anti-scab legislation, there's nothing wrong with it at all.

No, Madam Chairman, after coming to power there were debts to be paid and the trade union movement has been on the backs of this government ever since, making demands, and since even the government is not that crazy as to legislate those things that they promised when they were in opposition or when they were members, were aspiring to be members of the government, they had to pass a whole bunch of things and what have they passed here, Madam Chairman? Essentially they have heard from every union about some of the problems that they have had living with the legislation and the trade union organizers find that they can't win everything they want. They call irresponsible strikes and then cannot win them, and they need the government's help.

So this legislation is not passed for employees, it's passed for an irresponsible, gutless union bureaucracy that doesn't know anything about free collective bargaining and wants to take the place of employer bosses to have union bosses. It's not for workers, it's for trade union organizers and has been enacted by trade union organizers, and the advisers are trade union organizers and that's what the inspiration of this legislation is, Madam Chairman, and I can prove it to you.

There's one clause here, Madam Chairman, that says that even if there is no just cause clause - that's become easy for me to say because I've said it so often in court. Therewas a particular court case, and I can give you the name of it - Miami Sportswear, where the clause in the collective agreement said that the employer has full right of discharge, and I'm not repeating it verbatim, but can exercise that right only with due respect to justice and the rights of the workers. It didn't say that the employee is entitled to be reinstated. It went to arbitration; the arbitrator reinstated the employee; it went to court; the court upset the Arbitration Board award; it went to the Court of Appeal, and the Court of Appeal upset the Arbitration Board award and said that the Arbitration Board has no right to reinstate an employee unless there is a just cause clause in the Constitution. The Minister's nodding her head. Everybody knows this. So now rather than allowing the employer and the employee to agree as to the clause, Big Brother comes in - and let's not be chauvinistic - Big Sister comes in, and says that regardless of what you have agreed to, you have a just cause clause in your agreement and even if it's not there we say it's there.

Well, Madam Chairman, when I was a little boy I used to hear from a man by the name of Kovnats, who

happens to be the brother of one of the MLA's, and he used to do a routine, it was a comic routine and it had to do with him stirring up the workers to revolution. He said, comes the revolution there will be this and comes the revolution there will be that, and comes the revolution you'll have strawberries and cream. Everybody will eat strawberries and cream. One guy said, but I don't like strawberries and cream. He said, comes the revolution you will eat strawberries and cream whether you like it or not. That's what this legislation says, that you're going to have these clauses in your collective agreement whether you have agreed to them or not, so that's one of them. By the way, I won't be able to find all of them, but I'll be able to find many of them.

There was a particular situation, and people should know what you're doing, 18 people worked in a plant. It's Mrs. K's. I imagine the Deputy Minister knows all about that and that's why they have to change the act. Mrs. K's Food, it's a little plant in Stonewall. They signed up approximately 12 out of the 18 people. They didn't approach the four most senior people because the four most senior people were what they call company friends. So the four most senior were not approached and they did not approach six people. After they applied for certification there was a shortage of work. There was no accusation of unfair labour practice, and finally, there were only six people left in the plant, only six. They happened to be all not union members. They went to the board.

The board said, how many employees are there? They said, six. How many employees do you represent, Mr. Green? - because I represented the objecting employees, which is going to be a disappearing breed, they won't have objecting employees any more. How many do you object, six, you represent all the employees. Well, I don't know because in your information, you don't tell us what the cards are and who has signed. But they concluded that all six employees did not want the union, all six unanimous, and the board decided, whether or not you like strawberries and cream, you're going to eat strawberries and cream, and they certified the trade union. They certified the trade union.

The trade union was then sent a letter - know what you are doing. They sent a letter, we are uninformed. Now you'll be informed. The member sent a letter to the union and to the employer, we don't want a collective agreement, please don't bargain with these people. The union sends a letter to the employer. We are the certified bargaining agent. The law says that you shall bargain with us. The employer says, my employees don't want me to bargain with you, they have sent me a letter signed by their lawyer.

So what does the employer do? Know what you are doing. He applies to the Deputy Minister for a first agreement. Do you understand that the law in the Province of Manitoba is that you can have and impose an agreement even though the employees in the plant are unanimously opposed to such an agreement, unanimously opposed, and the union demanded such an agreement? We told the courts that the union was demanding such an agreement and the union continued to demand such an agreement while we were in court. It went to the Court of Queen's Bench and they sustained the Labour Board. They said, the Labour Board has the law to do this. They maybe didn't have it then, but the government is going to see to it that they've got it now, at least they think they are.

One of the things that will happen is that I will not be made poorer by this legislation, because the more sections they pass, the more legal cases there will be. Yes, the Minister who thinks that she can solve these problems by passing legislation is misinformed, misguided, one could even, if one wanted to be rude, say it's crazy.

In any event, the Court of Appeal set aside the certificate. The Court of Appeal said that's not what this is all about. We cannot have the Labour Board ignoring the provisions of The Labour Relations Act which say in Section 31, and the Board ignored it, 31(c) that the board shall determine the wishes of the employees in the unit as to the selection of a bargaining agent, whether expressed by way of vote, petition or any other manner. So you could read a petition, you could get a vote. You want to know something, look at your bill. 31(c) is eliminated.

The board now does not have to determine the wishes of the employees in the union because this section was ruled by the Court of Appeal as placing a mandate on the Labour Board to determine the wishes of the employees in the unit. What a revolutionary concept that you are going to determine the wishes of the employees in the unit before you have a certification.

Now what this act does, and I don't have to spell it out, I can tell you it's there even if you can't find it, it's there. This one says that the cards are submitted by the union, that nobody sees those cards, that the board has to accept those cards, that you can't cross-examine anybody as to how they got those cards, that nobody tells you how many cards are obtained and if there are 45 percent of the employees that signed cards there will be a vote. If there is 55 percent, there will be certification and petitions of employees or wishes of employees are irrelevant unless some employees want to come in and charge the union with fraud. I can't remember all of them, but virtually criminal acts in getting those cards signed. But nobody can look at the cards. Nobody knows who has signed the card. If you people, the 18 people at this table, don't know how many cards are in, you don't know from your neighbour if he or she has signed the card because the union always said that nobody wants to admit they are a member of a union, they are afraid. What nonsense. What irresponsibility.

Who are the people who are affecting union militancy in this province? Fully 25 percent of the workers in this province got organized the hard way through freedom, through militancy, through knowing that if they did go on strike and they didn't get support of the public and they were wrong, that they could not have their job. But these do it through cards.

There was a good scene in Guys and Dolls about big Julie rolling dice with Nathan Detroit. He was losing. Finally he said, "from now on we play with my dice." He showed the dice and Nathan Detroit says, "there are no spots on them." And big Julie says, "Yes, there are." He says, "I can't see none," and big Julie says, "I'm the only one who can see them." Then he rolls the dice and he says, "seven." Then he rolls the dice and he says, "four." He rolls again, "eight." He says that's a hard point, four, but not if you're the only one

who can read the dice. He rolled three or four times more and then he gets a four; and that's the basis upon which certification is now being sought in the Province of Manitoba. No longer will a notice be posted on the board telling a group of employees that they have the right to file a petition to make their views known to the Labour Board and no longer does the Labour Board have the right - excuse me, that may be going too far - have the responsibility. I don't think they'll have the right, but that may go too far, so I'll hedge on that. But certainly they no longer have the responsibility to look and find out what the wishes of the employer are. That's two cases.

There is another case, Madam Chairman, that I was involved in. It had to do with a health spa where the employees on one day signed cards and then it got to the fact that certain other employees didn't want them to sign cards, so they made the same pitch to the employees as the first group made. I thought that's what unionism is all about, that you could discuss it both ways and that people having one view would have a right to get their view put forward and people with another view would have the right to get a view put forward. They filed a petition and the board agreed that more people signed the petition than 50 percent, more cards were signed than 50 percent. What do you do? Ordinarily you'd call a vote, but the board did not call a vote so it went to court. It's sitting in the court right now, but this legislation says that they can't do that any more, that the only thing that objecting employees can do is say that there has been fraud in the signing of a card.

They might not know of any cards that have been signed. They don't have to put up a dollar any more. A person doesn't have to put up a dollar any more and I say to you, Madam Chairman, and members of this committee, that won't, in the last analysis, hurt the employer. In the last analysis, it hurts the employees because they will be beholden to the union and the union boss can be more vicious than the company boss and this takes away employee rights. This doesn't bring employee rights. This is a fierce assault on the principles of free collective bargaining.

I want to, Madam Chairman, go through some - oh yes, there is one crucial section that I don't know whether anybody has yet seen it or anybody has complained about it, but I'm certain that I know what it means because it arises from another case. It arises from a strike in Souris where the owner is one Murdoch McKay and there was a collective agreement and then there was a strike; and the employees did what they had the right to do, they withdrew their labour. The employer did what he had the right to do. He said I'm going to try and operate my plant. By the way, that's what a strike is to you uninformed people. You don't need legislation; there were strikes before you had legislation. It is simply a natural feeling on the part of a group of employees who are in the same boat, to get together at somebody's home, get together anywhere and say, look, we can't live on what we're making. If one of us goes and asks for a raise, the boss will kick us out on our ear, but if we stick together and tell him that none of us are going to work, we've got a chance; and furthermore, if he doesn't give it to us, we can go to the public and put up signs saying, "This Employer is Unfair." If the public supports us we will win, and if the public doesn't support us we will lose, and that's trade unionism.

Those people who are of the movement know that what I say is correct, that all of this that's being introduced is not collective bargaining at all. This is the institutionalism of trade unionism for the benefit of the union organizer, not for the benefit of the employee, because it means that the union organizer is no longer responsible for what happens.

In the Souris strike, the union called a bad strike. They were all out on strike and they ultimately lost it and the employer continued and the employees did whatever they could do. They found other jobs or some of them came back to work, which is natural.

Now the Minister and Bernard Christophe, who lost that strike and lost other strikes or almost got into the same - he found a solution. He says that at any stage he can declare the strike over. When he declares the strike over, the employer has to reinstate everybody who went on strike. Listen to what is happening. I don't know whether The Manufacturers' Association or the Chamber of Commerce knows about it. It says that the union people go out on strike, the employer tries to get by, he tells people he needs their help and some of the things that the union people will say when they're on strike would make an employer not want to hire him and some people wouldn't go back to an employer who locked them out. Can an employer lock out a group of employees? And the Minister who is uninformed, says, why would any employer want a work stoppage? That's how uninformed she is.

Most strikes many years ago started from lockouts, not strikes, so she says why would any employer want a work stoppage? When she's making this final option solution, which she says she is informed about but everybody else is uninformed about, she gives the union the right to say that a final offer must be accepted, but not the employer. When asked why doesn't the employer have the same right? She says why would an employer want a work stoppage? An employer would want a work stoppage because wages are very high; he has too many benefits; he can't survive. He says to his employees the same thing as they say to him - I can't keep this plant open unless there's a reduction in wages of $3 an hour, and the employees say, up yours.

