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Third Session — Thirty-Second Legislature

of the

Legislative Assembly of Manitoba

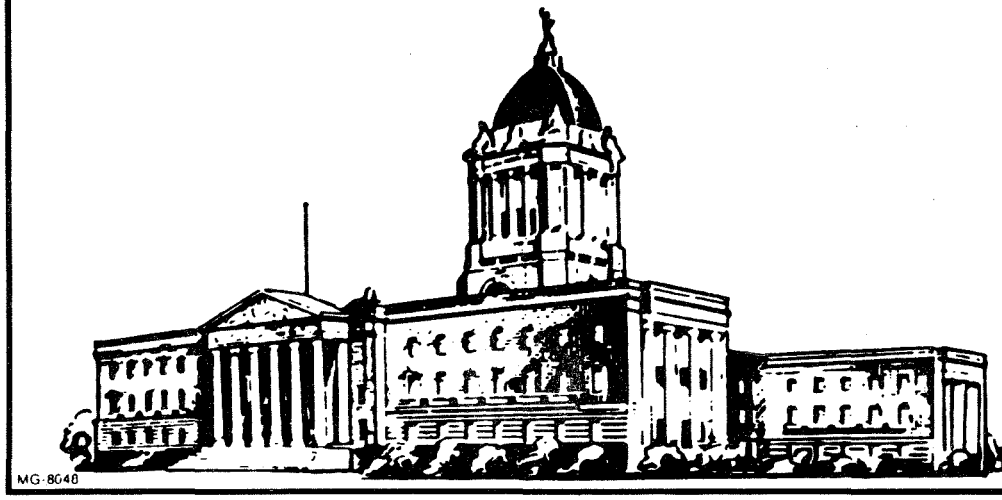
STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

33 Elizabeth II

Chairman
Ms. Myrna Phillips
Constituency of Wolseley



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Thursday, 28 June, 1984

TIME — 10:00 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Ms. M. Phillips

ATTENDANCE — 10 — QUORUM - 6

Members of the Committee present:

Hon. Mr. Cowan, Hon. Mdmes Dolin and Hemphill, Hon. Mr. Kostyra

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

WITNESSES: Representations were made with respect to Bill No. 22 as follows:

Mr. Ray Winston, Manitoba Fashion Institute Inc.

Mr. Daniel Quesnel, Private Citizen

Mr. David Newman, The Task Force of Employers Association

Mr. Andy Dawson, Manitoba Health Organizations Inc.

WRITTEN SUBMISSIONS:

Manitoba Association for Rights and Liberties

The Mining Association of Manitoba Inc.

MATTERS UNDER DISCUSSION:

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

* * * *

MADAM CHAIRMAN, Ms. M. Phillips: Seeing we have a quorum, we can reconvene the committee.

The first delegation on our list is Mr. Ray Winston of the Manitoba Fashion Institute.

MR. R. WINSTON: I do have copies, if they can be distributed.

MADAM CHAIRMAN: Yes, very good.

MR. R. WINSTON: Should I start, Madam Chairperson?

MADAM CHAIRMAN: Most certainly, Mr. Winston.

MR. R. WINSTON: Madam Chairman, Members of the Committee, the Manitoba Fashion Institute is the association of apparel manufacturers in Manitoba. We are close to 70 percent unionized and our labour relations, in the majority, have been reasonable and harmonious. The old act, with all its imperfections, served the labour relations community admirably, and held a reasonable semblance of balance between the two parties. The Department of Labour statistics show that in 1982 - and that figure of 6,000 should have been 16,000 that shows in your brief - 16,000 man days were lost to strikes of all types in Manitoba. This is one of the best records in Canada and if you were to remove the man days lost to one particular union and its affiliates, you would have near a perfect record. This does not sound as if fiddling is in order since there's no burning need.

The Problem

The amendments to the Labour Law, as presented in Bill 22 of the current Session, was more in the nature of a complete rewriting of the relevant acts rather than amending individual sections. The analysis of the bill poses a difficult problem for anyone who is not privy to exactly what changes were made. Complete sections were removed and individual subsections were either combined, discarded, altered or moved. This was compounded by sections of other acts, such as The Department of Labour Act and some of the regulations being moved into The Labour Relations Act with or without minor and major changes.

Therefore, our analysis will sometimes err in identifying a particular subsection as new when parts of it may have previously appeared in a different context in the existing act or regulations. Should this happen, we apologize in advance, and we are sure we will corrected by this committee.

We might suggest that, in the future, when amendments are made which cross several acts and make such drastic changes, that some type of guideline be issued with the bill to assist in this analysis. This is especially true when such short time periods elapse between introduction and law amendments as in the present bill.

The announcement in the Throne Speech and other speeches made by elected officials describes the changes as minor and in the nature of housekeeping. We must however state that, in our opinion, the act has been altered so extensively that we fear the dangers to this province, inherent in these changes, have not been properly anticipated or considered.

The amendments create conditions which will suppress the harmony and reasonableness which characterized labour relations in this province.

These amendments alter, completely, the equality between management and labour which existed to date.

These amendments create, not an independent board, but a board with broad, discretionary and absolute powers. These powers lack the balance of a suitable precedence of jurisprudence which is common to a court with similar powers.

These amendments add uncertainty in their broadness and difficulty of definition. Uncertainty is the one most prevalent factor which deters investment and expansion.

These amendments stifle collective bargaining and bind it in a strait jacket of compulsory yet ambiguous clauses.

The Analysis

We have examined the legislation as thoroughly as possible, within the time frame available and before proceeding to an item by item analysis, we will highlight some of the amendments under their general thrust.

Certification and Decertification

There is no longer a fee for signing a union membership card or any necessity to have paid dues - 36(2).

There is no longer a prohibition against the union for using undue influence and coercion is no longer an unfair labour practice - 15(d).

The union is no longer - and the word, "prohibitive" was used here - that's probably not quite true. The board does not necessarily have to take it into account when they decide on the first contract and that's more of what should have been said, not have to take into account bad faith when they talk about first contracts - 75.1(6)

The time limit before allowing decertification has been increased - 10(4)

Individuals signing union cards could have less than a few hours in which to change their minds - 36(1)

The employees are not allowed to vote in a certificate application, if unfair labour practice is found, and are automatically certified - 32

Powers of the Board and Arbitrators:

Interim orders for a wide range of penalties may be imposed before guilt is established - 22

The board can ignore an existing collective agreement - 22

The board can assess penalties over and above previous court settlements - 22

The board has no liability for any harm it may cause and is no longer required to have acted in good faith and without negligence - 95 & 113

The recourse available to the courts is extremely limited and requires reapplication to the board in all instances - 113.3, 121.3 & 109.2(f)

Causes of Uncertainty:

The definition of strike related conduct defies accurate description and will be extremely subjective in its interpretation - 1(v.1)

The lack of definition of dependent contractor and the definition of an employee make it difficult to know, in advance, you vulnerability - 1(1)&(k)

The definiton of professional strikebreaker is so all inclusive it could even mean your legal counsel - 1(t.1)

The number of unfair labour practices applicable to employers have multiplied while those applicable to union officials have shrunk, and there are a few examples there.

There are too many mandatory clauses for inclusion in collective agreements which will increase the number of grievances and arbitration, and there are the numbers in there.

There has been no action taken, whatsoever, to return freedom of speech to managers. Actually there are new prohibitions. - 6.2 (of the existing act)

Detailed Analysis:

We will now proceed to examine the amendments in more detail. We have ignored some of the amendments which merely replaced an existing portion of the act and those which were considered to have minimal impact on the present legislation.

MADAM CHAIRMAN: Mr. Winston, may I interrupt you just for a moment. I should have reminded you at the very beginning, and also the other members of the public, that last night we passed a motion to limit presentations to one hour. I'm not sure whether you were here and aware of that.

MR. R. WINSTON: Yes, I am, thank you, Madam Chairman.

MADAM CHAIRMAN: It was the presentations and the questions.

Continue.

MR. R. WINSTON: Bill 22, Clause 1(a) and (a.1)

The definition of an arbitration board has been changed as a body which settles differences to one which settles differences concerning the meaning, application or alleged violation of the collective agreement. A definition of an arbitrator has been added and is similar.

My comments are along the side: may not be a startling difference but a legal opinion would probably clarify that.

Clause 1(b) The definition of Labour Board no longer states, "established under the Department of Labour Act." - that doesn't sound very critical.

Clause 1(c) Bargaining agent definition is clarified and expanded - that's no serious change.

Clause 1 (c.1) They have added a definition of business which is completely all encompassing - this is part of the thrust to allow no exemptions from unionization and to minimize the escape of contractors.

Clause 1(d) Throughout the amendments they substitute the word "cancelled" for "revoked" when talking about certification - now I'm not sure of the legal difference, but it doesn't sound serious.

Clause 1(e) Changed definition of collective agreement to include first agreements imposed by the board - that to us was a language clarification.

Clause 1(i) They have removed the definition of dependent contractor. This thrust to allow the board arbitrary powers to include dependent contractors in agreement will be a continuing source of trouble.

Cl. 1(k) This removes the words dependent contractor and substitutes power for the board to designate anyone they wish as an employee. Same problem as above.

Cl. 1(n) The concept of grievance mediator is introduced in place of examiner. A grievance mediator is not dangerous in itself but under 113.5 could change the grievance and arbitration process and increase costs.

Cl. 1(q) The definition of mediator now refers to a new Clause 83 instead of the old Clause 60. This enables the Minister to appoint a mediator without both sides requesting it.

Cl. 1(t.1) The definition of professional strikebreaker is added and is extremely wide in its definition. This is so wide open that it could, in the extreme, include legal counsel.

Cl. 1(u) They have deleted this definition which applies to regulations since it is assumed there will be none as they might restrict the power of the board and the board will now define their own regulations.

Cl. 1(u) This new definition is broad and all-encompassing definition of what constitutes a sale. It will make it almost impossible to deter successor rights by a union if business is disposed of even in bankruptcy.

Cl. 1(v.1) A new definition called strike-related misconduct and includes incitement, intimidation, coercion, provocation, infiltration and surveillance. I wish I was a laywer. This one would keep me busy forever. There is no way of measuring its full potential for trouble.

Subsection 10(4) This changes the term of the clause prohibiting changes in your collective agreement after termination from 6 months to 12 months. It gives the union lots of time to pressure you without calling a strike. It also delays decertification.

Section 10(1) A new clause which forbids you from hiring people to replace workers during a strike for longer than the length of the strike. You may not even threaten to do do. It strengthens the union position in calling a strike and adds another unfair labour practice.

A new section which defines work as any work before and during the strike, even if it is new and different work. That's 11.3 and that's similar to above.

11.1(1) A new section which defines the taking back of people after a strike if no collective agreement is reached. Terms are similar to 11(1) and we don't feel that's especially serious.

11.1(2) Defines the strike or lockout, ends with written notice. Now, we put down that's in the nature of housekeeping, but every day you're a day older and learn a little more, and after being here yesterday I think we would have to take another look at that one. I refer specifically to points made by Mr. Green on that one.

11.2(1) Prohibits the hiring of professional strikebreakers according to definition 1.(t.1). This becomes an unfair labour practice. Same comments as 1(t)(1).

2(3). Makes strike related misconduct and unfair labour practice. See comments under 1(v)(1).

14(b). This amends the depriving of a person's rights under the Act and changes it to inducing them to refrain from exercising them. To some extent this is semantics, but coupled with a board which has arbitrary power, could cause a problem in many circumstances.

Section 14.1. An new section requiring the employer to allow employees locked out or on strike to continue paying premiums on benefits normally maintained by the employer and becomes an unfair labour practice. Work related benefits we do not believe should be used to encourage a strike.

Cl. 15(d). This amendment removes the words "threat of dismissal - loss of employement - any other threat - undue influence" in place of these actions it introduces fraud. These were penalties previously on the union. It also does not change the phrase - "deprive any person of his rights" to "refrain from exercising them" as was done for management in Cl. 14(b). Not only does this give the union organizer more leeway, it indicates in the strongest terms the differnt treatment of management and union officials. If nothing else, it's an irritant.

Section 16. This amendment compels a union official to do his job in representing his people. Does not have any real, except to lead to grievances being processed, which even the union may have thought unreasonable. However, it does serve as a rational for the inclusion of just cause and fairness clauses, included later, and allows the drafters of the legislation to appear more even-handed.