Then he says I'll close the plant. Now he closes the plant and they're out there. When he starts to hurt, can he say fooled you, lockout's over, everybody has to come back to work? Everybody has to come back to work. That's what this legislation says. One-sided, it says, they go on strike, that they're being beaten. The union organizer now, he doesn't tell people strike is a serious thing, doesn't do what they used to do. We all have to stick together; we have to make sure we want it. We have to go to the public and convince them they were right. We have to have the public convince the employer to deal with us. He says don't worry, when it gets cold, I'll say, strike's over; and when the strike's over, the employer has to reinstate every employee on the basis of seniority. That's what he has to do. He has to take them back, if there is a collective agreement in the way in which they agreed to in the collective agreement, and if they don't, if not, he has to take them back in order of seniority.

He might have been able to let them go without seniority before the strike, but he has to take them

back in order of seniority. Do you think this will help the workers? It won't help the employee because it will make for gutless, irresponsible trade union organizers. They no longer have to deal with militancy. They no longer have to deal with legitimate rights. All they have to do is say, "If we lose, it's heads we win, tails they lose." That's not going to help the employee. The crucial problem with this legislation is that it departs from the free collective bargaining process and 75.1 was the first departure. Some day, Madam Chairman, I want to have this written down, as other things that I have said were written down.

I was challenged by an NDP member, when I said that the rights of property will be protected by the Constitution, one of the now Ministers said, well, that our Constitution says nothing about property. But the courts have already said that life, liberty and security of the person includes - and it's being argued - but one court said it includes, and another court said it didn't include the rights of property.

When I was in this Legislature, I argued that it would be an infringement on the democratic process to say that people can't spend money to support people in an election campaign, and the silly Tories brought in the bill agreed to by everybody in the House except myself. But the courts have now said that this is an infringement of the democratic process. It will be declared to be, contrary to the Charter of Rights, to impose an "agreement" on people who don't wish to have an agreement, both the employer and the employee.

The Manitoba Court of Appeal did not have to go that far in Mrs. K's case, but when the time comes that they have to go that far they will go that far, as they will in dealing with many other measures with respect to the kind of legislation, crazy legislation, and bear in mind, when I use the word "crazy." I've been before this committee on numerous occasions and wouldn't use such a word. I'm adopting the language of the Minister. She considers it elegant and a very forceful argument to refer to something as crazy; therefore, I'm sure she'll regard my remarks as being much more erudite and meaningful.

When I talked about this crazy legislation, which it is, here is what it imposes, Madam Chairman. It imposes on the employer a requirement that he continued to pay Medicare premiums after he has no agreement with the union when they're on strike, only when they're given to him by the union, but I assume that there is a share there. But why? I'll tell you why. I don't know the circumstance, but I'll guarantee you, just as God made little apples, that some union had trouble with an employer with regard to Medicare premiums and said make them pay, so they put it in the legislation. That's what happened. Ask during your question period: did this come up, did a union get into trouble with it? The answer will be yes, because that's how all this legislation is written. This legislation is passed because union organizers got into jams that they didn't know were going to take place and said next time we're in this jam or even now get us out of it, pass some legislation. To talk about it as being a long consultative approach, what are you doing? Do you have eggheads advise you?

You know, in 1967, Dennis McDermott came to the Province of Manitoba and said we've got to stop. We know that eggheads are formulating labour policy in the Province of Manitoba. Since I was very instrumental in the labour policy and since I also had the misfortune of having gone to university, it didn't take long to figure out who he was talking about. And he said we have to get rid of these eggheads. So they got rid of the eggheads and they replaced them with boneheads, because now boneheads are formulating the labour policy of the NDP - boneheads. That's what you got in this legislation.

So what have they imposed? Some union man said, "We wanted to go and talk to a man in the plant and the employer wouldn't let us in." That's what happened. You know, I can't swear to it, but I can say that I am almost certain that what happened is that somebody wanted to go into a plant and had an argument with the employer, came to the government and the government said good, we'll pass legislation. You can go into the plant. You have to negotiate a way of going into the plant. If your negotiations don't succeed, we will impose a way of going into the plant and you'll eat strawberries and cream whether you like it or not. That's free collective bargaining. We've been able to do this kind of thing through the good will of the parties, and if we permitted them more freedom we would have more good will for years. But now there will be an imposition that you will have consultative meetings to determine the ways and means when a union organizer goes into the plant, and if you don't agree on one we will impose one. And we'll write one for you and we'll get a lawyer from Saskatchewan to put it into the act, to write it in to the act - and they did. They wrote into the act a visiting privilege clause that will apply if the parties are unable to agree. These are the people who are destroying free collective bargaining in the Province of Manitoba.

If there is a dispute: "22(4) Where the board finds that a party to a hearing under this section has committed an unfair labour practice it may, as it deems reasonable and appropriate and notwithstanding the provisions of any collective agreement," and then it says the board can impose (a), (b), (c), (d) and (e).

Now, do you know why they put that in? Because a collective agreement may say that in the event of this happening the following shall be the case, and some union organizer says what we've got in our agreement isn't good enough. So you put in there "notwithstanding the provisions of the collective agreement, the board can do any of these things," and you know, you go through a whole list. If you look at your act, 22 (a), (b), (c), (d), (e) or (f), they can fine $2,000 or order the party to cease and desist, order the party to rectify the situation, and then in case they miss something here's what the board can do, "order the party to do, or refrain from doing, anything that is equitable to be done or refrained from in order to remedy any consequence of the unfair labour practice" - anything.

Now, this is injunctive relief; one of the members said that the board can order injunctive relief. I disagree with it. Some day there will be a court case, and by the way, Madam Chairman, so there is no misunderstanding, I have represented most of the major unions in the Province of Manitoba. I still am retained by some unions from time to time, despite the MFL telling people not to deal with me. I represent employees frequently, and therefore I come here as somebody

who speaks on behalf of employees, but more important as when I was a member of the Legislature, and at that time I think the Member for Lakeside didn't agree with me, I said that what I was proposing was not for unions, and not for employees, but for human beings, for citizens. I don't like a labour board saying that I shall do anything that is equitable to be done. I'd like to know what the law says, what has to happen, but it says you can do anything that is equitable to be done. Now that may have been in the previous act, I'm not certain. If it was, it was wrong and we went too far but in any event those are the things that can be done.

It imposes, because I told you about Miami, you know, the lawyer in the Miami case is a lawyer who was very pleased at winning the case at the first instance, and when it went to court he says, why are you complaining, you just don't like to lose, you can't stand to lose. Well I really don't like to lose very much. I mean I am one of those strange people, the odd person in society who likes to win better than to lose. Everybody else likes to lose. I like to win but when we did win in the Court of Appeal, Mr. Myers proved he doesn't like to lose either so he went to the Legislature, got them to change it. There's nothing wrong with that.

I think Mr. Pullen is here. When the IBEW went to the Supreme Court of Canada, myself and Mr. Martin, and we said that the court has no right to order a person to work. The court has no right to tell Abe Rubin he can't stand on Portage and Main with a sign, and the Supreme Court said we're wrong. The moment we got into the House, the moment we got a majority in 1969 that was first on the Order Paper, and we said the Supreme Court was wrong and we were right, that a court does not have a right to order people to work, a court does not have a right to stop a person from walking down a street with sign. Those two things are more important than all of these 90 pages because they are the basis upon which any group of workers can ever succeed.

Madam Chairman, employees have only two ways of getting their achievements, and one is by organizing and the other is the political method. But in the political method if it is the employees versus the employers and you take away the right to strike, or say that you're going to replace it with some final solution, those are good words, final solution option, that you're going to replace it with that, you have in indelibly affected to its deterioration the rights of the employees because a government, no matter what stripe, will use its legislation in the last analysis to fight the employees.

When Mr. Parasiuk says you're going to make 1.7 billion selling Hydro and you've got people working on a Hydro project who say we're going to bite into that 1.7 billion and if you don't give it to us we're going to see that you make nothing, and the government, whatever stripe, will not have the guts to go and say - you have a right to do this. Mr. Levesque proved it. Mr. Levesque passed anti-scab legislation and then made a whole series of strikes illegal in the Province of Quebec, because you can't do it.

MADAM CHAIRMAN: Mr. Green can I interrupt for a moment. I'm not sure that you're aware that we passed a one hour time limit for presentations including questions.

MR. S. GREEN: I was aware, I wasn't aware of a time limit. I was aware I had gone beyond and I thought that the Minister needed to be informed.

MADAM CHAIRMAN: No, Sir, you haven't gone beyond. You have 15 minutes left which will include time for questions. So you can judge accordingly.

MR. S. GREEN: Well, I will continue, Madam Chairman, and I am at the will of the committee. If I go longer my understanding is that the committee, by majority vote, can say that we want somebody to continue. You can't do that anymore. Well, the committees can no longer do that. I see - okay. I see - that's a new innovation in the Province of Manitoba. They have imposed an ongoing consultation clause. You know, it's a good thing that there should be in it, you don't even have to have it in a collective agreement.

I think Mr. Cerilli is here. Mr. Cerilli is here, he doesn't wish to hear it but in negotiations in which I was involved with him, I said that this is good, we don't need in the agreement and we should have it, and we do it, and you don't need it in the agreement, that the employer and the union sits down on a regular basis and consults. But some union had difficulty with this ongoing consultation so they came to the Minister and said we can't get this, please put it in the act. So they put it into the act, and it sounds so reasonable that this is the clause, you will agree to it, and if you don't agree to it we'll get a lawyer from Saskatchewan and he'll write it into the act, and then it'll go in your agreement, and you'll have strawberries and cream whether you like it or not, because they are now putting that clause in the agreement.

So, maybe we started it. — (Interjection) — Mr. Cerilli tells me it was federal, but you know we still did it. Maybe the compulsory trade union checkoff was a mistake, because look what happens now. Look at Mrs. K's case. They got six people who don't want collective agreement who tell the employer not to bargain, who write the Minister, telling him, "Please don't force an agreement on me." The union says, "We want this agreement." What do they want the agreement for? Six people say, "We don't want you. We are the only six people." But if we have an agreement we've got a compulsory checkoff. Therefore the agreement now is more important than what the employees want because we've got a compulsory checkoff.

I am telling the members of this committee that these things do not assist the employees in the Province of Manitoba, and the reason that Mr. Cerilli is so annoyed is because it is revealed that they assist the irresponsible, gutless trade union bureaucracy in the Province of Manitoba and not the workers. — (Interjection) —

Madam Chairman, I want you to know these people who do not believe in duress and . . . say, come outside and say that, come outside and say that.

MADAM CHAIRMAN: Order please.

Mr. Enns.

MR. S. GREEN: Come outside.

MADAM CHAIRMAN: Order please, Mr. Green.

Mr. Enns.

MR. H. ENNS: We do have some rules and traditions in this Chamber. It's an affront to any person appearing before this committee to be in any way threatened or in any way be called upon to have to defend his statements made before this committee.

MR. S. GREEN: Madam Chairman, they say a lot worse things about me and I don't get that excited.

MADAM CHAIRMAN: Mr. Green, continue. I will remind the members of the public that we do not have cross discussions and that they should remain orderly please.

MR. S. GREEN: Madam Chairman, the strength of this legislation is its interference with the free collective bargaining process to the extent that legislation interferes with the collective bargaining process. It hurts the rights of the employees. Therefore I am speaking here as one who is concerned with those rights, as one who has fought for those rights, ever since I can remember, as a child and through my adult life in court and in the Legislature. I fought them when they were done by Conservatives and I fight them when they are done by NDPers. The last thing that has been done to protect unions who feel that they've been hurt is that the right of certiorari has been attempted to be removed by legislation that says you will not be able to upset the Labour Board decision by certiorari, etc. We got rid of most of those certiorari clauses a long time ago.

I can tell the members of this committee that when you remove the clause, every action evokes a reaction, that ultimately that will be declared contrary to the Charter of Rights, or the courts will simply broaden that sphere of activity, which they call an interference with natural justice, which is still permitted. The NDP has not yet said that nobody can go to court where they claim an interference with natural justice, but they've still got a year to legislate, so don't count it out, because they've done everything else, which one wouldn't do, if one was seeking to maintain a climate of freedom in this province and freedom is indivisible. You take it away from one person, you take it away from everybody, whether that person is an employer or an employee.

Those are my remarks, Madam Chairam.

MADAM CHAIRMAN: Thank you, Mr. Green. Are there any questions? All right, thank you for coming tonight, Mr. Green.

I'll call Mr. Blunderfield and Mr. Dennis Stewart from MacDon Industries.

MR. F. BLUNDERFIELD: Thank you, Madam Chairman. We're addressing the committee representing PIMA, which is the Prairie Implement Manufacturing Association. MacDon is my employer, but I'm chairman of the legislative committee.

Dennis Stewart is going to be making most of the presentation because he's the chairman of our subcommittee we've established to deal with this act, so he's just passing out now some information on PIMA for the members of the committee that are unaware of what PIMA is, and what we do, and who we stand for. So I'll just turn over to Dennis, if I could.

MR. D. STEWART: Thank you, Madam Chairperson and Minister of Labour, for the opportunity of making this presentation to the committee regarding Bill 22.

The Prairie Implement Manufacturers' Association is an association of members in Alberta, Saskatchewan and Manitoba, representing a total of 368 different organizations. Within Manitoba, we have a total of 107 members, and of this 107 members, member companies, we have approximately 30 regular members. Those firms are involved with the manufacturing of farm implements. We also have 77 associate members constituting suppliers who supply component parts, materials and services to the manufacturing organizations.

As of today, we took a survey of 23 of those 30 regular members of our organization in Manitoba and determined, for the benefit of the committee, that our members employ approximately 4,200 employees in the Province of Manitoba, with a payroll of $78 million and annual sales in excess of $518 million. This is by way of background information, together with the handout that you have received, a membership directory that covers members all across the three prairie provinces, who deal with other firms in Manitoba and also a short brochure on the organization.

What I would like to do for the benefit of the commitee is to review, from a critical point of view, the proposed Bill 22. Before I start that, I would like to say that there are many areas of the bill that PIMA does support as an organization and we have addressed those in a previous submission to the Minister of Labour, in response to the White Paper.

This evening I'll only be dealing with our concerns, and perhaps some suggestions for making some improvements. I will deal with the items in the bill sequentially, according to the numbering that's been provided in the bill.

Item 5, Clause 1(k), redefining employee, now proposes to omit from consideration a very important test for determining employer-employee relationships, that being vicarious liability. Together with the proposal to remove the definition of dependent contractor, it is going to mean a broader scope and ability for the Labour Board to interpret employees as it relates to bargaining units.

Point No. 8, Clause 1.(t.1), defining a "professional strikebreaker" will have to be very subjective in its applications. We view that there will be several difficulties in applying an interpretation of this particular section. In addition to that, I'd like to point out that the bill fails to identify a definition for a professional picket, which is perhaps the other side of the coin in the procedure.

Item 10, Clause 1(v.1), provides a two-edge definition of who may be considered to have committed strike-related misconduct. However, the application provided for in 11.2(3) would appear to limit the penalty only to employers and not to unions or to individual employees.

Item 13, dealing with Clause 10.1. With respect to the hiring of replacement workers, PIMA's view is that the current provisions provide adequate protection to workers upon a strike and a resumption of work

following that strike whether or not - pardon me - the present provisions provide protection in this situation where there is a collective agreement reached. It would appear, as a previous presenter has indicated, that the proposed amendments will only serve to protect the workers in situations where they have subsequently determined that their course of action was incorrect and they regret their conduct and will now be given the opportunity of changing their minds in midstream.

Item 17, Inclusion of 14.1 would appear to negate one of the elements of economic sanction over which the employer has control in a strike or lockout situation. I'm referring to the sections dealing with insurance and continuation of benefits. Benefits form a part of the contractual relationship between an employee and his employer and the union's obligation is to negotiate a level of benefit, to provide a system whereby the union, on behalf of employees, is able to continue those benefits results in a reduction of the opportunity to impose an economic sanction by the employer.

There is also the problem of the administration of this type of clause or section in the act. That would be that the employee, as an example, to file a dental claim under one of these insured benefits is going to have to cross his own picket line. It doesn't seem reasonable to me to enable an employee to continue with the benefits of the employment relationship when his conduct or his union's conduct has severed - for a temporary period - that relationship, or at least altered the relationship to such an extent that there should be no further obligations on the part of the company to continue benefits.

Item No. 20, this particular provision relates with the union organizers and their access to the workplace. It would seem that there is some concern on the part of the government that there is insufficient communication within the union organization once it's certified. We would encourage, however, the government to withdraw these particular provisions, and instead rely on the normal communication avenues open with a union organization of local meetings, the election of the representatives, officers and stewards.

Section 23 dealing with Clause 21(2) removes the six-month time limit on applications for unfair labour practice. PIMA's view is that this may complicate the existing situation. The wording that is utilized in the proposal is "unduly delayed," and this may easily result in some confusion as to the onus of proof and to who is to lead evidence in the proceedings. We would suggest, as an alternative, criteria similar to those in the present provisions of 111.2 of the current act, which deal with prejudice against one of the parties in the arbitration procedure where there is a violation of the time limit.

Further on, Clause 21(4) provides for a report to the board by a representative of the board. PIMA's view is that this report should be disclosed to all parties as is provided in Section 37(2) of Bill 22 to enable access of information to all the parties.

Further, Clause 22(1) should require mandatory hearings, as in our view they are the essence of justice in our system, wherein a party is able to defend his or her position and/or, as the case may be, attack the opposing force, whether it be the applicant or the respondent.

Clauses 22(3) and 22(4) would appear only to relate to a party to a hearing under this section has committed an unfair labour practice. With our view, perhaps an incorrect one, that the board does not now require to hold hearings under this proposed legislation, we would suggest that there is an opening or an avenue that exists whereby there would not be a remedy for an unfair labour practice, either for the employer or against the union.

Item No. 24, Clause 24(2) parallels the current Section 16 with the exception that it was formerly an unfair labour practice. I'm talking about in the existing statute. The provisions of 24(2) was an unfair labour practice. It would appear now that communications are okay, but that we would not want to restrict a union-organizing drive in a workplace so long as whoever was doing the organizing didn't disrupt the ongoing operation of the employer's workplace.

Item 25, Clause 26(5) confers authority on the board to limit application for certification where a strike or lockout is in effect. PIMA's view is that the board should not prejudge without any evidence the industrial relations value of changing bargaining agents in the middle of such a dispute.

Clause 31(1) denies an employee the opportunity to reconsider his or her decision to join a union. As was previously mentioned by another presenter, organizing drives often occur in a very short period of time. The employees do not have the opportunity of carefully weighing the pros and cons and they may make a hasty decision. This decision will now not be able to be reversed. Unless the employee is prepared to come forward against one of his coworkers to establish fraud or intimidation under 36(4).

Further under 31(1), as we presented in our original response to the White Paper and also in our submission before the Labour Law Review Committee, a figure of 55 percent to automatically grant certification is too low. This position is regardless of whether or not a vote has been conducted. Such a significant change in the employer-employee relationship should require a substantive majority of 66 percent or two-thirds majority vote. In our view this parallels many situations within several labour organizations that require a two-thirds majority vote to change a constitution of the union.

I note, as well, that further on in the act, in the section dealing with appointment and removal of the board chairs and vice-chairs, that that same concept is reinforced in terms of a two-thirds majority vote.

Clause 32, whereby a union could be certified automatically if the employer is found to have committed an unfair labour practice, represents a denial to individual employees of their rights, to exercise their freedom of choice to unionize or not to unionize. In our view, a more appropriate provision would require a cooling-off period of three to six months. At the end of that period of time, the board could conduct a supervised vote of the potential bargaining unit, and this procedure would enable the true wishes of employees, who have a vested interest in the outcome, to be ascertained.

Clause 36(1) should provide for a verification process of employee wishes, up to and including the date of a board hearing. Again this goes back to the issue of organizing drives occurring in a very short period of time and the opportunity should be given to employees to reconsider a decision that they have made, or perhaps even to make a decision to join the union, as

in many organizing drives there are certain employees that are left out or ignored due to the views that may be held by the organizer or their fellow employees that they would be opposed to such a union and would tend to support any company action to oppose that type of certification.

Clause 36(4) places a very difficult burden of proof upon employees to establish that there was undue influence in spite of - I use those words loosely - to cover off the criteria of intimidation, fraud, coercion, or threats to impose a penalty, noting that, of course, the words "undue influence" have been removed from the existing provisions.

It's interesting to note that clauses 41(1) and 41(2) don't provide for the same type of 45-55 split as in the application for certification. A simple majority of 50 percent plus one or in excess of 50 percent of the employees is required before decertification process would be completed, and even in that event the board would order a vote.

Under Section 58.1 as proposed in the bill, the Prairie Implement Manufacturers' Association has some reservations about providing detailed information regarding the costing of benefits to an existing bargaining unit unless there is an arrangement between the parties to share benefits. In that type of situation, we can understand sharing premium information. It would appear to us that the type of disclosure that may be included in Section 58.1 would be prejudicial to the company in its attempts to renegotiate premium rates as an example with an insurance carrier if this information was publicly accessible.

In Section 60(3) of the bill, and I read at the bottom line of Page 38, "The conciliation officer is not a competent or compellable witness with respect thereto." I'd like to contrast this, if I might, with the proposed Section 37(3) in the same bill and perhaps request this committee consider whether or not they really do mean the same thing in spite of using different wording.

In 37(3) it makes a reference simply to a compellable witness in the certification proceeding. This is in reference to a representative of the board; and then further on in the act, in Section 95(1), it goes back and utilizes the wording, "competent or compellable." Our submission would be that perhaps there should be some consideration given to standardizing that wording if it is indeed intended to mean the same thing.

With respect to Section 61(4), regarding what we would consider on the whole to be an improvement in the non-existing provisions regarding contract ratification, there would appear to be some technical difficulties with respect to existing contracts as the present exemption in Section 61(4) refers to a collective agreement, which would already contain a provision enabling that type of change to occur during the lifetime of the agreement. It wouldn't seem reasonable to us that the whole bargaining unit would have to vote on a Memorandum of Agreement if this provision in this bill goes through without being changed.

Our views with respect to Section 61 and 62, as a whole, are that these areas are an improvement with again the one technical difficulty that we feel may exist.