Section 17.1(1) and 17.1(9). Outlines the union's right of access to consult with their members and can be imposed if not negotiated. This does not seriously affect a reasonable employer or a reasonable union official. It does, however, give you a little less bargaining power and becomes yet another new unfair labour practice.

Subsection 20(1). This clause was amended to add the prohibition of asking if anyone has exercised any of their rights and making this an unfair labour practice. The main problem with this is that casual conversation could get you into trouble inadvertantly. You being to feel gagged and harried.

Sections 20.1 and 20.4. Makes it an unfair labour practice if you do not comply with 53, 54, 58, 59, 90 and 68. Some of these may have been unfair labour practices before but the list is beginning to become endless.

Section 20.3(2). Makes a certificate or written statement by a conciliation officer (59(3)), mediator or conciliation board (90) prima facie proof of failure to comply with requirements of these clauses. We've made no comment on this.

Section 20.4. It is an unfair labour practice to fail to remit union dues as per 68(1). We know that was one before, but they sure seem to mount up.

Section 21.(1) to (5). The old act outlines the duty of an investigator. The amendments allow the appointment of a representative of the board. The main difference is that the 6 month deadline is removed and the board will decide if there has been "undue delay" in filing the coplaint. Increases discretionary power of the board to hear unfair labour practices no matter how long ago they were alleged to have occurred.

Section 22(1) to (6). The changes in this section are extreme. They outline the powers of the board in unfair labour practice hearings. In outward appearance they do not seem different from before, but the slight changes made are very profound and hit the heart of the collective bargaining process. The board may now:

Issue an interim order for almost any penalty, even though a decision is not yet rendered; Ignore completely your collective agreement; issue penalties despite, or on top of, a private court case settlement. Previously, a complainant could not do both.

This section is absolutely insidious and unconscionable. There must be some constitutional guarantees and, surely, agreements have some standing. The arbitrary powers granted to the board herein, if misused, will set back labour relations by at least a century.

Sections 24(1) & (2) - They have deleted this clause in the old act (16) and replaced it here, but it is no longer an unfair labour practice on the union. They are not supposed to disrupt your workplace, but there is no penalty if they do.

The continuing sage of adding unfair labour practices to employers and removing them from union officials.

Section 26(1) - This amendment adds the proviso that the 12-month period for another union to obtain

certification applies only after the end of any court proceedings.

Minor, but gives the certified bargaining agent extra time in some cases.

Section 26(6) - This amendment defines the composition of a unit during strike or lockout for the purpose of another union attempting to obtain certification.

It allows the board to determine who can vote.

Section 27(2) - Has changed the old (46(2)) to leave out parties who may be affected by the new agreement and the words referring to their counsel.

Could possibly keep people interested in a new agreement from intervening. Probably not serious.

Secton 30(2) - They have amended the old (29(2)) so that the board is not advised to take steps to determine the wishes of the employees as to whom they want as a bargaining agent.

This may not be a major item, but it illustrates the contempt for individual rights versus union rights shown throughout the proposed amendments.

Section 30(4) - This is a new right to issue a certificate and allow collective bargaining to commence even though composition of the unit is outstanding.

This cuts down on the waiting period for the union as against previous legislation.

Section 30(5) - The amendments are not so kind to decertification as, besides increasing a 6-month wait to 12 months, they also start the clock on decertification from final certification, not the interim certification.

Another minor example of dual treatment depending on who the government wishes to favour.

Section 31(1) - This amendment changes the percentages for automatic certification or holding a vote.

Not of particular significance and not particularly unfair to anyone.

Section 32 - This amendment can allow certification regardless of the vote of employees if it is satisfied the employer has committed an unfair labour practice which makes it difficult to determine the true wishes of the employees.

While we do not excuse unfair labour practice, this does deprive the employees of their individual rights. With the number of new unfair labour practices proposed, great care and caution will be required.

Section 34 - The amendment outlines the treatment of so-called employer dominated unions. The old act, under 34(3) at least gave the board some guidelines as to what constitutes employer domination. The amendment does not.

Makes it a little more difficult to work with the union as an ally rather than an adversary.

Section 36(1) A membership card, signed before the date of filing an application for certification, is deemed conclusive evidence of the employee's wish to have the union as a bargaining agent.

There is no allowance for the employee to change his mind.

Section 36(2) The old clause defines minimum membership requirements for purposes of certification, or cancellation of certification. The amendments only define it for certification. The old act, (49(2)) also included the proviso that he must have paid at least one month's dues, if he was a member more than six months, or at least $1 initiation fee if less than six months.

The changes really make being a union member have very little monetary value and make it easier to persuade people to sign a piece of paper at no immediate cost to them.

Section 36(4) This amendment allows that if the board finds, in the solicitation of membership for certificaton, intimidation, fraud, or other similar irregularities by the union, it may dismiss the application or order a vote to determine the wishes of the employees.

This won't help the offended individual if the majority still want the union. This differs from the treatment of employers who are guilty of similar offences.

Section 37(1) to (3). The board can assign a representative to determine appropriateness, the employer's operation and jurisdiction and his report becomes prima facie proof although he is not compellable witness.

It makes it extremely difficult to question any of his findings.

38(1) and (2) Gives the employer no standing before the board on certification matters unless requested by the board. The old act at least enabled him to question the appropriateness of the unit.

A further erosion of employer rights.

Section 43 This amendment to cancellation of certification for fraud leaves out unfair labour practice as in old clause 43, and also adds other provisos the board has to satisfy in order to cancel the certification.

Again another change that gives - I know I said small and little but I've changed my mind since this was written - more protection to unions using unfair tactics. When you combine it with the removal of 16, it can be reasonably serious.

Section 44 The amendments give the bargaining agent 12 months, instead of 9 months, to exercise his bargaining rights before decertification. It also tacks on time lost in court. They also seem to have repealed the old Section 42 which calls for decertification if no contract was reached within two years

Just another small arrow which all point in the same direction.

Section 46(1) all the way through to 50(3). The old act, on mergers and sales of business, (36-36.1-65-65.1) was reasonably predictable and clear if you change the status of your business or group of employees. The new amendments give the board very broad discretionary powers and it will be extremely difficult to know what effect a merger or sale might have on your business or your present contract.

Will add to the uncertainty of expansion or investment.

Section 54(2) and (2.1) The old clause 54(2) deemed that notice to bargain collectively by one party was notice of termination of the collective agreement. The new act inserts the word "not" and thus changes the meaning except in the case of lockout or strike.

Changes the meaning of your collective agreement without the business community having prior notice.

Section 58(1) to (4) The act now gives you a time limit to comply with the information required by the union and now obliges the employer to calculate and supply the cost of all benefits.

Another slice out of management rights in collecive bargaining and another part of the union organizer's job you have to do for him. You will also be handicapped by the release of confidential material.

Section 59 to 60 The clauses referring to conciliation officers have been consolidated.

There is a bit of a cloudy area as to who is paying for the conciliation officer but I guess that can be defined.

Section 61 to 65 The amendment now makes a secret ballot mandatory for contract ratification but not government supervised. Members of the union only have 15 days to complain about irregularities in the balloting and, if they do not, the ballot is final. Management, of course, is prohibited from advising them of their rights. The old act gave you the right to request your agreement not be made public. This is now the prerogative of the board although you may still make a request.

At least a token is extended in the requirement for a secret ballot.

Sections 68(3) and 68.1(b). A religious objector must now apply to the board for exemption from union dues. They have also tightened up the definition of conscientious objector in 68.1(b).

Not a great hardship on management, but individual rights suffer to some extent.

Section 69.1(1) to 69.1(3) New enforced provision in every agreement with regard to "just cause." Also to exempt probationary employees you must so state in your agreement.

Does not seem to be unreasonable on the surface. However, since it is such an arbitrary term, it will, of necessity, add a whole new series of grievances. The 69.1(3) also gives the union a new bargaining tool.

Section 69.2(1) to 69.2(3) The inclusion of compulsory wording with regard to "fairness."

Same comment as above. Incidentally, does the union have to have just cause to discipline its members or act with fairness to employers? But just to give you a bit of an example. I've been trying to think, how can I express such a motherhood term as fairness, how will it hurt anyone. And then lo and behold in the paper two days ago, Finance Minister, Vic Schroeder, came to my rescue. He was being interviewed on the difference between the 3 percent he was talking about with the MGEA and the 4.2 percent they wanted. The Minister said the increased term "fair" yesterday by Manitoba Government Employees Association President, Gary Doer, may be too rich for a province with a heavy deficit. We all have our definition of fair, Schroeder said in an interview. Fair depends on what you can afford.

Section 69.3(1) to 69.3(3) The inclusion of a compulsory clause in your agreement to meet at least every two months to hold discussions with your union.

A prime example of Big Brother guiding the misguided. Frankly a good employer or union does not need to be told, and bad ones will only pay lip service.

Section 75.1(1) to 75.1(8) This changes some of the legislation with regard to first agreement by deleting any role by the Minister in not having a first agreement imposed and makes it mandatory, unless an agreement is concluded voluntarily within a reasonable time. They also delete the board's obligation to consider good faith bargaining, by either party, in its deliberations.

Another obligation removed from the union which can stonewall if they prefer an imposed first agreement.

Section 81(1) to 81(6) This section implies that the bargaining agent cannot call a strike if the members vote against it, and does not have to call a strike if the members vote for one. The old act gave him more leeway to call a strike at his discretion. The amendment also puts a time limit on application to the board by a member questioning the voting procedure.

This gives more weight to members who do not want a strike, but it limits the ability of people to complain if they do not know their rights. By that, I mean if they do not know there's a 15-day time limit.

Section 95(3) This amendment limits liability for damage and is really being made to a section of The Department of Labour Act which is moved into The Labour Relations Act. This is done in the case of all boards or people appointed as mediators, board members or conciliators. The clause which is removed, however, was "in good faith and without negligence."

An admonition to act in good faith seems to be lacking for some reason.

Section 109(1), (2) and (4) This amendment seems to be an expansion of the discretionary power of the arbitrators and now allows the imposition of interest.

Only time can tell how these powers will be used and whether labour harmony will be served.

Section 113(4) Chamging arbitrators could cause some problems with the perception of fairness and costs

Surely the threat of being dropped from the list would cause arbitrators to be more timely.

113.3 (1) to (5) These amendments deal with the legality and challenge to an arbitrator's decision. The potential ground for challenge are limited and you must now give the board notice of a court application.

The courts will become less and less involved in decisions, regardless of their fairness.

Section 113.4 This amendemnt introduces the concept of grievance mediator, appointed by Minister, if both parties apply. To introduce the right of one party only to apply a portion of the fee will be paid by the Crown if you include this in your contract.

This is the carrot. (see next subsection)

Section 113.5(1) to 113.5(14) This is a new expedited grievance and arbitration process. It takes precedence over your contract or other procedures and can be initiated by either party.

This is the stick, of course. The additional cost is difficult to assess. Some of the provisions may have some merit but are extremely restrictive.

Section 113.6 This amendment removes any liability for harm caused by the grievance mediator without requiring good faith on his part.

No comment.

Section 119(1) to 119(15) These amendments outline the composition and duties of the Labour Board. The main changes are the length of term. The rights of a person to finish a procedure, even if removed for cause, seems to be new.

May we be blessed with upright honest and democratic individuals.

Section 120(1) to (8); 121(1) to (11); 121.1(1) to (3); 121.2(1) to (5) Same as above but note should be taken that the board is not bound by its own guidelines.

I have the same prayer for that.

Section 121.3(1) to (9) The relationship of the board and the courts are outlined. The board may now be part of its review by the courts.

A very thorough job of making the courts almost inaccessible.

Section 121.4(1) to (3) Still on the powers of the board and their liabilities.

One would wish they had been asked to act in good faith.

AMENDMENTS TO DEPARTMENT OF LABOUR ACT

Sections 06.1(1) and (2) This is a new section to the act which enables the Minster to disperse monies for labour relations education and research to various groups.

Seems to be reasonable and will depend on how much, and to whom, the money is eventually dispersed and how it is used.