Moving along into Section 69.1(1) and 69.2(1)(2), in our view these are areas that are clearly the responsibility of the parties to negotiate. Section 69.3(1) regarding co-operation, that is something that, in all seriousness, you cannot expect that legislation is going to solve the problem of communication in the workplace. I think that is something that, as responsible employers and as responsible trade unionists, we have to continue working together to maintain the current industrial harmony that has existed in Manitoba. I really do think that placing the words in the legislation will not accomplish the goals that the government has stated in their White Paper.

With respect to Section 81(1), this area dealing with a ballot for a strike, the position PIMA takes in this regard is that again there should be a substantive majority, not just a 50 percent plus one. The idea behind this is that it is another significant change in the employer/employee relationship and it ought to be more carefully considered; and if the percentage figures were increased, there would also be an assurance and an awareness of the employer that the bargaining unit was very serious in its intentions.

PIMA has severe reservations about the board moving into the area of collective agreement administration. Sections 108(1) and several sections thereafter empower an arbitration board in the statute with a large limit of authority. Further on in these sections as well, the Labour Board becomes involved in collective agreement administration, which we don't view as a positive step in industrial relations harmony in the Province of Manitoba.

Remedial powers, as an example, would well be left to the parties to a collective agreement to negotiate. Those agreements which presently exist which have provisions different than the legislative provisions will provide will be frustrated as provisions of their collective agreement become null and void.

Section 119(3) is the area requiring a two-thirds majority vote to remove the Chair or the Vice-Chair of the Manitoba Labour Board. In our view, the periods that are referred to in the Act of between five and seven years for the Chair and Vice-Chair are perhaps too long in duration. The existing provision, whereby it is open to the Legislature to make an appointment, should remain as it is.

Further provisions, members of the committee, deals with Section 121(2). Representations in writing - in any case under this act where the board may or is required to hold a hearing into a matter, it may do so by providing the parties with an opportunity to present their evidence and make their representations in writing.

In our view, as we've stated earlier, hearings are essential with the opportunity of examination and cross-examination of witnesses appearing before the board, and if this section were to be interpreted as limiting or perhaps limiting submissions to written submissions, we feel that there would be the interests of both employees, employers and unions that would be affected detrimentally.

In Section 121.1(1), these provisions would appear to remove the requirement for the regulations that exist in their present form as an attachment that they form a part of the act.

In our view, regulations ought to be prescribed by legislation. The procedures as to how you do something as compared to the what you do are substantially different. The board ought to set the method of doing it, but in accordance with regulations that are specified and set down on paper so that all parties have the knowledge of those.

Section 121.2(1) gives the board extensive and wide-sweeping powers that to a limited extent PIMA has in previous submissions agreed that the board power should be increased, but there are problems with increasing the powers and responsibilities of the Labour Board at the present time and those principally are in the area of the changes in the budgetary allocations, whether or not there is an approved budget to hire the additional staff that are going to be required to carry out the new bill. As we see increased involvement by the Labour Board and the Labour Management Relations as taking away from their already busy schedule.

In closing, members of the committee, it's the position of PIMA that the courts should still properly have the final determination of statute interpretation and they should not be denied, or a party that appears before the board should not be denied the opportunity of having their day in court. The courts do have the responsibility for interpreting statutes and that should remain unchanged.

At this time, that's the end of my submission on behalf of the Prairie Implement Manufacturers Association and I'd welcome any questions.

MADAM CHAIRMAN: Thank you, Mr. Stewart. Are there any questions from the committee members?

Thank you very much then for coming.

The next person on the list is Mr. McGregor for the Manitoba Food and Commercial Workers.

MR. A. McGREGOR: Madam Chairperson, members of the committee, I am on the list on behalf of the Manitoba Food and Commercial Workers. We will be presenting a brief in conjunction with the Manitoba Federation of Labour with Mr. Pullen, who is representing the Manitoba Federation of Labour.

I would just say at the outset that basically Mr. Pullen will be presenting the brief. I will be here for legal assistance should it be required.

I just had certain remarks to make before Mr. Pullen gets into the brief and that is quite simply, I've listened with some interest tonight and I hope that you will find that our presentation, and indeed Mr. Pullen's presentation is one that deals with the issues that are facing you. We come not here to complain about passed defeats; we come not here to brag about past victories. I could take up a considerable amount of time if I wanted to deal with the former. Some people accused me of dealing with the latter, so I will deal with neither past victories or past defeats. I hope that we will be able to, in a mature fashion, put forward the position of our clients just as I have seen sort of the mature briefs put forward by the majority of people who have appeared in front of you tonight, mature briefs put forward by the Chamber of Commerce and the Canadian Manufacturers' Association and the last gentleman who just spoke.

I think it aids none of us to engage in personal attacks against individuals who we have dealt with over our careers in the field of labour relations and I don't intend to engage in that sort of approach.

By way of preface, what I've heard here tonight indicates to me something that is of deep concern to me and I know deep concern to Mr. Pullen and the people he represents and that is the duty of fair representation, the represenation of the individual. The individual is more important than we are, more important than management is. We recognize that and we hope to approach it on that basis, just as we believe that in part at least the government, in putting forward Bill 22, seems to have recognized that there is a corollary of duty and fair representation, and that is found in Section 69(2), the duty for management to act fairly.

This is not a baseball game, it's not the field of Nathan Detroit, it's much more important than that, ladies and gentlemen. I live this field every day of my life and it's extremely important to the individuals involved in it. It is not a game; it is their life that you're dealing with. Certainly one can look at any piece of legislation, and as an individual lawyer I suppose I am capable of tearing apart any bit of legislation if I'm directed to do so.

But I've looked at the purpose of the legislation and I look at what is taking place across this country, and I say to myself, ladies and gentlemen, it's time that we did, once again, move to the forefront of labour relations in Manitoba. Other provinces, other jurisdictions, have moved ahead of us in the last 10 or 15 years. It's time that we, once again, took a responsible leadership role and there are, at each and every step, each and every stage, of Bill 22, built-in safeguards.

People have not recognized them evidentally, because I don't think that they have paid enough attention to what Bill 22 says, and what many people do neglect is the fundamental importance of this whole piece of legislation and that is the existence of a very responsible and experienced Labour Board in this province. We have very responsible individuals from management, very responsible individuals from labour. We have a very energetic chairman of that Labour Board. We have very energetic vice-chairpersons of that Labour Board. I think it says much for both parties to consider that at least one of the vice-chairpersons of the board was appointed by the previous government and reappointed by the government that is in power now. I think that certain responsible people here in this room and in this House have recognized the fundamental importance of labour-relations law and the fundamental importance of how we put it into effect.

Let us be leaders, let us not be constantly followers, because if we look out to other jurisdictions exciting things are taking place, and those things are taking place to the benefit of the individual. Unfortunately, some speakers before me have not recognized that fundamental occurrence.

Having said that, I say I have faith in the Manitoba Labour Board. I appear there on a constant basis. I've appeared there for every group and continue to appear there for every group. I win cases; I lose cases. I think I win cases that, on behalf of individuals, the individuals deserved to win that case. I didn't win the case. By the same token, the same remarks can apply to losses.

What you have is a responsible Labour Board, dealing with legislation. Certainly at the outset there are going to be difficulties of implementation and understanding, but that's what life is all about, ladies and gentlemen, isn't it? If we try something new, none of us can be 100 percent certain as to the outcome, but I think that we have to look at what the stated goals of this legislation are. I believe the stated goals are - and I must accept these stated goals as being industrial peace

for Manitoba and Manitoba stepping, once again, to the forefront of a field where they have taken a back seat to other jurisdictions.

Having said that, I would turn matters over to Mr. Pullen, who can deal with matters in detail. I will be prepared to remark on matters dealing with specific legal questions.

MR. J. PULLEN: Madam Chairperson . . .

MADAM CHAIRMAN: Mr. Pullen, I'd just like to inform the committee that the Clerk's Office was notified that you were doing a joint presentation, and that you're representing the Manitoba Federation of Labour.

MR. J. PULLEN: Thank you, Madam Chairperson and members of the committee.

The Manitoba Federation of Labour welcomes the commitment, on the part of the Minister of Labour, to "fair and balanced laws," expressed in her speech to the Legislature on June 13, 1984. Indeed this is an essential ingredient to the "humane and responsible government" and good management of the "industrial relations community," which this government has taken as its mandate.

We have been noting for many years that the industrial relations system has been biased in favour of employers since The Labour Relations Act came into existence. This unfavourable balance is particularly acute in the areas of:

1. Union organization;
2. Breakdown of negotiations; and
3. Administration of labour relations.

This Federation commends the efforts of the Minister to impose stricter limits on an employer's ability to intimidate, threaten or pressure employees who seek union representation. We believe that in a democratic society workers should enjoy the kind of bargaining power, through union organization, that will give them some say in their wages and working conditions. It is only fitting that employers who oppose union certification merely because they do not wish to be accountable to the employees who work for them, should realize that those unfair advantages are immoral and should no longer prevail.

We are also appreciative of the efforts to remove some of the unfair legal advantages that employers enjoy in cases of strike or lockout. We believe that employees should possess rights to their jobs. In fact, we would submit that employees possess at least as much equity in their jobs, by virtue of the time and energy they invest at their workplace, as any financier who contributes only money; yet when negotiations break down, employers are free to give away those jobs, without legal impediment. It is helpful, in a limited sense, that employers will be allowed to give away the jobs of striking employees on a temporary basis only and will not be able to employ professional strike breakers to assist them. But this does not address the fundamental question and we are looking to future legislative action to deal with this question in a more definitive way.

We also commend the Minister on the steps taken to make the Labour Relations Board, the grievance arbitration system, etc., more effective. It is painfully evident, when arbitration cases drag on indefinitely, that "justice delayed is justice denied." A comprehensive set of provisions to establish an efficient set of structures and procedures, with the powers to confer judgment within a reasonable period of time, is long-awaited and very much appreciated.

In the following sections of this brief, we would like to comment on the strengths and weaknesses of Bill 22. We will discuss the issues in order of their appearance in the act.

PART 1
UNFAIR LABOUR PRACTICES AND INFRINGEMENT OF RIGHTS

Reinstatement - Section 11.1(1)(e), 10(4).10.1

The provision for reinstatement of employees at the end of a lockout or strike which has produced no new collective agreement is commendable. It is a recognition of the fact that working people, by virtue of their contribution to society, should have rights to their jobs whether the employer assents or not.

This section makes failure to reinstate these employees an unfair labour practice. However, this may accomplish little if an employer is at liberty to alter dramatically the wages and benefits associated with the jobs. If the parties have failed to agree on a new contract, it is eminently unfair for the employer to gain an increase in revenues by diminishing the incomes of employees. In order to ensure reinstatement of employees at their previous rates of pay and benefits, some revisions should also be made to Section 10(4).

Section 10(4) ensures that the terms and conditions of the previous collective agreement will be extended for 12 months beyond its termination, in cases where a new agreement is not concluded. It does not apply, however, if a lockout or strike has occurred. This section should be amended to state that the extension of the terms and conditions of the previous agreement will be inapplicable ONLY FOR THE DURATION OF A LOCKOUT OR STRIKE.

In addition, it should be made very explicit, in Section 10.1, that replacement workers shall be terminated with no notice whatsoever upon the termination of a strike.

Refusal to Facilitate a Struck Employer - Section 12

The section in question is limited in the protection it provides to workers not directly involved in a strike situation. This problem was not addressed at all by Bill 22. The section should be expanded to cover the following situations.