Conclusions and Some Recommendations:

The amendments, as they now stand, will not improve labour relations but will result in much unnecessary conflict and confrontation. Now that the legislation is tabled we should delay passage of ths bill until there is reasonable agreement between labour, management and to government as to which portions will increase labour harmony and which portions require changes, removal or detailed examination.

The Minister will, then, have accomplished her stated purpose - a wholesome, balanced and peaceful climate in which contract negotiations can be conducted by two equals. Also union organization could be conducted with due regard to the rights of the individual.

Minimal Changes:

We would wish to leave this committee with a list of the more important changes which we believe are required to give Bill 22 even minimal acceptance by management.

We cannot overemphasize the concern we have for that hasty passage, when proclamation is not required before 1985, will do a disservice to all Manitobans. Once the bill is passed it becomes a difficult and lengthy process to rectify its errors. Surely we do not wish to risk our job creation and investment potential for want of a little more patience.

Amendment number and required change:

1(1)&(k) The definition of an independent contractor should be reinstated as in the present act.

1(c.1)&(u) The definition of a business and sale are too all encompassing and create massive uncertainty.

1(t.1) Change the definition of profeslonal strikebreaker to be more narrowly defined. At the very least remove the words "one of" and "in the opinion of the board."

1(v.1) Strike related misconduct is extremely broad and becomes extremely arbitrary with words such as provocation and surveillance. I mean I don't know whether I'm supposed to put my hands over my eyes if somebody throws a bomb in my shop; I mean, what is surveillance?

10(4) The six-month time period should be left as it is in the present act.

14.1 It is difficult to understand why work related benefits should be provided after a deliberate decision to use the strike weapon. This would be similar to not allowing picketing. There may, of course, be some exceptions which might merit discussion.

15(d) Reinstate the words "threat of dismissal - loss of employment - any other threat - undue influence." If the words "deprive any person of his rights" are to be left in this subsection then this phrase in 20(1) and 14(b) which refers to employers should also be unchanged.

20(1) Change this amendment and 14(b) to reflect what is done for the union manager.

21(1) Retain the six-month deadline in the present act, rather than leave it open as to undue delay in the opinion of the board. I understand the union asked for that, too.

22 This section is so bad, in our opinion, that it requires a great deal of rewriting and we stated our main objections in the body of our brief.

22 This is an unfair labour practice in the present act (16) and deserves to continue as one.

32 There should not be automatic certification, as called for in this section, since this would trample on the individual rights of every employee.

36 This section should require some time period for the employees to change their mind and some obligation to have paid dues or an initiation fee. Also there should be some rational given for 36(4) which calls for a vote when the same treatment is not used in Section 32.

38 This section completely eliminates the employer from any meaningful role in the certification process. Under the present act he is, at least, able to question the composition of the unit. At the very least, this right should be restored.

43 This amendment should have the words "unfair labour practice" reinstated and remove 43(d)(i).

54(2)(b) Remove "not" in the second last sentence of this subsection as it changes completely the meaning of the old clause.

58(1)(c) This amendment should be dropped. It breaches confidentiality and your competition will come by the information very quickly.

69.1(1)(2) This provision should be dropped. It will lead to a multitude of grievances and arbitrations since it is completely subjective and can be used as a constant threat by someone who has no other grounds to harass an employer.

69.2(1)(2) Same as above. Neither of these admonitions are placed upon the union.

75.1 This subsection of the act requires a great deal of rethinking. There is no discretionary screen any more and the parties are not required to have bargained in good faith.

95(3) In this and every clause referring to the liability of board members, conciliators, etc., the phrase "in good faith and without negligence" must be reinstated as it was in The Department of Labour Act. Surely this was merely a slip up by the drafters of the act.

113(4) This could pose a problem if its use was required very often. Surely the threat of dropping that arbitrator from the list should be incentive enough for the arbitrator to be more timely.

A general comment is that all the clauses which make the use of appeal to the courts difficult should be re-examined.

We respectfully submit this brief to the Law Amendments Committee with the expectation that our concerns will be addressed in their deliberations.

If I might add a few more words. The amendments and the act as it now stands, or will stand, in our opinion is so patently unfair - outside of anything else - it's just so one-sided that I think it will cause tremendous, tremendous problems. We sat down with Marva Smith, some type of agreements, some type of concessions were being made, we were talking. I can't tell what she

put in her report, it has not been released, but I would assume she must have had some rationale for some of the things that are being done or some of the points that were made to her by management, that were made to her by labour; but surely we can sit down and come to some agreement so that amendments of this nature are not necessary and that we don't start a pendulum action in this province.

I mean, nothing is forever, and if you make somebody feel so abused, when their chance comes they're going to go the other way and further and then you're really going to have thing happen. The old act - we didn't think it was perfect - but it sat in this province through an administration which many people say are pro business. We didn't go to them and ask them to make tremendous changes and put everything in our favour, we didn't think it was necessary. It so happens that we deal with a union - at least the one I deal with - we've always been able to sit down and talk. Nobody has to tell us to meet, we're on the phone to each other weekly.

I just think that there has to be a better way than what's done here. That's all I have to say.

MADAM CHAIRMAN: Thank you, Mr. Winston.

Mr. Filmon, you have a question?

MR. G. FILMON: Thank you, Madam Chairperson. Last evening, Mr. Winston, the President of the Manitoba Federation of Labour said that, although he and his association had been in favour of The Labour Relations Act when it was passed in 1972, that many changes had taken place in Manitoba since that time that had transferred much greater powers to employers in this province, and this act was needed to bring back the balance of powers, rights and responsibilities between labour and employers in this province. Are you aware of any changes that have taken place since 1972 that threw that balance right out of whack and would require all these changes now to take place?

MADAM CHAIRMAN: Mr. Winston.

MR. R. WINSTON: If they did, we're certainly not aware of them. We certainly didn't agree with everything in the old act. To be honest, we felt there was a little imbalance in it, but was working, okay, and certainly we didn't ask for or are aware of any major changes that have occurred.

MR. G. FILMON: I wonder if Mr. Winston would say, when he thought that the old act was a little out of balance, in whose favour.

MR. R. WINSTON: I think that goes without saying who I would think it was out of balance for.

MR. G. FILMON: I assume that you feel then - and I don't want to put words in Mr. Winston's mouth, but just in case anybody who's reading Hansard five years from now wants to get the sense of it, just for bedtime reading - you're suggesting that the old act, if anything, is slightly out of balance in favour of labour. Is that what you're suggesting?

MR. R. WINSTON: I would say, with all its warts, I've been able to live with it.

MR. G. FILMON: I'm not trying to put words in your mouth because it seems to me that the best of all worlds is when neither side is really satisfied.

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

MR. G. FILMON: Madam Chairman, I really don't want to get into a confrontation with you; that's not my desire. I would appreciate it if you'd indulge me with just a little bit of preamble before I get into my question.

MADAM CHAIRMAN: I'll indulge you with preamble as long as you're not entering into debate.

MR. R. WINSTON: I think I know what you're trying to say.

MR. G. FILMON: I'm glad you do, Mr. Winston. I'm not sure what I was trying to say there. It's been a long night and an early morning, but you have indicated in your brief, Mr. Winston, that you believe that the climate for labour relations is relatively harmonious, that there have been few work stoppages and that, in fact, if you eliminate the work stoppages attributable to one union and its affiliate that, in fact, you have almost a perfect record in this province over the past few years.

Having said that, I'm not sure if you're aware that the President of the Manitoba Federation of Labour last evening said that he, too, thought that the climate for labour relations had been relatively good up until the employer groups ran full-page ads this week, and that has totally destroyed the harmonious climate. That being the case, what do you see as the solution, Mr. Winston?

MR. R. WINSTON: Well, I don't know if there's a solution in the sense . . . I can only say that when people are pushed far enough, eventually they react. I don't know what other defense they have.

MR. G. FILMON: So, in other words, you were reacting to this specific legislation and if, indeed, it's this specific legislation that caused those full-page ads, then it's the legislation that has destroyed the harmonious relations?

MR. R. WINSTON: I find, surprisingly enough, I have to agree with you.

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

MADAM CHAIRMAN: Mr. Ashton.

MR. S. ASHTON: Just a couple of brief questions. I take it from your brief that when you talk about the way the system is functioning and there being relative harmony, you're referring to strike statistics. Is that basically what you're saying.

MR. R. WINSTON: That's, I guess, part of it but, like everything else, you've got to be slightly subjective and

we do work with a union and we haven't found anything we can't solve by sitting down at the table yet.

MR. S. ASHTON: The reason I'm asking that is I'm wondering if you perceive any problems with any other aspects of collective bargaining. For example, the statistics show that grievances can take between three months, up to over a year - I think, on average, 300 days to reach resolution - and one of the aspects of the act is to attempt to reduce that through expedited arbitration. I wonder if you see a problem with that and whether you do support expedited arbitration.

MR. R. WINSTON: We haven't argued too strenuously with anything that would be fair. If something really appears fair, and can be worked out, and I think to really know you have to have the union sit down and management sit down and government sit down and talk about it. That's consultation and arriving at a solution. Then if out of that comes an act that everybody is agreed on, or a clause, and it alleviates damage which is hurting one party and not particularly helping another, there's nothing wrong with that.

MADAM CHAIRMAN: Mr. Ashton.

MR. S. ASHTON: The reason I mentioned the area of arbitration and proving the arbitration systems; I understand that was an area where both management and labour did agree, at least in their original submissions. I'm wondering if you support the concept of expedited arbitration included in this bill?

MR. R. WINSTON: I would have to go back and see what I said about any particular clause you're referring to and I reserve that right, but the basic concept of not keeping people waiting - as long as it's done in a fair way and if it is done in a fair way here I'll be glad to sit down and discuss it with you, and I'll have to look at the exact clauses carefully - but if it's fair, there's nothing wrong with it. That's my definition of fair. Not what's in the clause that has to go in my contract.

HON. M.B. DOLIN: Thank you.

Mr. Winston, I'd like to compliment you and your colleagues first of all, on a very thorough brief. I'm impressed with the depth to which you did your study and your review. I'm pleased to see this, and it will take me some time to go back and match this against the bill.

MR. R. WINSTON: I'm sorry I can't hear you.

HON. M.B. DOLIN: I said, it will take me a little while to go back and match this against the bill to see exactly what you mean in each of these cases. There are a few though, that I would like to ask you about. Just towards the end, where you make your recommendations, I would like to deal just with that.

To Section 75(1). I wonder if you are aware that conciliation is now required before a first contract can proceed?

MR. R. WINSTON: Yes, I believe that is in the bill.

MS. M.B. DOLIN: Yes, it is. I just wondered if you were aware of it because it affects the bargaining in good faith.

I'm also wondering if you would define for me, in Section 3 above that - 58(1)(c) - you used the phrase, "your competition." Would you define for me who you mean by that?

MR. R. WINSTON: Okay. I can only go back to our own case where we bargain as an association representing 18 or 19 firms with one particular union and local. If somebody who's in that group, let's say somebody who becomes unionized and has to come into that group, now he's in a group with his competitors and when he gives that kind of information to the union, I defy you to see that his competitors don't find out about it.

HON. M.B. DOLIN: Is that information used in bargaining? I'm trying to get at the point you're making. I think I understand it. I'm not sure.

MR. R. WINSTON: If it's the one I'm thinking of. I'm just looking at this, I'm not looking at the clause. Is that not the one that refers to giving you the exact cost of benefits and that kind of thing?

HON. M.B. DOLIN: Yes, as I understand, what you're getting here. It's the release of information in regard to the benefits package that is part of the negotiated wage of the employees.

MR. R. WINSTON: Yes. If somebody in our case may not apply as much, but it would apply to a single - the people who are organized singly - where their competitors organized under one contract, and another competitor under another contract. You're giving up confidential information that becomes public knowledge.

HON. M.B. DOLIN: Thank you.

MADAM CHAIRMAN: Seeing there are no futher questions, Mr. Winston, thank you very much for coming.

MR. R. WINSTON: Thank you.

MADAM CHAIRMAN: Mr. Daniel Quesnel.

MR. D. QUESNEL: You'll have to excuse me. This is my first performance or appearance before such a committee. I have a very brief presentation.

MADAM CHAIRMAN: Do you have copies, Mr. Quesnel for the committee members?

MR. D. QUESNEL: I have a few, yes.

MADAM CHAIRMAN: Fine.