(1)An employee who refuses to facilitate the business or operation of his or her OWN employer shall receive the same protection; and

(2) An employee who refuses to facilitate a struck employer shall be offered alternative work to replace the work that the employee refuses to perform, with no decrease in total remuneration.

For the sake of consistency, Section 12(5), stating that an employer need not pay wages for work not performed, should be deleted.

Duty of Fair Representation - Section 16

It is entirely appropriate to require a bargaining agent to represent an employee in a manner which is not arbitrary, discriminatory or in bad faith. However, the

clause in this section which requires the bargaining agent to "take reasonable care to represent the interests of the employee" may make it an unfair labour practice not to do a good job in representing the employee. This is a rather heavy onus to include in the act, and subsection 16(a)(ii) should be deleted. We feel that Section (i) provides proper legal protection for individuals. Section (ii) is ambiguous and is liable to result in long drawn-out legal proceedings. It should therefore be deleted.

Access Agreements - Sections 17.1, 24(2)

It is very useful to provide for a formal agreement which allows access to an employer's premises. Section 17.1 sets out the terms for negotiating such an agreement between an employer and a certified bargaining agent. The only minor problems with that section regard the lack of a time limit for concluding an agreement, the potential inference that only one visit will be allowed, and the apparent inapplicability to unions which have been voluntarily recognized. Negotiation of the agreement could drag on indefinitely in some circumstances. Perhaps the act could make provision for a standard agreement, which would remain in force until an initial agreement is concluded. In reference to the second problem, the phrase "the visit" should be replaced with the phrase "any visit." The third problem is rectified by deleting all references to certification from the various subsections of Section 17.1, so as no longer to exclude unions which have received voluntary recognition.

The status of union representatives during an organizing drive is quite unclear. Bill 22 deletes Section 16 of the current act, which makes it an unfair labour practice to solicit membership on the employer's premises without permission. However, Section 24 remains, affirming an employer's right to act against trespassers. In addition, there is new Section 24(2), prohibiting the disruption of an employer's operation. Whether this clause is meant to legitimize solicitation, when there is no disruption, is not clearly stated. In practice, it does little to prevent employer discrimination between favoured and unfavoured union organizers. The employer can claim that the unwelcome organizer is disrupting operations, while the welcome one is not. This kind of discrimination can be prevented by amending the beginning of Section 24(2) to read, "Nothing in this Part, IN THE OPINION OF THE BOARD, authorizes any person to disrupt the ongoing operation of, etc."

Complaint Alleging Unfair Labour Practice - Section 21(1,2)

Section 21(1) leaves it wide open for frivolous or malicious applications by parties with no direct connection with the case. The section should read, "any AFFECTED PARTY WHO IS AN employer, employee or other person . . ."

Section 2(2) allows greater flexibility to the board in rejecting a complaint that has been unduly delayed. Section 21(2) deletes the specific definition of undue delay, namely, six months. As proposed in Bill 22, it would be left entirely up to the discretion of the board, which could reject a complaint for undue delay considerably before six months have elapsed. It may be preferable to retain the six month definition, but allow the board some discretion beyond that period.

Duty of Board Representative - Section 21(4)

Under Subsection (c), the results of an inquiry into an unfair labour practice must be reported to the board. It would be desirable for these reports to be made available to the parties concerned.

Interim Order - Section 22 (2,4)

Section 22(4) contains three potential problem areas. First, it contains no time limit. There is nothing to prevent an Interim Order from being unduly delayed. Second, there is nothing to ensure that the failure to issue an Interim Order will not prejudice the outcome of the Final Order. This should be stated explicitly.

Third, it is impossible to issue an Interim Order that an employee whose employment has been terminated as the result of an unfair labour practice be reinstated before the unfair labour practice has been established. Section 22(2) should begin with the phrase "Notwithstanding that no allegation has been finally proven . . . ."

Remedies for unfair labour practices — Section 22(4)

It is felt by affiliates of this Federation that remedies should be adequate to (1) recover the total costs which have resulted from the unfair labour practice, and (2) deter the repetition of such practices in the future. Section 22(6) of the currect Act containes limitations which restrict the capacity of the Board to order such remedies. Subsections (e) and (f) maintain the old limit of $2000 on awards, regardless of the effects of inflation.

Subsection (h), which empowers the Baord to "order the party to rectify any situation resulting from the unfair labour practice," is no improvement over the current Act. If it was weak in the current Act, it will be weak in the revised Act. Subsection (i) is new, empowering the Board to "order the party to do, or refrain from doing, anything that is equitable." This is thought to allow for the possibility of exemplary damages, and possibly circumvent the $2000 limit. This clause, however, seems merely to contradict sections 22(4)(e) and (f), and the overall ability to order adequate remedies remains in doubt.

Part V, section 109(2) outlines the remedial powers or an arbitrator, providing for recovery of losses (with interest), and to "do any other thing necessary to provide a final and conclusive settlement." This section does not seem any more conducive to the awarding of adequate remedies than the sections in Part I. Overall, it seems uncertain, at this point, how effective these provisions will be in creating more effective penalties. There is some need to make the intent of these clauses more explicit.

PART II

CERTIFICATION AND BARGAINING RIGHTS

No Interrogation — Section 20(1)

The strengthening of section 20(1) is an important positive step. The proposed section prohibits interrogation about whether an employee has exercised his or her rights under the Act. This is a vital human rights provision.

No Decertification During Work Stoppage — Sections 26 (5,6), 40(2)

It is notable that the White Paper on Labour Law Changes called for a 12 month period, during which an application for decertification would not be entertained. Bill 22, however, provides for only a six-month period. We feel that the full year is necessary, or employers may continue to be tempted to precipitate a strike situation in hopes of decertifying the union in a few short months.

We appreciate the clarificaiton, contained in Section 26(6), that the voting constituency on a decertification application in these circumstances include only those who were employed on the day preceding the work stoppage, and who "have a continuing interest in the outcome." There are a couple of potential problem areas, however, which should be given a second look. First, it is not certain whether locked out or striking employees, who have sought work elsewhere, would be considered as not having a continuing interest. Second, section 40(2), allowing for employee application for decertification, does not make it clear what the voting constituency shall be. Potential future disagreements could be avoided by specifying the voting constituency right in section 40(2).

Interim Certification — Section 30(4)

The word "composition" (of the unit) appears several times in this section, and numerous other sections. Often the word "appropriateness" is used in conjunction with it. It is felt that there is some potential confusion over the use of these words without definition. Legal opinions vary as to the meanings of these words, and which is appropriate in any given application. It would be advisable to include both of them in the Definitions section at the beginning of the Act, and then ensure that they are used consistently throughout.

Certification — Sections 31(1), 39(1)

Section 31 represents a significant change from the current section 31. The latter gave complete discretion to the Board regarding how to determine the wishes of employees. The new section 31(1) specifies when certification shall be granted, or when a vote shall be called, in terms of percentages. This is a distinct improvement in the sense that the new system eliminates the role of petitions, and specifies the date of application as a firm criterion for determining the voting constituency.

But it is also retrogressive in that certification without a vote would now be impossible with a signature count under 55 percent. We would recommend that a small degree of discretion be re-introduced by amending section 31(1)(b) to read:

"that, as at the date of the filing of the application, 45 percent or more but fewer than 55 percent of the employees in the unit wish to have the union represent them as their bargaining agent, the board shall EITHER CERTIFY THE AGENT FOR EMPLOYEES IN THE UNIT, OR conduct a vote amongst the employees in the unit in accordance with subsection 39(2); or"

It should be noted here that section 39(1) lends a little confusion to the situation. It suggests that the Board does have full discretion, in conflict with the provisions of section 31(1). This section should specify that it is "subject to section 31(1)(a)."

It should be noted incidentally, as a matter of consistency, that we are in accord with section 31(2), tying a decertification vote to the date of application.

Discretionary Certification — Section 32

Having removed the Board's discretion in matters of certification, in section 31, it is necessary to include section 32, which restores discretion to the Board in cases of unfair labour practices.

New section 32 limits discretionary certification to unfair labour practices (i) which would prejudice the outcome of the vote, making it impossible to determine accurately the wishes of the employees, and (ii) in which there is reason to believe an adequate number of members wish to be certified. This is a little weaker than the old section 31(d), which left it up to the discretion of the Board, without specifiying that these kinds of conditions be met. There are two principal problems with the new section 32. First, prejudice may be difficult to establish. Second, there is nothing in section 32(b) to ensure that the word "adequate" won't be interpreted to mean that a majority of signed cards are necessary before certification is granted, contrary to the intent of this section. Section 32(b) is redundant anyway, since evidence of membership support is required for the application for certification in the first instance, and it should be deleted.

A small but important omission from section 32 is any reference to a PERSON ACTING ON BEHALF OF THE EMPLOYER, OR ANY OTHER PERSON ACTING TO BENEFIT THE EMPLOYER, when determining whether an unfair labour practice has occurred. There is nothing to stop an employer from hiring or inducing someone else to commit an unfair labour practice in which case section 32 would not apply. This dangerous loophole must be filled in the final version of the Bill.

Replacement Certification — Section 35(b)(c), 45

When a new union is certified as a bargaining agent, replacing a former bargaining agent, the new union may inherit the old collective agreement according to section 35(c). This is directly contradicted by section 45, which states that a collective agreement would be terminated in the same circumstances. Section 45 should cite section 35(c) as an exception.

Board's Discretion to Dismiss — Section 41(4)

This section requires not only "every reasonable effort to conclude an agreement," but good faith bargaining as well. In such cases, experience has shown that good faith bargaining is notoriously difficult to prove. Reasonable effort alone should be the Board's criterion for dismissal in such cases.

Decertification where Fraud or Abandonment — Sections 43, 44 38(1)

Certainly, such a provision should exist, as a necessary protection for employees from fraudulent activities or non-representation. But if Section 38(1)

declares that an employer "has no status in the determination by the board of the wishes of the employees," then why should the employer have status when it comes to alleging fraud or abandonment? Allowing an employer to direct the board to investigate for fraud or abandonment, whenever the employer wishes, invites abuse. The power to initiate an investigation should be left in the hands of employees and the board itself.

Application to Open Agreement - Section 47(3), 48

We detect a potential loophole in Section 47(3), allowing an employer to sell to a dummy corporation, and then apply to open the collective agreement. A clause is necessary which specifies that such application is available only to a "bona fide new employer."

In Section 48, it would be practical to require the parties to provide information to the board before the commencement of a hearing, not just during a hearing. That would accomplish two desirable ends. First, frivolous applications would be discouraged. And second, the bargaining agent would understand the issue to be considered, and could prepare accordingly.

Access to Employee List

Consistent with the right of employees to organze, a union which is attempting to organize a workplace should have access to the necessary information. This principle was recognized in the White Paper on Labour Law changes, which proposed that employee lists should be submitted to any union conducting a legitimate organizing drive. We would like to draw it to your attention that this item has been omitted from Bill 22, and should be included as a necessary part of creating a more balanced industrial relations system.