MR. D. QUESNEL: I am nervous, so you'll please bear with me.

HON. M.B. DOLIN: So are we.

MADAM CHAIRMAN: Thank you.

MR. D. QUESNEL: I'd like to introduce myself. I'm a personnel and industrial relations practitioner in the

province with about eight-and-a-half years experience; three of which have been as an independant consultant.

As such, the proposed changes in Bill 22 are frightening to me. The changes in total are in my opinion designed to do the following:

1) Make the process of collective bargaining more complex. An example is 17(1)(1), 54(2).
2) To promote confrontation between employer and organized labour. An example is Cl. 1 V.1. The word "surveylance" sounds like we're in a combat zone.
3) Promote an inbalance of power between employers and organized labour. For example, 24(2) and 43.
4) Give inappropriate authority to arbitrators. 109(2)(f). The power to go outside the collective agreement and the law.

The examples given above, are not to be taken in isolation as attempts to look at the legislation, but they're chosen almost at random to illustrate my concerns. Throughout the proposed changes, the four general areas prevail.

I personally see nothing in the changes that would:

1)Promote positive industrial relations on issues of joint concern of employees, employee representatives and employers, or

2)protect individual employees in ensuring a fair hearing of their wishes, free from inappropriate persuasion.

I do see the changes in the legislation as creating more legal work for companies and unions and will create jobs for lawyers. I also see these changes creating an uncertain labour climate which is not conducive to the promotion of new enterprise and the jobs they bring. It is difficult enough to understand, work within and comply with the current legislation regarding labour relations.

In closing, we in Manitoba have the lowest unemployment rate in Canada at this point in time. 7.5 percent seasonally adjusted. Also at this point, the lowest time ratio lost due to strikes and lockouts.

In the 1983 period we ranked the third best in Canada. When again I look at the proposed changes, I feel very strongly that if the system isn't broken, why fix it? If these changes take place, again in my opinion, our relative positions of unemployment and lost man days, will change for the worse.

MADAM CHAIRMAN: Thank you, Mr. Quesnel. Are there questions? Thank you very much for coming this morning, Mr. Quesnel.

MR. D. QUESNEL: Thank you.

MADAM CHAIRMAN: Mr. David Newman, respresenting the Task Force of the Employers' Association.

MR. D. NEWMAN: Thank you for giving me an opportunity to speak. I have quite a bit to say and I hope you'll bear with me. I intend, not only . . .

MADAM CHAIRMAN: Excuse me, Mr. Newman. Are you aware that we passed a motion for a total hour limit for the presentations? I'm not sure if you were here when we passed that motion.

MR. D. NEWMAN: I'll go as far as I can and then I'll seek your indulgence, if you're still interested. If you're not, I'll have a speed up at the end, like you're doing with your Legislative Session now.

I think we have to go back really to the beginning of the role of management because we tend to lose track of that. Management is of course interested in the security and well-being of its employees, but no matter how deep the desire of the employer to improve the conditions of his employees, he cannot escape the proposition that wages and other benefits or cost of production and it is his duty, in one way or another, to lower or at least maintain those costs.

The employer must consider the interests of shareholders. If he does not, he finds capital only with difficulty and higher charges. The government itself knows this as an employer. He must consider the interests of the community. A high cost plant will ultimately have to be closed and he is the guardian of the consumer. In bargaining, management represents the interests of consumers. The lower the costs of production, the lower competition forces prices or the higher it forces quality.

Our economic system relies on management to control costs. If management fails in its duty, that it does not keep costs at a level to enable the business to prosper and grow, then it fails utterly in its responsibilities to all - to customers, to the public, to its shareholders, and to its employees. Employee and union relations is only one and perhaps not the most important of the decisional situations which face management as it goes about its overall task of assuring the survival and growth of the business or this province, and you know that because you're employers.

It has been said that management must strike a bargain, not merely with labour, but with many other elements in the business which make claim upon it. These elements are customers, the government, the people who supply capital, and suppliers. Each of these elements has its own representative in the management, just as the demand of the union and the employees are brought into focus through the director of employee relations. The claims of the customers are affected by the sales manager, the interest of suppliers by the purchasing department, and the shareholders and creditors have their representative in the person of the treasurer or the company controller.

Competition between these departments is a well-known phenomemon in business. The board of directors and chief executive must take the views of all into account and strike a balance or a bargain between them. It is their function to satisfy all as best they can. Many of these decisions have to be made on the basis of factors which cannot be anticipated or controlled.

A new process may be entering the market which will outmode existing machinery and methods and perhaps the skills of workers acquired in practice in the plant for many years. Its survival dictates its adoption at whatever the cost. A competitor may develop a dramatic improvement in product. Patent rights or tax complications may demand a course of action which is vital to the business, but which the workers can only view as damaging to their security. Frequently decision turns on information which cannot be disclosed or explained. Perhaps it must be kept secret or so technical that even if disclosed it cannot

be readily understood. A decision may depend on an educated guess, not easily justifiable, but nevertheless a basis for expenditure of a large sum of money with a possibility that it may be lost. Sometimes these decisions must be made at the last moment and no time for explanation remains, yet delay would be fatal.

Since it is management alone which must account for these decisions in the marketplace, the responsibility for making them cannot be delegated or shared, just throw them into the area of joint determination, may even be an abdication of the function of management. Appeasement may be only an invasion of principal.

The role of unions is different than the role of management. I submit that the fundamental aim of labour is to achieve benefits for its members and make no concessions detrimental to them, and we've seen this during the recession. We've seen their determination and their solidarity in the face of adverse economic circumstances. We've seen them courageously and defiantly resist attempts to roll back wages or change terms and conditions of employment. Their solidarity is to their credit, but what we must recognize is that there has to be a balance, because on the other side something reasonable has to be worked out, through a process which we've traditionally called free collective bargaining.

Now if that's the role of the union in our society, the simplistic statement is I think an accurate one, that management represents many interests; labour unions, really only one. I don't want you to be misled by that. I'm talking only about the union-management relationship, not the many altruistic and social activities of unions.

There are other differences between union and management, which make the sort of fairness concept involvement of outsiders and tribunals in the decision-making process, inapplicable and inappropriate and dangerous. One of these is that a union represents not merely the employees of a particular company, but of many companies, not infrequently in wholly different industries. The union represents them all. It strives to maintain the same standards for all, the higher the better. The company is a competitor on the other hand against other companies, often even having the same union.

Another basic difference is a company is organized from the top, down; the union from the bottom, up. No matter how autocratic the union leadership, it must always keep an eye on membership loyalty and support. Workers are not impressed with statistics designed to show that a cost to reduce the business will prosper and they with it. They want to alter the existing share in their favour. Union leaders must conform to this conviction in their ordinary dealings with employers, even if they do not wholly share it.

The admonition that I make in light of that sort of background, is don't interfere so much with the process and don't give so much power to the unions that management can't manage effectively.

Now what have we done in Manitoba over the years to deal with this very difficult problem of the equitable distribution of wealth in our province, in particular with respect to the field of labour-management relations? We've done things in this province which are unique in North America and were innovative at the time. Back in 1943-64, when this Legislature unanimous resolution created the Manitoba Labour Management Review Committee, then called the Woods Committee, it did something special. It did something that still endures. It did something that other jurisdictions in this country look to and say, this is what we need today to deal with these complex problems that each of our jurisdictions in this country, and this country as a whole, have in the international community.

You've taken us back to 1972. The unions and the government in their answer to the business and employer community submissions have taken us back to 1972 and looked at that legislation. Well, I'm going back further than that, because we should go back to 1963 and '64, when we had this packed, this unanimous approach to a problem and a method for resolving problems in this society.

In 1972 there were some very responsible briefs that were presented by concerned citizens and concerned groups in this society. Briefs which on rereading, which I did last night, Manitobans can be proud of because they were thoughtful, they were considerate and they resulted in a number of amendments to that legislation which made it tolerably acceptable to this community. Tolerably acceptable I say, because there were some fundamental characteristics of the legislation which still grate and have, over the past 12 years, caused very serious problems to individuals and places of employment and their employees in this province. You can hear the Dick Martins or the John Pullens with their legal council and that's the Manitoba Food and Commercial Workers or United Food and Commercial Workers Affiliate - Bernard Christophe's union, you can hear their legal council come in here and tell you of the 100 cases that they've been involved in in the past year and they see through their tunnel vision the problems that their particular client had in defending and in advancing a challenge, a complaint, before the Manitoba Labour Board - allegations of unfair labour practices getting certified. The 1.3 million members, - the United Food and Commercial Workers Union - didn't have great difficulty through Bernard Christophe and the talents and genius of an Al McGregor who you heard last night speak fashionably to you group. They had not serious difficulty because they certainly win most of their cases. They can afford it. When they're up against the Refit Centre or the German Socity or the La Verendrye Club or any of the small employers in this province, Superior Cheese, or any of the small employers or individuals. Madam Minister you laugh at the individual plights of sincere people who used to support your government. You laugh. It's not a laughing matter to these individuals, because these individuals perceive themselves as victims of the system that you laugh about. It's a system which is fundamentally unfair. Were you to be judged by that system, you wouldn't laugh. You'd feel either frightened or you'd feel unjustly treated, because what legislation does as a concept introduced in 1972 and still there, still a characteristic of our legislation, and still disliked, is the concept against the 100's of years of tradition built up going back as far as the beginning of our present system of justice. A person is innocent until he's proven guilty. The unions see that and they talk about a justice and dignity clause, but they don't see it when they talk about an unfair labour practices complaint. You know why? Because there aren't unfair labour practices against unions.

They're all against employers with a few minor exceptions - several of which are being removed in this Bill 22 - so they don't see it that way, but employers do, managers do, supervisors do. They're the people who seek council to advise them what can and what can't they do in our society so far as their freedom of expression is concerned. Do you know what they can and can't do? They can't speak. Managers who are leaders of their organizations, by virtue of their duty and responsibility, can't speak. Now what you're doing - they know they can't speak - but what you're doing now is saying, "Okay, if you do speak, even by accident, Joe Smith in the hardware store out in rural Manitoba, if you do speak at the wrong time and say the wrong thing, you can not only be guilty of an unfair labour practice, but it can result of an imposed certification in your place of employment and your three or four employees will be certified to union. Then for a year, those employees are represented by an imposed, exclusive bargaining agent. An Alan Eagleson is an agent to a hockey player, a union is a bargaining agent for two or three or four employees in Plum Coulee, Manitoba in a hardware store. That bargaining agent, not an Alan Eagleson, might be 1.3 million members of the United Food and Commercial Workers Union and their wealth and their resources behind and dealing with that hardware store through a local, through Bernard Christophe or his hired full time people and dealing with that little hardware store.

How, if you put, Madam Minister, yourself in that position, are you going to laugh? Are you going to laugh about that and chuckle about that? Is it crazy to be upset about that? I submit to you, that's a real and genuine concern expressed in the ads that represents the feeling and the genuine concern of the majority of employers in this province and I would submit also the majority of employees in this province. There's one thing that we Manitobans have a great sense of and we're very sensitive to it - you are Madam Minister, I know - we have a passionate concern and sensitivity to what is just and what is unjust. When you see things in practice in our society which are unjust, we feel strongly about it and in our very Democratic society, we usually do something about.

That's what's happened here so far as the business community is concerned. They feel very passionately about this issue and they've held themselves - and I will illustrate this - in a very disciplined manner and in check and attempted to use the consultation process to achieve a fair piece of legislation for all Manitobans and for the betterment of all Manitobans. That's in spite of the abuse that they've taken from you, Madam Minister, in the papers when you refer in a derogatory way to the consultation process which business has participated in sincerely and with thousands of hours of volunteer time which the government and taxpayers of this province didn't have to pay for. You should be greatful, Madam Minister, I suggest to have had the contribution made by those thousands of people and thousands of hours free of charge, I might say.

The highlights of some of the things that have taken place during this process of consultation. What we've had - 1964, the labour management review came in. We had legislation tolerably acceptable with those sorts of reservations I expressed in 1972. In 1976 we had another surge ahead which has been forgotten about. The government introduced some changes to legislation. We had The Workplace Safety and Health Act that came in and was not zealously enforced for seven or eight years. Now we're just moving into a time when you're devoting the resources and giving it the encouragment that it needs to become effective in the way the legislation originally intended. But it was really shelved for about eight years and kept very much in the background because it was so far reaching. Now that happened in 1976. Other things happened in 1976. There were other changes to the legislation which shifted the balance, I would submit, further in support of union power.