PART III
COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENTS

Notice to Revise — Section 54 (2, 2.1), 66(2)

According to Section 54(2) and 54(2.1), in the case of contracts which allow for extension beyond the termination date, the contract remains in force even as the parties are negotiating a new agreement, unless a lockout or strike occurs. Section 66(2), however, states only that the parties "may" agree to extend the agreement while revisions are being discussed. Clearly the latter was meant to apply only to contracts of a definite duration, and Section 66(2) should make exemption for the type of contracts described in Section 54(2).

PART IV
LOCKOUTS AND STRIKES

Mandatory Strike Vote — Section 81, 39, 26(6)

It is often desirable to enshrine normal practice into law, in order to ensure some consistency. In the case of conducting a strike vote, Section 81 consolidates the democratic rights of union members.

We would like some further clarification in the act, however, regarding the voting constituency. Section 81(2) specifies that constituency as "the unit represented by the baraining agent" without specifying whether that includes all employees in the unit, all union members in the unit, or all union members who were on the payroll of the employer on the day immediately preceding the strike or lockout, as in Section 26(6). We would recommend that references to voting in Sections 81 and 39 refer explicitly to the definition of the voting constituency outlined in Section 26(6).

PART V
CONCILIATION OFFICERS AND BOARDS MEDIATORS AND ARBITRATION BOARDS

Both this Federation and the Provincial Government have been calling for a more effective system of facilitating settlements. We commend the authors of Bill 22 for a comprehensive set of provisions to strengthen the supportive role of the Labour Relations Board, arbitrators, conciliators, etc.

Section 121(6) states that the board "may undertake efforts to assist the parties to a proceeding before the board to settle the matter." This affirmation and strengthening of the board's mandate to pursue settlement in an active and assertive manner, bodes well for the future of industrial relations in Manitoba.

Sections 83, 84 and 100 strengthen slightly the role of mediators. Allowing the Minister to initiate the process, giving legal status to the mediator, and maintaining a list of mediators are useful new provisions.

The consolidation of the clauses relating to conciliation boards and arbitration boards into separate and distinct parts of the act will be valuable in making these functions more coherent and unambiguous. A tightening up of procedures and functions and a firming up of powers are most promising.

We welcome innovative measures, such as mid-contract mediation and expedited arbitration. We look to this government for the innovative spirit necessary to keep Manitoba on the forefront of industrial relations.

The following discussion points out a few concerns over some specific features in Part V.

Appointment of Abritrator — Sections 102, 69(2)(a)

In setting up a sole arbitrator as the norm for arbitration hearings, unless otherwise indicated, the bill has not specified a time limit in the selection of the arbitrator. This could create problems, by allowing one of the parties to stall on the basis that they have not yet failed to agree. It should be a simple matter to specify a reasonable time limit for selection in both sections 69(2)(a) and 102.

Hearings and Decisions Public — Sections 110, 113.1

Bill 22 reverses the situation regarding public access to arbitration hearings. Section 100 opens them to the public and the press, unless the board rules that the matters discussed should be confidential. This creates some potential problems. There may be matters that the parties to the hearing feel are confidential, but the board may not agree. Would they be open to the public regardless of the feelings of the parties concerned? Even if there are not intimate personal details being

discussed, many people would be reluctant to file a grievance if there is a prospect o a public arbitration. In addition, there are periodically issues which become newspaper headlines, and the parties involved would have to face the prospect of sensationalist reporting if the press is allowed free access to hearings. The best way to do this is to dlete Section 110 in it entirety.

We feel that an employee's relation to his or her employer or union is a private matter, not open to public scrutiny. The current situation, in which hearings are held in private unless there is an agreement amongst all parties to the contrary, should be maintained.

Section 113.1, regarding the public filing of board decisions, should be more carefully worded. Where the parties wish their privacy respected, the public record should delete all names or other information which would directly identify the participants.

Justice and Dignity

We have repeatedly called for a "Justice and Dignity" provision in the act, which was acknowledged in the White Paper on Labour Law changes. Justice and dignity means essentially that an employee who is disciplined by an employer shall be considered innocent until proven guilty.

The Interim Orders of Section 22(2) cannot be passed off as a Justice and Dignity provision. It allows the board to provide relief in certain kinds of compelling cases involving certification, but it does not establish innocence until guilt is proven, and it does not apply to arbitration cases.

In other words, there is no Justice and Dignity provision contained in Bill 22, an omission which should be rectified immediately.

Conclusion

There seems to be widespread agreement that the principles contained in the preamble to The Labour Relations Act should serve, more than ever before, as the foundation for labour legislation in Manitoba. Those principles state that:

1. The public interest is best served by harmonious relations between labour and management; and
2. Free collective bargaining is the appropriate means for achieving that harmony.

These principles, however, take as given the existing balance of power between labour and management. They would be equally applicable to a circumstance where labour has virtually no rights whatsoever as they are to the current situation in Manitoba. As important as these principles may be, therefore, they are not adequate to deal with the restructuring of the labour relations system and the changing of that balance of power.

Labour relations law should be founded every bit as much on the principle of justice. It is a failure to appreciate this requirement that leads commentators to claim that any action to expand the rights of employees upsets the balance of power between labour and management. But when the balance of power is unjust it should indeed be upset and changed to establish more equitable labour relations.

We are particularly concerned about the privileged position of employers' rights when it comes to a strike situation, and in the case of plant closure.

The privileged position of employers' rights at the bargaining table is especially evident during the course of a strike. The demand of anti-scab legislation is really no more than a demand to even up the balance, by giving employees the same rights over their jobs as their employer enjoys. The privileged position of employers' rights at the workplace is painfully evident when a plant closes and leaves workers on the streets, with nothing to show for their years of work and dedication. The demand for plant closure legislation is a demand for workers' equity in their jobs.

Given a political decision on the part of government to reject anti-scab legislation, we were very receptive to the proposal in the White Paper on Labour Law Changes to even up the balance by other means. Final Offer Selection was meant to give an additional option to the bargaining unit, which would hopefully counteract the employer's absolute control over property, buildings and capital machinery at the workplace. It would not remove that control, but it would be a device which could salvage a losing situation on the picket line, and therefore give the bargaining unit an additional card to play at the bargaining table.

The trade-off we were prepared to make should be clearly understood. We were content to back off, for now, from our demand for equity in our jobs, whereby the work we contribute gives us some rights over those jobs and some legal priority over scabs who would take those jobs away from us. We were prepared to trade that off for an additional weapon at the bargaining table, a weapon which has yet to be proven and may well work against us in some circumstances.

With Final Offer Selection now removed from the agenda, we are left with no answers for our members when they ask if their employers' power to break unions on the picket line has been reduced. With plant closures not addressed in the current amendments, we are left with nothing to present to our members dealing with the fundamental issue of workers' rights at the workplace. We must register our dissatisfaction that these important reforms are being placed on the back burner, with no firm indication that they will receive the serious attention they deserve during the term of office of this government.

It is with these qualifications in mind, that we present our commentary on the current legislation.

The proposed changes to The Labour Relations Act are a meaningful step in the direction of restoring a degree of justice, and a degree of balance, into the industrial relations system. We have presented our recommendations for improvement in a positive and constructive spirit, joining with you to make the new act a success. We look forward to further review of the labour relations system in Manitoba, where crucial issues such as alternative methods of dealing with strike situations, measures for dealing with plant closures, and equal pay for work of equal value can be discussed, and can become the basis of further reform of Manitoba labour legislation.

MADAM CHAIRMAN: Thank you, Mr. Pullen.

Mr. Filmon.

MR. G. FILMON: Thank you, Madam Chairperson. I would like to ask Mr. Pullen, in his conclusions he says,

firstly, that the public interest is best served by harmonious relations between labour and management. Does he believe that there are harmonious relations between labour and management in Manitoba today?

MR. J. PULLEN: I believe there is a degree of harmonious relations. However, they can be improved to a far greater extent than they are at the present time. The reason I say that is obvious with the recent ad that was taken out in the Winnipeg Free Press by employer organizations which made it obvious that as far as they were concerned they wanted to once again look at unions, big unions, as being a detriment to Manitoba and they used the myth about the views. When it is known, well-known, that as far as unions are concerned the union organization is approximately 30 percent, so as far as big unionism it is just a myth.

As far as we are concerned, if that relationship is going to improve, and we have sat down many many times in an attempt to I think have a harmonious relationship, but when things occur of that nature it doesn't help for the very reason that that takes us back, in my opinion, many many years. Because you can look back, and I can look back on different committees that were established many years ago, where we sat down with members of the Chambers of Commerce and the old Woods Committee when it first started, by now, the harmonious relationship in this province and the degree of relationship should be far more ahead than what it is. But the reason it isn't, in my opinion, is because of the type of thing that is done of that nature where we in the union movement and the labour movement get blamed for what goes on. Yes, we resent that.

MR. G. FILMON: In view of the fact that it is this proposed legislation that caused that ad to be taken out, would it not appear then to be that the legislation should be withdrawn to allow to get back to the harmonious relations that occur?

MR. J. PULLEN: In no way whatsoever. We will make no apologies for saying to the people of Manitoba that as citizens of Manitoba and under the Charter of Rights and under the International Labour Organization you had the right and the freedom and the freedom of choice and the freedom of association to organize. If there are restrictions that prevail in existing legislation, then they should be removed, and they do prevail in spite of what happened in 1972, and the rhetoric did prevail in 1972 at that time in regard to when changes were being made. But as far as I'm concerned, I make no apologies in regard to going forward and the MFL going forward with proposals for changes, as far as I'm concerned, that should be made in an act to assist citizens of Manitoba in being able to organize and get better wages and working conditions for themselves in Manitoba. I see nothing wrong with that whatsoever.

MR. A. McGREGOR: What Mr. Pullen has stated, I would just give you an example of what this act would do. I know of at least one case where an individual was terminated from employment on August 17, 1983. That matter has not as yet gone before any artibration board. This act would ensure that that matter would have been dealt with by an arbitration board long before this period of time has gone by, approximately 10 months have gone by. I don't think the individual concerned would be too happy about that delay.

MR. G. FILMON: Madam Chairperson, I have a further question for Mr. Pullen. He referred to The Labour Act of 1972. Was the Manitoba Federation of Labour in favour of that act in 1972?

MR. J. PULLEN: Were they in favour of the act?

MR. G. FILMON: Yes.

MR. J. PULLEN: They've made proposals at that time for changes to the existing act at that time, yes, and they were in favour. I think it was Bill 81 at the time. At that time there were many clippings. In fact I have some of them that read that it was going to be devastating for the citizens of Manitoba and it did not turn out that way. As far as the situation is concerned, labour was in favour of changing the act at that time.

MR. G. FILMON: So they were in favour of the act that was adopted at that time?

MR. J. PULLEN: In favour of the act at that time, yes.

MR. G. FILMON: Madam Chairman, assuming that - well not assuming - Mr. Pullen has indicated that labour was in favour of that act in 1972. He then makes a further statement that says, "We have been noting for many years that the industrial relations sytem has been biased in favour of employers since The Labour Relations Act came into existence." What changes since 1972 have biased that act in favour of employers?

MR. J. PULLEN: It's like many acts. Over a period of time, Mr. Filmon, you can apply bandaids to different acts, but there comes a period of time and particularly what happens in the labour relations field, where you have to do what is considered - I consider - major changes.