What happened in this country during those 76 and 77 years was that there was an apparent concern by labour management and government about the increased dependency on government of unions and business and increased by government as an employer in society. With the unionization of the public sector under Pearson, federally, and in Manitoba, under the 1972 legislation, which opened the door here, we had a real involvement of the government as an employer.

There was a concern about how these different groups were getting along and what happened was that the Winnipeg Chamber of Commerce recognized this and in an enlightened and thoughtful paper, which was agonized over, and then adopted as policy of the Winnipeg Chamber of Commerce in 1977, a paper entitled "More Co-operation Between Labour and Management in Goverment" came into being. Consistent with the Woods Committee, the Labour Management Review Committee sort of philosophy and there were issues identified, a basis for union management and government co-operation. They were outlined issue by issue, point by point: to better Canada's production and standing the world marketplace; to recognize and respect the proper role of management and certain prerequisites and freedoms necessary for good management and management accountability; to recognize and respect the proper role of unions and certain prerequisites and freedoms necessary for good unionism and union accountabilities; to promote safe, healthy and satisfactory work environments to the greatest extent reasonably practical, and so on, and so on.

This didn't fall out as a dead issue. This was passed by the Winnipeg Chamber of Commerce. It became their policy. A committee was set up for the purposes of meeting with unions and gradually enhancing what had been done - was it Gordie Howe? - to enhance what had been done by the Labour Management Review Committee over the years.

I might say unfortunately under the Schreyer Government, the Labour Management Review Committee was not modernized and it was not given the attention that it had been expected would have been given when the resolution was passed back in the 60s.

Now, what happened to that co-operation paper? Well, one thing that happened to it was that Art Colter back at a convention at the Manitoba Chamber of Commerce, in 1978, the Annual Meeting, April of 1978, indicated the agreement of the Manitoba Federation of Labour with at least 10 of those points including those first five that I read, the basis for co-operation. So, in 1978, we had that progress being made in this evolving way in this province.

Then the culmination of this process was 1981, before your government was elected, when a paper was signed by Dick Martin on behalf of the Manitoba Federation of Labour and by Harvey Patterson of the Winnipeg Labour Council and by the Manitoba Chambers of Commerce and the Winnipeg Chambers of Commerce. It happened that the government changed hands and this paper was submitted then to your predecessor, Madam Minister, the Honourable Vic Schroeder, December 15, 1981. This product of this years of evolving co-operation was submitted to the Minister in 1981 and it was recommended that when the government is proposing changes in labour legislation, the Labour Management Review Committee should be afforded the opportunity to review the proposed legislation and make recommendations on it to government before it is passed into law.

It is important that the government give notice to business and labour. They should be involved in the committee and representatives should have the necessary authority to speak on behalf of the respective organizations.

Certainly not all areas of dispute can be settled within this committee, but it is our joint belief that many areas can, in fact, be agreed upon by the parties who are involved. If two opposing groups can arrive at a mutually satisfactory solution, then both parties are indeed speaking on behalf of their respective constituents and we submit that the government should follow their advice and act upon their recommendations, and it was a perception of this joint statement that that committee had not been allowed to fulfill the role designed for it.

Now what happened? No sooner had that reached Vic Schroeder's desk and a few short months after that, and maybe right at that time, first contract legislation was on the drafting board and was introduced. Not only was it introduced to amend, after the 1972 and the 1976 amendments to amend the legislation, but it held out and represented that what we were going to have was something like they have in B.C. federally, in terms of imposing first contracts.

But what the Manitoba Government did at that time was to introduce first contract without discretion. What they did was not having - and it wasn't an agreement anymore, it was an imposition of terms and conditions of employment by a board. Now the Minister had discretion to scream at. That was how the legislation . . .,but they took away the discretion. You know how they took that away? They took that away at this committee stage, at this committee stage without notice to the business community. What was represented to be first contract legislation like in Canada and B.C. which was challenged here because we liked Sid Green's code of employment better. We thought that was more responsible. That allowed management effectiveness, that was in existence in 1972-76. We liked that better because it was more sensible. It involved less government and outside tribunal interference in the resolution of appropriate terms and conditions of employment in the free collective bargaining process.

But we all know now that legislation did go through. It was opposed by employment-employer community and it went through in a form that was harsher and more far reaching than anything of that nature in North America. Now, what we have now, is an increased harshness of that first contract provision. We have now a concept in the Province of Manitoba which will not be lost on anyone in the world who is looking at Manitoba and interested in coming here because what you have here is something very different.

Federally, in B.C., in first contract legislation, they recognized that the parties should, the best solution is for the parties to resolve their own agreement because then it's an agreement and not with the intimidation of some tribunal out there saying, "We've got the standard form and you're going to be hit by that, so you'd better compromise at a level which is higher than you would normally," and that's really the threat of this Legislature because Madam Minister that's what you keep saying that this tribunal will encourage people to arrive at an agreement and therefore it's a good thing. How many agreements have been opposed?

Well, the fact is that when something is going to be imposed and you're uncertain of what it is, sometimes it's better to take a bird in hand and you make a deal, but that deal is worse, Madam Minister, than fair, it's worse than realistic, it's worse than the exercise of the duty of effective management and it's a result, it's a cost to Manitoba and any intelligent person anywhere in this world who thinks about Manitoba is going to see that. They're also going to see the philosophy behind that because what the federal and B.C. people recognize is that the marketplace is still the primary means of determining what is fair and the negotiating process is still the primary means; but Manitoba, philosophically, is different, because what they do is they do not give the board discretion to, only in those circumstances where the marketplace is being abused, only where it's being abused, do the B.C. and the Federal Boards impose first contracts and they've hardly ever done it federally and they're proud of that. In B.C. they've done it occasionally and they're proud of that. The Manitoba position is that the board has no discretion and, Madam Minister, you have abdicated responsibility by giving up your discretion and not giving that discretion to someone else. Someone in charge of management of this province and responsible for management of this province has to make a management decision.

What we have is a judicial decision and the judicial decision is not based in the give and take, day-to-day complex system of that workplace where the different managers make their decisions about different things, bearing in mind all those considerations. You get a labour board trying to impose them. What information are they going to have to need to come up with a contract which might work? What sort of evidence am I, as a legal counsel for an employer, representing - I'm representing the Province of Manitoba about an imposed first agreement. What information do I come up with before that board to enable that judge to make an informed decision and to counter the union approach, which is simply to say, we have this contract in this place of employment; it's similar in composition, it's a similar type and that should be the terms here. So, as legal counsel for this employer, what do I come up with before the board?

Can I come up with anything less than opening up the whole books of the operation? Can I do anything less than come in with all these experts that make these decisions and try and educate this board as to the knowledge and the heads of these people and the records of this company so that it won't do something

stupid that's going to destroy that company during that year? That same union, I might say, Madam Minister, and you know this, because you've got a copy of a letter on your desk right now - or your deputy does. This very employer could be represented by the same union that represents a competing employer, so that union has a conflict. So what do you do before the board?

I submit, Madam Minister, that if you're going to take this out of the political arena so that you lose the . . . which I think was identified as a good thing - it was not a political decision - but someone surely has to have discretion. In other jurisdictions, the board has the discretion not to impose. Surely there are situations which you can envisage where that might be the appropriate thing to do. Surely you are giving up control. Now the union can go directly to the board and the board has to impose. Not only that, the employer could do the same thing; so we're not taking a one-sided view. The employer could do the same thing.

That's the 1981 change which is refined, so it's worse, in Bill 22, submitted, and dangerous, it is submitted and philosophically inconsisent with what we have in all of North America in that regard, and it will be seen to be so.

I will make just a mention about final offer selection, because the way that was proposed, that was just an extension of that same philosophy into renewal agreements, so let's not be comfortable. The MFL still wants final offer selection. In their paper last night they said, you better give it to us; we're unhappy about your not giving it to us. What that message conveys to every employer interested in Manitoba, in the world, that looks at these things, is that's on the horizon, that is the same type of philosophical position that first contract legislation was, because that means a tribunal will do the harsh thing of taking one position or the other and ramming that one home, even though that complex organization which is competing to survive in the world marketplace is going to be hurt by it, and they believe . . . .

You say, that will force a compromise. Maybe it will force a compromise because they'll say, better a bird in hand, but what is that compromise going to cost the Province of Manitoba and why should any individual or any business or any union in this province have to make decisions out of fear of what the government appointed body is going to do? That, to me, is fundamentally wrong. Government shouldn't be using fear tactics to get what they want. They should use demonstrable fairness and reasonableness to get what they want; they should practice what they preach.

The government practices, suggests disclosure. All this involves more disclosure and it's great for business to disclose more; but what we have, we have a government holding back a 700-page report paid for by taxpayers' money, done up by Marva Smith, which everyone says is a horrendous document. It really does things to make an ideal labour system and you don't buy that because it's too theoretical, so you're just introducing this little bit and we should be happy with that. What an insulting position to take, because why should we be happy with anything that's less than the best in this province?

So to use that fear tactic again, it could be worse. This could be just the tip of the iceberg. Do you think that conveys a sense of security to the employers in this province and outside the province that are thinking of coming here? Does that convey a sense of security to employees and small unions in this province, when they perceive that really what's happening here is that you've got big unions, and I say that unashamedly, big unions, a union with 1.3 million members, having a position totally consistent, with a few minor exceptions, with the government in this whole process, the whole consultation process, it was the union movement, through the MFL, total solidarity with government, don't slow down the legislation. Push it ahead, throw out the consultation process; that was the position of the union movement through Dick Martin, MFL, its leader. That was the message the business community got through the consultation process.

Do you know what they did? They acted responsibly; they acted in a disciplined way and they kept at it and saying, we've got faith in this system. This Minister is going to take notice, and the process went on for a year. Marva Smith had her public hearings. The business community spent thousands of thoughtful hours. You read the submissions. You should be proud of those submissions; they're a matter of public record. You compare them to the MFL position, the MFCW position. So those positions were debated and discussed.

You, Madam Minister, in November of 1983, set a deadline. You wanted to put an end to discussion on the issue. No more consultation; we've got to get on with this thing. We've got to move into the 21st Century. When that deadline was imposed by you, the business community said okay, we've been negotiating through our leadership in trying to consult and arrive with a consensus so we better inform our members that here are the possible changes that the union movement, through the MFL and MFCW primarily is asking for.

What they did they said, did you know, to their members, here are the possible changes to the province's labour laws and they will, if adopted, put Manitoba's investment climate in further jeopardy. They sure would because they gave unions the veto power over tech change and all kinds of far-reaching things which you toss aside, and they say that's simply bargaining position. We're not really serious about those things. Sure we'd like to have them but we know they won't work in Manitoba, but they're there, they're on the table, and we don't know what you're going to do, because you don't tell us, Marva Smith is going to give you a secret report. So we go to the members and we say, are you aware of these changes? Here they are and they set them out and Madam Minister talks about these crazies, going off half-cocked. A responsible business community, employer community informing its members as to what these demands are. Well she's doing the same thing again but that's what she did then. She was going off half-cocked. A responsible thing to do. You're making fun of responsible and serious people that have the public interest at heart.

Then what happens after that? Well we get the White Papers in, things that were never discussed during the consultation process are in there. Final offer selection was never raised at any time, at any meeting, that any employer organization was that, that I am aware of. So there it is, a bold, new, innovative concept.

Then the removal of discretion, even from the Minister on first contract, and all the other changes. In a review

of the White Paper and this bill, there is absolutely nothing - and I say this unequivocally - there's nothing in the White Paper and in Bill 22 which is to the advantage of employers in this province, which is not at least equally to the advantage of unions. Looking at it the other way, there are many transfers of power to unions and impositions of restrictions and penalties of employers that don't cut the other way.