I think that time has come in regard to that it had to happen to The Labour Relations Act, because of what is happening around us in industrial relations and in regard to technological change of many many other things. The time has come in regard to why we've had to make changes to The Labour Relations Act.

You heard people earlier making statements about militancy and different things that used to go on in the past or there's a lot of things that don't apply the same way today, as they did in the Sixties and the very early Seventies, and that's why we need some very major changes. The thing is with these changes, Mr. Filmon, many of them are already in existing acts, some are not. Some are new, but is there anything wrong with the Province of Manitoba being a little innovative? I think it's about time we were.

MR. G. FILMON: I appreciate the response that Mr. Pullen has given, but he made a statement that in 1972, he and the Manitoba Federation of Labour were in favour of the act that was passed; and further and I'll quote from his brief, "We have been noting for many

years that the industrial relation system has been biased in favour of employers since The Labour Relations Act came into existence." What changes occurred from 1972 until now that biased that act that he had agreed with and said they were in favour of, what changes have now, since that point, biased the act in favour of employers?

MR. A. McGREGOR: Perhaps to respond better to that question, I think that what the MFL did in 1972 was relate to the situation as it existed in 1972. What they are doing in 1984 is reacting to the present situation. Now you ask what has taken place over the years? Unfortunately, small segments of society have developed a group of individuals whose prime purpose and really only purpose in life is to bust unions.

I've had recent cases where that has taken place. You might recall a recent decision - and I hesitate to mention recent decisions in view of what I said before - but a case involving a certain chain store in Winnipeg, where there was in existence a plan to destroy any union and to keep any union out of the store. There now exists those types of plans.

In 1972, society was not as sophisticated, if one wants to consider that to be sophistication. One can look at the national scale and talk about what the Canada Labour Relations Board did on Eastern Pacific Airlines, in reinstating the pilots or look at the case involving Tandy or Radio Shack, where they did hand down a substantial judgment because of the strong anti-union actions taken by that particular company. That is what has changed between 1972 and 1984. People have become professionals in that particular field.

MR. G. FILMON: Madam Chairman, I believe that the lawyers, such as Mr. McGregor, have a saying that says, "Hard cases make bad law," and it seems as though he's confirming that these changes are in response to some of the hard cases that have occurred, just as Mr. Green told us earlier. I'm trying to get at the point that Mr. Pullen was attempting to make, that said that there have been changes since 1972 that have biased the legislation in favour of the employers.

Having been a member of the previous Conservative Government, I'm quite confident that I can say that we didn't make any changes that biased it in favour of employers. So is he suggesting then that the previous New Democratic Government, during the years 1972 to 1977 made some changes that biased it in favour of the employer? I doubt that very seriously and I just would like some substantiation to his statement.

MR. A. McGREGOR: Changing circumstances.

MADAM CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: Thank you, Madam Chairperson. I'd like to direct a question to Mr. McGregor.

In your opening comments, Mr. McGregor, you mentioned the fact that you have acted on behalf of employers, you've acted on behalf of employees, and you've acted on behalf of unions in cases before the Labour Board, so I presume from that comment that you're somewhat of an expert in the field, though you didn't take as much time as a previous delegation to explain all of your background.

In view of that fact, I would like your response to this question. What in your view do you think will be the impact of this legislation on the economy of the Province of Manitoba?.

MADAM CHAIRMAN: Mr. McGregor.

MR. A. McGREGOR: The impact on the economy? I think with the imposition of this legislation and with the people I know on both sides taking a co-operative approach, a distinct, two-way confrontational approach, I think that this type of legislation will in fact add to the economy in this province, because it will lead individuals who previously took strong intransigent positions towards a more co-operative approach to the benefit of all of us.

HON. E. KOSTYRA: One furthur question.

Do you have much knowledge of what legislation exists in other jurisdictions across Canada, labour relations legislation?

MR. A. McGREGOR: I have a certain knowledge, yes.

HON. E. KOSTYRA: One further question, how does this legislation relate to legislation in the Province of Ontario? Would you say on balance there are things that are more advanced than what exists in legislation in Ontario, less advanced or similar?

MR. A. McGREGOR: Probably similar. I was surprised earlier by one of the speakers who made comments about various decisions. I was surprised because I had a recent case with that individual and perhaps I will be immodest and say I was successful in that case, but I did cite a bunch of law from Ontario because the Ontario Board has for a number of years given written decisions. The Manitoba Board has just started to and, as I understand it, part and parcel of this whole act is to expand the services of the Manitoba Labour Board and allow them to give written decisions so that the parties will know what the rules are in the ball game. I, for one, have always taken the position, Mr. Kostyra, I don't care if I'm playing under hard rules, as long as I know what the rules are. Up to this point in time Manitoba really has not had rules that everyone could know and understand; only a select few lawyers knew those rules. I luckily was one of those few lawyers. I would suggest that there are probably a dozen lawyers in this province who know the rules of handling cases before the Labour Board properly. I do not think that is correct. I think that any citizen of this province should be able to appear in front of the Labour Board and handle their case themselves properly. I don't think that I should be one of the favoured few, as evidently I seem to be at the moment.

HON. E. KOSTYRA: Just one final further question arising out of the last comment. In view of your last comment with respect to the fact that the Labour Board has not provided in the past written decisions, and there are proposals under this legislation to expand the activities of the Labour Board and strengthen the Labour Board, would it be your view that in view of those changes, that the kind of situation that you

described with respect to the lack of information, the lack of, I think as you put it - knowing the rules of the game - that that would provide the opportunity for more individual employees or individual businesses to be able to know what the rules are and be able to appear at the Labour Board rather than how the case was that you described?

MR. A. McGREGOR: Exactly, and I think it would lead to what I see as a necessity, the co-operation.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Madam Chairman, I had some other questions there that I was going to pursue. I didn't want to interrupt the Minister of Industry, Trade and Technology, but I — (Interjection) — is it necessary to indicate that I still have questions or are there different rules? This isn't necessarily my final question.

MADAM CHAIRMAN: I called on you, ask your question.

MR. G. FILMON: My question to Mr. Pullen is that on Page 2 of his presentation, in reference to unfair labour practices and infringement of rights, he refers about the section requiring employers to reinstate employees after a strike or a lockout. He says that, "However, this may accomplish little if an employer is at liberty to alter dramatically the wages and benefits associated with the jobs. If the parties have failed to agree on a new contract, it is eminently unfair for the employer to gain an increase in revenues by diminishing the incomes of the employees." Would he consider it to be eminently unfair if rather than gaining an increase in revenues the employer was in a loss situation to begin with and was merely decreasing his losses by renegotiating the contract terms?

MADAM CHAIRMAN: Mr. Pullen.

MR. J. PULLEN: I would suggest that in a given situation, if there's a loss situation, then it's going to be a situation that would have to be dealt with; it would have to be looked at and negotiated and whatever had to be done at that particular given time. That's all I can answer with that given situation, but if it's by law he's going to be compelled to do certain things.

MR. G. FILMON: The proposal - that's precisely the point. The proposal that you are making, Mr. Pullen, is that they must be reinstated at previous rates of paying benefits. That does not allow an employer to reduce his losses if he's in a loss situation. How is that fair to the employer?

MR. J. PULLEN: Once they are back in the workplace, Mr. Filmon, I suggest to you it would not be the first time that negotiations have taken place between the two parties over a given situation, once they are back in the workplace.

MR. G. FILMON: You think that an employer should want to take the risk of the possibility that he would be condemned to losses by taking the employees back or should he have the right to know ahead of time whether or not he can cut his losses before he has the employees return to the workplace?

MR. J. PULLEN: What about the employees, Mr. Filmon? Does nothing matter in regard to the employees either?

MR. G. FILMON: Of course, I'm very concerned that the employees, under these circumstances, would be out of work and they would be far worse off than in a situation where there could be some reasonable discussions.

MR. J. PULLEN: That's why I'm saying, once they're restored in the workplace, those discussions can take place.

MADAM CHAIRMAN: Mr. Filmon, the purpose is not to debate but to ask questions. Do you have a further question?

I should also point out that the hour for this presentation has arrived. What is the will of the committee? Do you have further questions? Leave for further questions? Is it the will of the committee to grant leave? (Agreed)

Mr. Banman.

MR. R. BANMAN: Thank you, Madam Chairman.

To Mr. Pullen, I wonder, there is one section in the act, you mentioned the Charter of Rights. There's one section in the act which says that the employer has no status in the determination by the board of the wishes of the employees in the unit. Don't you feel that there should be some input, where an employer feels that there have been some unfair practices that take place, should the employer not have some status - we're talking about the Charter of Rights - and some opportunity somewhere along the line to say something about what his or her feeling is with regard to that, even if it be before the board?

MADAM CHAIRMAN: Mr. Pullen.

MR. J. PULLEN: I'll let Mr. McGregor answer that, Madam Chairperson.

MADAM CHAIRMAN: Mr. McGregor.

MR. A. McGREGOR: It's a standard section across the country, Mr. Banman.

MR. R. BANMAN: Mr. Speaker, I guess, or, Mr. Chairman, I guess . . .

MADAM CHAIRMAN: Madam.

MR. R. BANMAN: Madam Chairman, . . .

MADAM CHAIRMAN: I'm going to grow my hair long.

MR. R. BANMAN: I have to say that I find it kind of odd that an employer is not allowed, at least, some status before the board.

Another question is, with regard to the discretion of the Minister, when we talk about 75.1(1), which is the clause dealing with First Contract, First Agreement, the discretion of the Minister has been taken away and of course there's no discretion on the board. They have to impose the First Contract. Doesn't it make sense to allow the board to have discretion on the imposition of First Contract? You've got a situation now where, instead of being sort of an operation or a situation where both sides know that this could happen to them, but to now have the legislation say it will happen, regardless if you bargain in good faith or not, seems to me to be something that is not desirable and that if indeed there is unfair labour practices on either side, that the board should have the power to impose First Contract or have the right not to impose it.

MR. J. PULLEN: It seems to have worked very well up to now, Madam Chairperson, in regard to what is happening, and I think, yes, the board should impose the First Agreement.

MR. A. McGREGOR: Mr. Banman, the quality of that agreement is something that is totally within the purview of the board.

MR. R. BANMAN: Yes, but I would submit then that the frightening of that is that, really, you leave no discretion to the employer any more.

MADAM CHAIRMAN: Mr. Banman, are you asking a question or are you debating?

MR. R. BANMAN: I'm stating a question, I guess.

MR. A. McGREGOR: I think he takes it as being consistent with some of my answers.

MADAM CHAIRMAN: Mr. Banman, a question?

MR. R. BANMAN: Yes, to Mr. McGregor. With regard to the religious objectors' clause, has the Manitoba Federation of Labour had any serious problems with regard to large numbers of people wanting to opt out of union membership or have their union dues transferred to a charity of their choice or of mutual acceptance to the employer in that?

MR. A. McGREGOR: Not to my knowledge, no. There have not been those widespread problems and I might also indicate, I suppose,. that I also came from an area of the province south of here and I know the religious feelings of certain groups of people vis-a-vis unions and the relationship of the Bible to their feelings, but I haven't found that it has created problems.

MR. R. BANMAN: Do you feel that if the act were changed to allow people, because of their personal religious beliefs, to be able to take advantage of the situation where they could have their union dues passed on to a charity, do you think that would cause a problem for the unions in the province?

MR. A. McGREGOR: The question is whether it would be a problem if they could have their . . .

MR. R. BANMAN: Do you think there'd be a large exodus from the unions - not an exodus - if there'd be a lot of people that would take advantage of that particular section?

MR. A. McGREGOR: No, I think basically you really haven't changed the situation that has existed for a number of years and we go back to the Court of Appeal decision in the Funk case on that point, and it seems to me that the courts found and the Legislature over the years and the parties over the years, have not had difficulty with that type of legislation.

MR. R. BANMAN: I guess, Madam Chairman, we had a . . .

MR. A. McGREGOR: I must apologize, Mr. Banman. During part of that submission I was out getting some drinks of water, so I am not fully clear as to what the individual said completely. There are certain other sections of the act that you should consider to flush out really, although Section 21(4), a submission given to you to this point in time, doesn't make it clear, but there is a perfect example of a court attack which will take place. That, I think, would be a guarantee. When the board representative prepares documentation and turns it over to the board, if the board has documentation that the parties don't have, that will be struck down so quickly and that should be looked at.

MR. R. BANMAN: Another question and I'll pose this to Mr. McGregor. In light of the fact that in the bill now, I guess there could be some regulations established by the Minister or by the board dealing with the signing of cards and the lack of any inclusion of a period of time for employees who have signed cards to change their mind. Would you not feel that a certain period of time, let's say seven days, for an individual to change their mind and, of course, the one that's been used is The Consumer Protection Act and some other examples. But shouldn't there be a time after the filing of the application has taken place that the individuals within that group should have a chance to reflect on their decision?

MR. A. McGREGOR: The problem there, Mr. Banman, is, case after case across the country shows that after individuals join a union, they are particularly sensitive to attacks from outside sources and will quickly change their minds, not on the basis of logic, but on the basis of fear. Case after case shows that. In many cases it is unfounded fear, but that's what takes place.

MR. R. BANMAN: But would you not admit that, in many instances, when dealing with the public, when going door-to-door soliciting for whatever reason, petitioners for instance - in municipal cases, let's take the example of petitioning for a lane closing, you will have one group of petitioners going through the neighbourhood collecting signatures to have it closed, another group coming through to have it open, and you'll find people's names on both lists. Really what I'm saying I guess is that when somebody comes and knocks at the door, people have a tendency to be nice to the individual. We now have a case where you don't

even have to pay a dollar anymore for the membership, you just sign it to get rid of the individual.

MR. A. McGREGOR: If I might give you an example, Mr. Banman, you yourself showed your commitment to a position by joining a political party. You showed that commitment at that time. You gave some thought to that. It's an entirely different situation, a petition situation. I, for example, have had various dealings with the Canada Labour Relations Board, and individuals on that board come to Manitoba and make comments, "oh yeah, this is Manitoba, you still consider petitions in Manitoba," because they don't. They recognize the distinction between the very strong commitment that is made to join a union and the signing of a petition. It's very similar to the strong commitment that you made at some point in time in your life.

MR. R. BANMAN: I would just like to say that while I made that commitment, it . . .

MADAM CHAIRMAN: Is this a question?

MR. R. BANMAN: Yes, Mr. Chairman.

MADAM CHAIRMAN: Madam!

MR. R. BANMAN: Madam Chairman.

MADAM CHAIRMAN: Ms., anything feminine, please.

MR. R. BANMAN: I can decertify the day after I have made the decision. I'm not locked in for a year with something if I don't like it. I can get out of it.

MR. A. McGREGOR: The point is, I think it was made quite clear by the late Chief Justice of this country in the Transair case in front of the Supreme Court that individuals did have the right under the legislation to get out if it was proper for them to get out, and it still exists. He said, "yes, certainly, there may be a passage time required," but that was writing for a full court of the Supreme Court as I recall it.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: This is a question for further clarification. On the bottom of Page 8, Mr. Pullen or Mr. McGregor, you encourage the government to close what you consider a loophole in Section 32 with respect to unfair labour practices that an employer may engage in. Madam Chairman, I'm aware of the very specific conditions that an employer has to operate under once an organizing drive is under way, but when you're suggesting to the government to close that loophole for somebody that may be in the hire of the employer, does that extend to a worker in his shop? In other words, what I'm really getting at, is the worker in the shop who may of his own volition wish to argue or speak against the union organization attempt that's being made, do the same issues of unfair labour practice apply to him?

MR. A. McGREGOR: If the individual is breaching the law.

MR. H. ENNS: As I understand it . . .

MADAM CHAIRMAN: Order please. I don't want a cross conversation. No. 1, Hansard can't record it properly. I know it's getting late, but I beg your tolerance.

MR. H. ENNS: The point I'm trying to make is, the law is very specific about what constitutes an unfair labour practice on the part of the employer. Are you suggesting to me that those same conditions apply to a workman in the shop such as communicating with his fellow workers which I understand is a prohibition against the employer, or is judged to be an unfair labour act, but is that transferred to the employer at present?

MR. A. McGREGOR: No individual can breach the law. It's as simple as that. Every individual must follow what the law is contrary to what one of the previous speakers said to me at a session one time, an open session. That individual said, I know that you'll know who it was that said it when I repeat the words, he said, "I don't care what the law is. If I don't agree with it, I'm not going to follow the law." I happen to carry a different approach. I believe in the sanctity of the law and it should apply to each and every person and does by that wording apply to each and every person.

MR. H. ENNS: Madam Chairman, I'm having trouble making my point there.

I'll move to one further final matter and that has to do with your observations and again your suggestions to the government having to do with access for the media and press to hearings, in this case, by the board, arbitration hearings, etc. I must confess, Mr. Pullen, that I could be induced to start an organizing drive here in the Legislature if I thought it would offer me some protection from newspaper headlines or sensationalist reporting from the media.

MR. A. McGREGOR: I think, Mr. Enns, that individuals who are in an employment relationship have a very special relationship, an employer-employee relationship is very special. I don't think you or I as outsiders have the right to have knowledge as to what is going on between those two parties.

MADAM CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. McGregor or Mr. Pullen, the certification, do you not think it would be fair to all employees that the person who is organizing a company should let them know by bulletin or a sign or something that they are there, that they should hold a meeting and do everything in their power to let all employees know, rather than the situation whereby they get 55 percent? Is it not necessary to contact anybody else?

MADAM CHAIRMAN: Mr. Pullen.

MR. J. PULLEN: Under those circumstances, Mr. Johnston, we very seldom organize any places if we could stick up a notice under those circumstances. The idea is to sign cards . . .

A MEMBER: Unfair labour practice.

MR. J. PULLEN: Pardon me?

A MEMBER: Unfair labour practice.

MR. J. PULLEN: We have to go out, we have to knock on doors, we have to contact employees of those companies and we have to do it in many many cases at their own residences and talk to them. If we're going to make it public, then we wouldn't be able to have an organizing drive do it.

MADAM CHAIRMAN: Mr. McGregor, did you have some comments?

MR. A. McGREGOR: Mr. Johnston, if your suggestion was don't you think it would be proper for us to be able to put up a poster at the workplace? - yes, certainly we would invite that if that's what your suggestion was, but really at law at the present time, we're not allowed to do so.

MADAM CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: I'm saying, as Mr. Pullen has said, that he goes out and he maybe calls at their homes, and he puts on a drive to certify or organize a business ad, but the way it is at the present time that once you have 55 percent you can apply for certification. There is nothing that says the other 45 percent of the employees of that company are not notified that this is happening.

MADAM CHAIRMAN: Do you have a question, Mr. Johnston?

MR. F. JOHNSTON: I said did you not believe that the other 45 percent, the minority in this case, should not have the right to know what is happening, to know that certification is going in?

MR. A. McGREGOR: In my experience efforts are made to sign up everyone.

MR. F. JONSTON: Mr. McGregor, I would suggest to you . . .

MADAM CHAIRMAN: Mr. Johnston, is this a question or are you debating?

MR. F. JOHNSTON: Would you just hold on, Mr. Chairman, I'll get to my question when I get time. We'll get along very well and get this over with if you just hold on.

MADAM CHAIRMAN: Mr. Johnston, the rules are that you do not debate, you ask questions. Do you have a question?

MR. F. JOHNSTON: Thank you. I just celebrated 15 years in the Legislature and I'll handle myself as well as I can, thank you, Mr. Chairman.

MADAM CHAIRMAN: Mr. Johnston, do you have a question?

MR. F. JOHNSTON: Mr. McGregor, what I'm saying is that . . .

MADAM CHAIRMAN: Mr. Johnston, do you have a question?

MR. F. JOHNSTON: What I'm saying, Mr. McGregor, is don't you believe that there should be some system that lets the other 45 percent of the employees know that there is 55 percent signed up and the certification is going in?

MR. A. McGREGOR: I would wish that bargaining agents could go onto premises and speak to all of the people, but that's not allowed under the law.

MR. F. JOHNSTON: Well, don't you believe that it should be for the benefit of all of the employees that they should all know what is happening and that the law should state that?

MR. A. McGREGOR: I have no problem with that, opening up the plants to the business agent to go in and explain everything to the employees. I have no problem with that.

MR. F. JOHNSTON: You have no problem with that. Then you would agree that the certification could not be put in until all of the employees are aware that it's happening?

MR. A. McGREGOR: No, I don't think one can go that far, because I get involved in a legal argument then with you, Mr. Johnston, saying I don't know what percentage of the electorate voted for you in your constituency. It may have been more than 50 percent, it may have been less than 50 percent, I don't know. But am I to conclude that everyone who didn't vote for you is against you? I can't conclude that.

MR. F. JOHNSTON: Everybody had a chance to vote and they all knew the next morning what everybody did.

MADAM CHAIRMAN: Mr. Johnston, after 15 years in the Legislature you should well know the rules in that case.

MR. F. JOHNSTON: That's right.

A MEMBER: Are you going to take that sitting down, Frank?

MR. F. JOHNSTON: After your short while, you'd learn to get along better without interruptions.

MADAM CHAIRMAN: Mr. Johnston, do you have more questions?

MR. F. JOHNSTON: No, I don't.

MADAM CHAIRMAN: Then thank you very much, Mr. McGregor and Mr. Pullen.

MR. A. McGREGOR: Thank you very much.

MADAM CHAIRMAN: Before committee rises, I'd like to announce that we'll continue the work of this committee at 10:00 a.m. tomorrow in this room.

A MEMBER: Today.

MADAM CHAIRMAN: Today. I'm sorry, today. Mr. Enns.

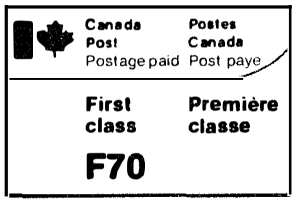
MR. H. ENNS: Madam Chairman, there have been people that have been with us all evening. I would just like to determine if there is anybody present that would like to make further presentation - indicate that the opposition is certainly prepared to hear them. If, on the other hand, they're prepared to return in the morning, that's fine.

MADAM CHAIRMAN: What is the will of the committee?

A MEMBER: Committee rise.

MADAM CHAIRMAN: Committee rise. We'll reconvene today at 10:00 a.m.

COMMITTEE ROSE AT: 1:15 a.m.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