So here we have come to a stage where we had the White Paper and we had the bill. The business community, the employers, the representatives of management in this province, the public and private sector, non-profit and profit, meeting with this government and trying to get the government to change its mind about features of their White Paper, trying to get them to change their mind about Bill 22 - as late as the Friday before the bill was introduced in the Legislature there was a meeting, a meeting I might say, Madam Minister poked fun at the business community about. But there was a meeting, a sincere meeting. You got a sincere submission which was never answered and the bill was rammed home on Monday, June 11th, it was introduced and given first reading. The business community then tried to negotiate about that as well and say look, now we know what you're going to do. Please don't do it because it's going to cause hurt. We don't believe it's right. We perceive it as being unfair. There's some dangerous aspects to it.

In spite of all this, you persisted, here we are now, we're here again and we're still trying to urge you to do what is consistent with the evolving, constructive history of labour relations in this province and asking you not to set it back many, many years, not to do what the union movement is surprised you're doing, not to do what they ask you, maybe tell you to do, as payment of a debt. They'd like to, like a child sometimes, trying to get attention, they'd like to be told, no. They'd like you to play umpire. They'd like you to throw this back into the area of consultation and co-operation, because by taking the position you did, you made effective co-operation and consensus on more issues impossible because you took one side and you took a full 100 percent solidarity position with them and they with you and you ganged up and that's the perception that's left and that's what's happened.

Deling with the bill, because we must deal with the specifics. What is this bill? Is it really that bad? Definition of professional strike breaker. We have this, ah, that's just taken from Ontario. Well, we've heard, I think you must have heard that it isn't. There's additions to that definition which could give the board discretion to convert a well-meaning person who is doing the proper thing, turn him into a professional strike breaker and force him to go before the board and prove his innocence, just another person that can be taken through the hoops. It goes too far. Any one of his motives - you may as well do a fishing expedition, take it to the board.

I've seen individual employers go to the Supreme Court of Canada and back and up through the courts because they feel innocent of something they have been accused of doing wrong and they've been unable to prove, satisfy the board they're innocent; so they spend thousands of dollars taking matters to the Supreme Court and back. It's a lot different than having United Food and Commercial Workers or the Steel Workers or the MFL go to the Supreme Court of Canada and back because they spread it over 1.3 million members, in the case of the MFCW.

If it's a single employer, employer organizations don't pay each other's legal fees, so if one guy is picked on, what does he do? It can destroy him. It not only takes time, it makes him feel a great sense of injustice and it costs money.

10(4) - six month's freeze, extended to 12 months. So what? What does that mean? That means it's another lack of flexibility. The only way an employer can change terms and conditions of employment, after a collective agreement has expired and is involved in negotiating a new one, is by having a strike or lockout. You're frozen; lose flexibility, for time. Strike or related misconduct, broad definition, again. Surveillance. What's surveillance? Again, you're opening the door to have someone that's watching innocently accused of being a bad guy, guilty, and he goes before the board and has to prove he's innocent.

These are managers in this province, these are individual human beings in this province. They're being put through these hoops. This costs money; this costs time and it gives a sense of injustice, a sense of unfairness.

15(d) - Unfair Labour Practices, complaint under the old legislation. That was one of the few unfair labour practices a union could be accused of and it didn't have reverse onus, of course; but it had words "undue influence" in there. That section's been repealed. The replacement section doesn't have "undue influence" in it any more, so now you have to prove fraud or coercion, something stronger than undue, very subtle, but the protections are less for individual human beings in this province, from unions, because at one time you not only had the undue influence protection against the direct selling, door-to-door selling by a union of a membership, but you used to have to pay. Now it's for nothing; you can simply try and get rid of somebody by signing a petition or a card, but now the salesman can do something that you're not allowed to do under The Consumer Protection Act. Under The Consumer Protection Act, you have to be a licenced salesman and the consumer can change his mind on direct sellers because it's known there's pressure and it's one-sided and unbalanced.

If you have a professional organizer from a 1.3 million member union come to the door of your house and you're employed in Plum Coulee in a hardware store with three other employees, what are you going to do? Do you understand the constitution and by-laws of the United Food and Commercial Workers and what that means to your future? Do you know that when you sign that card you're signing - that Alan Eagleson, that 1.3 million member Alan Eagleson group - you're signing for them to be your exclusive bargaining agent, in your place of employment, while you're at that job, for at least one year and you cannot change it under any circumstances, and maybe two because if there's an imposed first contract, you're locked in for two years and you can't change your exclusive bargaining agent. Do these people know that? When they do, do they know what the obligations are under the constitution and by-laws of that union? It's a very serious matter.

Al McGregor, last night, said, "Well, federally the wishes of employees are considered at the time they

sign the card. That's what counts. The day for changing your mind is gone." What he didn't mention is when that was taken out, the requirement to pay union dues which are now $5 was put in, so again, it was brought home to the person that what he was doing was a serious matter. Why did he have a dollar consideration requirement for contracts, or a seal? The theory is, and I think it works, that then there's some demonstrable, tangible evidence, that there's a deal, that there's a commitment involved. The message that comes through by the changes in that area, wishes of employees, is that really you're not concerned about the wishes of employees, you're concerned about the will of the union and the will of the union organizer and the result. You're saying, "We believe unionization is good for everybody regardless of that individual's views." I submit that's what you're saying in that legislation. That, I would submit, in the long term doesn't make strong unions either. Surely, your party knows that when you have dissentient members that get out and disagree. The importance of being a member is brought home from time to time, your responsibilities.

Interrogation section, there's that addition there in 20(1)(b). That should go. That's just another catch for the unwary, for the innocent. Any question that talks about the rights of a person under the act. I can't tell you, and I've been at this game for over 12 years in Manitoba dealing with this day in and day out, I can't tell you what the rights are under that act. I can't list them. I can't think before I ask a question. I'm not intelligent enough to think before I ask a question of an employer or anyone else, whether that affects his rights under the act or not. I know that I can't ask him whether he's a union member or not, but I don't know what the rights are under that act.

21(1)(1) - six months limitation period. I can't understand, and I guess last night the MFCW and the MFL indicated they have some hesitation about it too, and they should. The six month limitation that used to be there for unfair labour practices is now gone and replaced by an open season, so there's no limit when someone can bring one so it's a contingent liability, goes on forever. The MFL, it appears, would prefer to have the six months back. We agree. Put a six months limitation in if you can.

Remedies given to the labour board, Section 22 - very, very broad. Dangerously broad, because you must remember two things that distinguish a specialist board from a court. One is, there's no right of appeal. Two, there's no principle of stare decisis as we call it. There's no binding precedent on boards. They can look at all the labour board decisions in the world and they can pick one that they like because it suits their reasoning and they think it's fair and use that. They're not bound to follow the Ontario Board or the Federal Board or the B.C. Board. The far-reaching broad discretion given to the board it is submitted, should be diminished. Too much power.

Soliciting, Section 16 of the old act is gone. That's the prohibition against soliciting. Now you have this 24(2) about no disruption. I was hoping Al McGregor would be here because I kidded him last night because I reminded him of a case that he conducted. He acted for an employer of a hotel and the union was on the other side. It was an application for certification and the employer contributed to the hearing and the employer position was, "Look, the union committed an unfair labour practice, because they solicited during working hours." Section 16. That was prohibited. It was an unfair labour practice. The board, relying on the wording of Section 43 read together with Section 16 said, "Yes, Mr. McGregor we agree with you," and they tossed out the application. Now, know what you've done, and maybe - I don't know, I hope Mr. McGregor isn't behind it, because he won that case, but he's not going to win it again. Not under the new law. The employees aren't going to win that case either, because what you've done is first of all, soliciting is no longer an unfair labour practice. Second of all, in Section 43, you've taken out the penalty to a union of losing a certification application or having its certification cancelled where there's an unfair labour practice by union. Now you have to prove fraud.

There's subtle differences between fraud in a layman's eyes, but fundamental differences from a lawyer's eyes, because fraud means a deliberate intent to do something wrong. It's pretty difficult to say a salesman at my house, when he misrepresents his product and exaggerates and everything else, is being fraudulent. Pretty difficult to do, but that's what you have to do. You have to prove a deliberate intent to mislead somebody. What you used to be able to do in the other one, is if there was an unfair labour practice, then the union was punished for that. What you do though, at the same time you do that, and this is why employers get upset, you introduce the concept of imposing certification on employees when an employer commits an unfair practice. There's absolutely no balance, there's no sense, there's no fairness to that. That's perceived by people and that is perceived by employees, because the imposition on the employer means that the employees are getting something that they might not want.

27(1)(b), there's a little addition there and I'm very curious what that means, because it says now, any person on behalf of the employees - 27(1)(b). Take a look at that. Does that mean the competing union raiding another union can in effect trigger that application, and he can take a case on behalf of the people who are happy with the in-house group? Is that what's behind that? Take a look at that.

Section 32, "Discretionary certification for unfair labour practice." I say, look at that from the eyes of an employee. Look at that from the eyes of someone who has a sense of fairness and ask yourself what happens when a union commits one of the few unfair labour practices under the legislation? There are hardly any. If it happens, what happens then? It certainly doesn't affect certification.

Now Section 36, why don't people be frank? Why don't people come out and say things the way they are? The debate about this Section 36 and that's, now you don't have to pay dues to be recognized as a union member for determining certification. You don't have to have paid your dues within the past six months, and the answer given publicly is that, "Well, it's not in the legislation now," or "I spoke to the Chairman of the Labour Board and he said it's not there now." The fact is, it is there. The fact is that it is in the regulation. It's supported by the legislation which empowers the board to make the regulations and there is a right of an employee to change his mind. The paying of one dollar

is in the statute now and it's in the act as well because there was a very good piece in 1980 and this was commented on, there was a very good recognition of individual rights in this province in 1972, Bill 81. At that time, the statute allowed the board to consider the true wishes of employees in this province.

In Section 31, here's what it said, and this is gone: where a union applies, in accordance with this act, to be certified as bargaining agent for employees in a unit of employees of an employer after considering, whether the unit is appropriate for collective bargaining, the number of employees in the unit, who on the day the application was filed with the board or members of the union so the concept of recognizing the membership wishes was as of the date of the application.

That's what the present law is. The only thing is now that you're saying it must be and can only be the date of that application. In spite of compelling evidence to the contrary, that that represents the true wishes. It is mandated that must be the day. But the old legislation said: the board would consider as well the wishes of the employees in the unit as to the selection of bargaining agent, whether expressed by way of vote, petition or any other manner, and the board would consider any other matters that seemed to the board to be relevant to the matter before the board. Then the board may certify the union after considering those things.

Well, now you're saying, "board, don't think, you do, because the true wishes are there on a date as evidenced by the cards. That's it." My God, that's easy and that's efficient, and if I were the Manitoba Food and Commercial Workers and MFL and I was spending all kinds of money on Al McGregor in legal fees and Mel Myers and these guys before the board, I would love to have that made more efficient so that he didn't have to go through those tests of fairness and wishes. I'd love to do that because it's cheaper and it's more efficient and I know I'm right. Dick knows he's right.

So you just go before the board, an open and shut case, bang, certified, and that's it. But, you know, I submit that there's a process, a process that people have to go through to be heard. You don't give people a day in court to let their views be known. A hearing before the board, people feel intimidated. They feel they're not given a chance to speak up for their rights. So that's what's happening there and in many other ways throughout this legislation. They're being denied the right to a hearing on issues of fundamental importance to them.

And, interestingly, again to make it practically even more unbalanced, the employer has no status before the board to deal with the question of wishes. So the only way something can come out, there being no objecting employees, there being no petition, there being no employer status, only the union can bring it out and it has a conflict of interest. My God, if you gave the same sort of powers to employers, Eugene Kostyra and Mr. Cowan they would be abhorred. I ask you to see it as if you're wearing your hat as an employer, as a small employer, particularly.

As I mentioned Section 43 just deletes unfair labour practice reference.

Section 46, Successor rights section. I don't know how much discussion has taken place on that, but that's an import from the Canada labour code. Not surprising, I guess Jim Dorsey had a great say in doing that, but I hope Jim Dorsey told you about - and maybe he didn't tell you about all of them because the cases are still coming out after he's drafted the act - the three issues you should be concerned about in importing that legislation. One is, this issue of subcontracting of work; the second one, the issue of tenders; and the third, the issue of, does there have to be more than one employer to have a sale under that section? Because those issues are in a state of uncertainty at the Canada Labour Board level.

The Labour Board has different panels and they disagree amongst themselves as to what the board should do on those issues. Those problems are being imported into Manitoba and the Manitoba Labour Board, employers and unions are going to have to wrestle with those. I ask you to go back to Jim Dorsey, get him to solve those problems for you, don't import them, don't let him get away with just bringing them in here because he might have created it there and lived with it.

Please bring us the solutions, not just the problems. Three issues: subcontracting, tenders, more than one employer. The National Bank case is one of them, the air terminal tenders case and the subcontracting. There are a whole bunch of cases there, the most recent one involving Reimer Express Lines and the board hasn't made up it's mind which way to go. They disagree amongst themselves. Our own Hugh Jameson is one of the people who thinks one way and Foisy thinks another way - real confusing situation.

Subsection 50(2), I don't whether anyone has touched on that, but again, philosophically, it really turns the crank of anyone who is used to our normal system of justice where he who alleges must prove, although that's perverted by the guilty until proven innocent concept which applies to employers under this act now and is broadened and made harsher.

Subsection 50(2), what that does, it requires anyone who's a respondent, and the unions can allege three, four or five different people are respondents in a given case and when you're a respondent in an application under Section 50, then you have to come before the board and adduce at the hearing, all facts within their knowledge which are material to the allegation, so what you do, is I guess, like in France, where is it, the USSR, where you come before a tribunal and you say, tell me everything. Tell me how your organizations are set up; tell me who owns them; tell me who the shareholders are and this and that. I don't know how broad that is, but just read the wording and it's the concept. What an opportunity for a fishing expedition. You can bring every employer before the board and they can show exactly how their organizations are set up, on a worldwide basis. What's that going to do to a balance to a multinational union, namely a multinational corporation if they come into the province? Are they going to allow a multinational union to dig into their affairs like that?

There's 58.1(c), which Ray Winston made a comment on, the costing of benefits. I'm sure that Dennis Sutton, of the Manufacturers made a comment on that because the costing of benefits - I mean, surely, the employer, when asked by the bargaining agent is required to cost out all its benefits. Some employers don't even do that

for themselves, let alone for the union, particularly the small, little guy. The big guys maybe do it, but the big guys aren't going to be very happy about doing the union's work for them.

If there's a good trusting co-operative relationship, sure they'll do it, because they scratch each other's backs; they understand one another. They help one another, but in every case, if someone would come in and ask, I want you to cost out your profit-sharing plan; I want you to cost out your dental plan; I want you to cost out maternity leave; I want you to do this and that. That's what that says. Wherever they have benefits, you have to cost it out. I don't know. Does that exist anywhere else in the world, that requirement? I'd consider that because I don't know where that's done anywhere else. I don't.

Marva Smith and her 700-page secret report might have told you but I haven't seen that. I also haven't seen the inter-departmental report on tech change because you refuse to release that. That document you refuse to make public as well. We tried many times because we felt shared information between groups trying to co-operate, so you have the same information base, is helpful, not to have one person holding things back and dealing in ignorance, dealing with the other people in ignorance, particularly a government who's there to help and provide co-operation. What you're doing is really unbelievable because you're being hypocritical. You're not practicing what you preach.

69.1, bargaining by legislation, you have imposed just cause provision in every collective agreement in the province no matter what the relationship is between the parties, no matter who's in there, another imposition on free collective bargaining. Parties can't decide for themselves. You already heard Sid Green that upsets something which was a very satisfactory thing insofar as employment relationship perceived by employers and unions in a particular industry in this province, so that knocks that out.

In the same way many things are knocked out because what's happened is you've had a certain number of lawyers sit down, look at it through union experienced eyes, labour board practice and they've tried to deal with every single case that they've been involved in and they feel should have been decided differently or should have been more efficiently dealt with. It's incredible. That's why it seems so one-sided. We recognize what this act is doing. We're not stupid.

Fairness, this concept of fairness. Anybody that's been involved in the arbitration field knows that there have been arbitration cases in this province over the past couple of years where the concept of management rights has come up. The concept is - and I've told you about management duties - management have a responsibility, to sometimes make decisions that people certainly aren't going to perceive to be fair because the union and the individual employees see it through their own personal eyes, their own conerns, their own role. Nothing to criticize their sincerity because it's right. They sincerely believe that's unfair, but the management is accountable to a far broader constituency.

It has to please consumers and suppliers and creditors and, in your case, the electorate as well and you're an employer and the shareholders . . .

MADAM CHAIRMAN: Mr. Newman, I have to inform you that your hour is now up.

MR. D. NEWMAN: Well, if you want me to sit down I'm pleased to not give you any more free advice, Madam Minister.

Thank you very much.

MADAM CHAIRMAN: There's a question from Mr. Kostyra.

HON. E. KOSTYRA: Madam Chairperson, I believe that we have adopted procedures with respect to the hearing of presentations and I believe that, if there are questions from committee members, then leave should be given in terms of asking questions, but in terms of presentation we've accepted a rule that allows for presentation for one hour. We did include in that questions and responses, but I think that if there are questions from committee members, then we should have leave for that purpose only.

MADAM CHAIRMAN: Mr. Enns.

MR. H. ENNS: Madam Chairman, I remind you and the committee that we extended that privilege to the representation of the Manitoba Federation of Labour last night, well beyond the extended period of time and would ask the same consideration be shown to Mr. Newman.

MR. D. NEWMAN: I really don't want to say any more. I've been misused throughout this whole process as has the employer community and I really don't want to . . .

MADAM CHAIRMAN: Mr. Newman, I didn't recognize you.

Mr. Kostyra.

HON. E. KOSTYRA: I don't know if Mr. Enns heard me. I indicated that we should extend the same courtesy as we did last night in terms of questions from committee members, if there are any, and allow leave for that purpose, the same as we did last evening.

MADAM CHAIRMAN: Is that agreed? (Agreed) Questions?

Ms. Dolin.

HON. M.B. DOLIN: Thank you. You mentioned, Mr. Newman, several times, the owner of the small hardware store in Plum Coulee as an example or we could say the shoe repair business in North Winnipeg or the small place in Ashern, the small employers who often are not familiar with the statutes of the Province of Manitoba. They don't have them at their fingertips; they don't know them. It's to be expected that the layperson seldom has the practioner's knowledge of labour law or, in fact, probably any other law unless it impacts on them personally in some way.

I'm wondering if you would tell me whether you feel that the owner of Superior Cheese has that same - or had that same lack of information that you described for the other small businesses that you were referring to.

MADAM CHAIRMAN: Mr. Newman.

MR. D. NEWMAN: That's a facetious question, but I'll address it in seriousness because I think it illustrates a real point. The situation where you have strong feelings, sometimes generated by political arena and the history of animosity that grows out whether it be between Sid Green and the MFL or Sid Green and your government or Murdoch McKay, the former Chairman of the Manitoba Labour Board, who owns Superior Cheese and the NDP Government. Those strong feelings sometimes result in issues being blown away out of proportion and that's why there's such a danger of an abuse of power when you do have big guys, like a 1.3 million member union dealing with Superior Cheese, because that big union can strangle and destroy that little enterprise for reasons which escape most of us unless we've been part of the process. That's illustrative of the sort of dangers that the power that you're giving big unions can cost.

HON. M.B. DOLIN: For the record, I think it is important that everyone knows that the Superior Cheese case is well documented.

With regard to the Labour Mangement Review Committee. I know you're a member of that, I know you're very a active member of the Labour Management Review Committee. Has that committee been reorganized in the last couple of years? Are you aware?

MR. D. NEWMAN: I'm glad you made that point because that is accurate and this is why we're so disappointed. You raised the expectations of everyone, and I speak of you personally and Mary Eady. You raised the expectations of everyone by doing a modernization and rejuvenation of that committee in 1982-83 and to date. It's an ongoing process. But, what you did, rather than using that committee, you insulted it, and you emasculated it and you hired an outside consultant, Marva Smith, with all due respect to Marva, who would not have been a person who would have been supported by the employer associations I represent, as being a person who would be perceived by them to have done the sort of mature, objective, understanding job of reviewing the Manitoba process . . . know Woods from McGill University who created this body.

So, you hired that person to do a 700 page report and conduct public hearings. To give you an idea how you hurt the sincere people; what you did - Marva Smith sent out a notice to the Labour Management Review Committee and invited that group in mid-summer to come and make a submission like any lobby group to her hearings. That really did nothing for the enthusiasm of the leadership of that group and then you pumped the public money into the Marva Smith team, who sat like judges to hear everybody make submissions.

We spent thousands of hours of time, productive time, that could have been channeled and it's been put, embodied in a 700 page report which is secret. What comes out is this - what is good, and the only good thing that by happenstance arose out of that whole thing is that now you have more employers in this province and leaders of employers in this province informed about what unions are all about and informed about the way the government operates in these things. They know better than to get involved again because they're misused. I can tell you, I shut off sending articles to the government that I sent out because I thought what I gave to the opposition when they were in government should go to you when you're in government. I shut off doing that in February, because I lost confidence and you were going to misuse it, because what you did - you took from employers and their submissions, and then you used it to get at them. You used it to see what you could get away with in terms of your bill. How much can we get away with without a big reaction? That's really what it's all about. Think about it. How much can we get away with without a big reaction?

Whenever there was a reaction, whenever someone had an inclination to go public because they were mad, they exercised discipline, they said, "No." Whenever they had that inclination, and they did, they went to their members responsibly to inform their members. Any union recognizes that. You, as a leader, have an obligation to bring your members and inform them. You got mad and Marva Smith wrote a letter and said, "That's confrontational, you shouldn't do it.

MADAM CHAIRMAN: Ms. Dolin.

HON. M.B. DOLIN: Just one more question.

I believe that there were items referred to the Labour Management Review Committee. In fact, I remember signing the letters myself, with regard to items that were under consideration for Bill 22, and in fact, appear in Bill 22. I'm wondering if the group that I believe you're a part of, is still working on the third item which refers to technological change and will be reporting to us? Are you a member of that group, Mr. Newman?

MR. D. NEWMAN: I'm not a member of the sub-committee. Dick Martin and I thought that it would be better if we did not participate directly in that. It would be better to have people that were right involved in the workplace involved in that. That is ongoing and you should be given credit for doing that because that is the very sort of process that we do support, because in time, something out of that will come, that perceives an endorsement of acceptability, I would hope, from groups in this province who have special knowledge in those areas. I hope above all, that you do act like an umpire, and you show fair leadership and objective leadership, and you encourage co-operation and consultation.

McGregor, last night, on behalf the MFL was saying, "That's what they want," but get the legislation through first. Then we'll get it. You put that legislation through, you're just undermining the whole process that has taken 20 years to reach this stage. You're on the brink of destroying it.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Madam Chairman, my question for Mr. Newman has to do with the role, as he sees it, or the role that was intended for the Labour Management Review Committee. I want to know what, other than making a presentation to the Marva Smith review committee, what was their involvement in the preparation of, or the consultation which produced this legislation?

MR. D. NEWMAN: In the summer, the leader of the Labour Management Review Committee, Cam MacLean, wrote to Marva and advised that there were no meetings scheduled over the summer and that they would review the report when the report was available. That was the position of the Labour Management Review Committee, and we suggested to the government and the union movement that what should be done is, let her go ahead and have the report and we'll participate and we'll make our submissions and we'll spend thousands of hours of time - free of charge - doing that. We did that and we said refer to the report. Of course the report was never referred, but what the Minister did do; she, I would submit, under demands from the employers' groups, submitted three issues to the board. Two of those issues were reported on. One involves the training of arbitrators. One involves the construction industry. The other involves disclosure.

The training of arbitrators - we've had ongoing sub-committee meetings on that. We did a draft report. We had a meeting with the government about it and we're doing this, while we're spending thousands of hours, free of charge, making representations from Marva Smith. Meeting on Remembrance Day, Saturday mornings and evenings with Marva Smith. All these employers. These are busy people. They include me; they include the Jim Wright's and Keith Godden's and all sorts of busy people that are movers and shakers in this province, and they gave their time and did it. So those three, just two have them have been reported on and the third one is an ongoing thing, it's recognized as a complex issue and that's the tech change, plant closing issue.

MADAM CHAIRMAN: Mr. Filmon.

MR. G. FILMON: I wonder, Mr. Newman can correct me if I'm wrong, but my understanding of the original intent of the Labour Management Review Committee when it was organized under Professor Woods was that it would in fact seek consensus and then make the recommendations that would lead to labour law changes in the province. That policy was more or less followed, not only during the remaining Roblin years, but during the Schreyer years, and that continuing meeting to seek consensus was carried out and, that generally speaking, that committee was pretty well informed and a part of the process that led to labour law change along the course of more than a decade.

MR. R. NEWMAN: Roughly until the mid '70s, that's correct.

MR. G. FILMON: I take it that really that wasn't the case with Bill 22, that in fact, your involvement may have been as individuals making commentary on certain aspects, but really, your consensus was not sought in arriving at this, nor was it in arriving at first contract legislation.

MR. R. NEWMAN: Consensus was achieved on three issues, improving the quality and the independence of the Manitoba Labour Board, something which we share with the MFL, and we think the government should devote more resources to that board, yes. Quality, independence, yes.

The second thing was conciliation and mediation, yes, by all means try and make that better and more effective and assist in dispute resolution, not by giving people powers and not making them enforcers, which I didn't mention here because I didn't want to give any more free advice and I ran out of time. But in that area, you ask the conciliation people whether they want to be enforcers. But, improving that, yes, by all means and there are some features in here that do it.

The third area where consensus was achieved was in some of those individual rights things. The duty of fair representation is not something that is going to cause some inconvenience and hardship to employers and unions, but they recognize that individual employees in this province need some access where they need a remedy.

The other individual, the strike vote, the agreed-upon collective agreement reference to the bargaining unit for ratification, we support those things and we also supported restoring to the Labour Board the religious objection thing so that there is not a conflict of interest and you have an independent tribunal to do it.

So we achieved consensus on those areas and when we took the position of the union movement, the MFL, that we should stop there and that should be the law, we took that position with the government and when we saw the White Paper and after studying it, we realized that you were going far beyond that and there was a final private appeal to all members of the Cabinet stating where we had a consensus and by God, please don't go ahead and ruin what's taken 20 years to build up in this province. You got that, you received that on Friday afternoon before the bill was introduced. You went ahead with the bill. I hoped all members of Cabinet got that because on Monday morning your Minister told us that she had not seen that submission. She hadn't seen it or read it, so I assume that she hadn't. But that submission was made on Friday, before Monday, June 11th, before the bill was introduced and that was saying: there is the consensus; why don't we work from there; let's try and expand that consensus; let's not do it with the government saying, we're going to adopt what you say so don't bother negotiating because you'll just get less.

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

What is the will of the committee? We've got about three minutes until 12:30. Shall I call the next presenter, or . . .

The next presenter is Ms. Judy Lingo. Is she present?

The next one is Mr. Crewson. Is he present?

MR. A. DAWSON: Madam Chairman, the initial presentation will take about 15 to 20 minutes, plus questions.

MADAM CHAIRMAN: What is the will of commit'ee? Do you want to come back at 8:00 o'clock?

MR. H. ENNS: Madam Chairman, we would be prepared to hear a 15 to 20 minute presentation.

MADAM CHAIRMAN: Fine, I'll call Mr. Crewson from the Manitoba Health Organization.

MR. A. DAWSON: Madam Chairman, Mr. Crewson is not present today. My name is Andy Dawson. I am on an acting basis the Assistant Executive Director the Personnel Services Department of the Manitoba Health Organizations and I will be making the presentation.

I also have with me Mr. Barrie Letters, one of the employee relations consultants of Manitoba Health Organizations and during question period, I would ask that he be allowed to respond to the questions.

MADAM CHAIRMAN: Go ahead, Mr. Dawson.

MR. A. DAWSON: Thank you. Mr. HenrNeufeld had been with us earlier this morning. He is a trustee of the Bethel Hospital of Winkler and he is also the Chairman of the Policy Advisory Committee on Health Care Staff Relations and he regrets having had to leave this hearing earlier.

I believe copies of our presentation have now been distributed.

Though Manitoba Health Organizations Incorporated is not one of the employer associations rferenced in the ads published in Tuesday's newspapers, we do have some specific concerns regarding some of the provisions of Bill 22.

By way of introduction, the Manitoba Health Organizations was founded in 1921 as a voluntary, non-profit corporation which represents the owners and operators of hospitals and personal care homes in Manitoba. One of the objectives of MHO is to represent the collective voice of our members to government in matters which will have an impact on them. Bill 22 has such an impact.

MHO has over 160 active member facilities ranging in size from small medical nursing units to a 1,200 bed teaching hospital. These facilities deal with 15 different unions representing approximately 15,000 health care workers who are included in over 180 separate bargaining units. The changes proposed in Bill 22 will affect the relationship between all of these employers and employees.

MHO supports those provisions of Bill 22 which would provide for the increased autonomy of the Labour Board. MHO is of the view that the proposed changes have the potential to increase this autonomy. In any quasi-judicial body, the respect of the community can only be gained through independent and non-partisan rulings. Should the community lose faith in the fairness of the body, the effectiveness of that body is severely restricted. MHO therefore welcomes the provisions increasing the autonomy of the labour board. MHO does recognize however that the most important function in the labour board is served by those people appointed to sit as members of that board. Those members appointed ought to be experienced in labour management issues. This is not a board that can stand the pressure of being saddled with recipients of political favours from any party. Therefore, MHO urges the government most strongly to ensure that all appointments made are of the highest calibre possible.

The next seven items that I will discuss deal specifically with certain clauses in the bill and are referenced.

Bill 22 has made amendments to the existing legislation to ascertain the wishes of employees during certification drives. Section 36 would allow an employee to terminate his or her membership in the union by taking reasonable and unequivocal steps. MHO supports the intention of the legislation, as it understands the intent to be to allow the wishes of the employees to be a determinative factor. The proposed amendment does not however meet this objective, in our eyes.

Section 36(1) states that if the employee is a member of the union as at the date of filing of an application for certification, he shall be conclusively deemed to wish to have the union as a bargaining agent. MHO is cognizant of the theory behind this amendment; that is, that the conclusive presumption prevents an employer from coercing employees to change their support of the union. MHO suggests that this fear does not justify preventing an employee from changing his mind for legitimate reasons. Should the employer attempt to coerce employees during a certification drive, the provisions of the proposed Section 32 are sufficient to deal with the situation. It is therefore submitted that Section 36(1) be deleted.

MHO has concerns with respect to Section 38. The proposed section states that an employer may provide the board with information at a certification application, but the employer has no status in the determination of the wishes of employees. The section is, it is suggested, contradictory. How an employer can provide information to the board, when the employer has no status, is difficult to understand. Obviously, the prime concern on a certification application is the wishes of the employees. The employer has no right to advise the board that it does not wish to have a union as this is not a relevant consideration. The employer should not, however, be prevented from appearing at the application to make representations as to its perception of the wishes of the employees. Should the employer be aware of unfair labour practices committed by the union, the employer ought to be able to advise the board of these offences. MHO respectfully submits therefore that Section 38(1) ought to be amended by deleting all words after the words, "shall do so," in line six.

Bill 22 proposes to make amendments to the decertification process. MHO is of the view that the present provisions of the act as incorporated by Section 26(2) of Bill 22 are adequate. MHO submits that the new provisions proposed by Bill 22 are unnecessary and do not aid in ascertaining the true wishes of the employees.

Bill 22 proposes an expedited arbitration process. MHO welcomes these changes and supports the proposals of the government to arrive at a just settlement of disputes without unnecessary delay. MHO can see no logical explanation however for Section 113-5(1)(2). These provisions limit the use of the expedited arbitration process to the whim of the griever. There may very well be sound reasons why the non-grieving body may wish to have the matter settled expeditiously. To have the option for the expedited process vested in one of the parties does not serve the arbitration system well. This option does not promote the harmonious relationship between employer and employee. MHO submits that Section 113.5(1)(2) be amended so that either party may apply for the expedited process.

MHO submits that any amendments to existing legislation ought to clarify rather than obfuscate the rights and responsibilities of the parties. Bill 22 proposes, in Section 62-2(1)(2), that an employer has a duty to act reasonably, fairly and in good faith and in a manner consistent with the collective agreement as a whole. It is respectfully submitted that these provisions do not clarify the responsibilities of the employer. Here I will repeat one of the comments you heard earlier this morning, Madam Chairman. It is ironic to read the comments of the Minister of Finance in the Winnipeg Free Press, Tuesday, June 26th, in that article which dealt with the forthcoming negotiations between government and the MGEA, the Minister is quoted as saying, "We all have our definition of fair. Fair depends on what we can afford."

MHO supports the view that an employer must act in good faith, but what is the difference between acting in good faith and acting reasonably or acting fairly? It is submitted that these sections ought to be amended by simply stating that the employer is obliged to act in good faith.

Sections 10, 11 and 11(1) of the act, as proposed by Bill 22, deal with the reinstatement of workers upon the expiration of a strike or lockout. The provisions require an employer to reinstate employees for employment held at the time of the lockout or strike as work becomes available. MHO does not quarrel with the provisions for reinstatement. MHO does believe however that some kind of provision must be made that recognizes the right of an employer to refuse to reinstate an employee who has been guilty of vandalism against the employer during the strike or who is guilty of conduct that would be found to be so serious as to justify dismissal had the strike or lockout not occurred.

It is therefore recommended that the act incorporate the following provisions:

An employer does not commit an unfair labour practice under Section 11-1(1), if the reason that the employer or any person acting on behalf of the employer, refuses to reinstate the employee for the employment which the employee had at the time of the lockout or strike commenced is that, (a) the employee has committed an act of vandalism or violence during the period of the lockout or strike against property owned by the employer or others acting on behalf of the employer or, (b), the employee has committed an act which, if committed during the period that the collective agreement was in effect, would be grounds for termination of the employee pursuant to the provisions of the collective agreement.

Bill 22 proposes to include a clause defining strike-related misconduct. MHO submits that this definition is wider than it ought to be. The clause as currently proposed could prevent an employer from guarding its property, to protect against vandalism during a strike or lockout. It is suggested that the definition ought to include a proposal that would allow an employer to monitor employees for legitimate business reasons, such as the protection of property, during the term of a strike or lockout.

Madam Chairman, this concludes MHO's presentation. On behalf of the board of MHO I would like to thank this committee for this opportunity and ask Mr. Letters to join me at the podium so that he may respond to any of your questions.

MADAM CHAIRMAN: Are there any questions for Mr. Dawson?

Thank you very much, Mr. Dawson, for your presentation.

MR. A. DAWSON: Thank you, Madam Chairman.

MADAM CHAIRMAN: Is it the will of the committee to continue with the list?

Mr. Don Henderson. Is Mr. Henderson here? Mr. Kostyra.

HON. E. KOSTYRA: I thought, last evening when Mr. Gardner spoke, he indicated that he was also speaking for the Manitoba Chamber. I believe he indicated that he was here on their behalf also.

MR. H. ENNS: I concur with the Minister, that was my impression as well.

MADAM CHAIRMAN: Mr. Dick Martin, Canadian Labour Congress.

MR. D. MARTIN: Madam Chairperson, Members of the committee . . . .

MADAM CHAIRMAN: Just one moment. Mr. Enns.

MR. H. ENNS: Madam Chairman, I would suspect that Mr. Martin will have a somewhat lengthy presentation. Would it be available to him to come and join us tonight? I say so because all of us have caucuses to attend. The House opening at 2:00 o'clock, we were prepared to extend it somewhat but if it's going to be an unfairness to Martin, I think perhaps we should consider adjourning at this time.

MADAM CHAIRMAN: I'm in the hands of the committee. The committee already decided you wanted to continue.

Mr. Cowan.

HON. J. COWAN: Perhaps we should ask Mr. Martin as to what he anticipates the length of his presentation will be.

MR. D. MARTIN: I haven't read it, Madam Chairperson, and compared it to the clock. It's certainly not three minutes. It's somewhere in the vicinity of 20 to 25 minutes.

MADAM CHAIRMAN: All right. I'll ask you to return then at 8:00 o'clock tonight.

MR. D. MARTIN: Eight o'clock, okay, fine. Thank you.

MADAM CHAIRMAN: Are there any other people who wish to make a presentation to the committee that are present?

HON. E. KOSTYRA: Committee rise.

MADAM CHAIRMAN: Committee rise and we'll reconvene at 8:00 o'clock this evening.

COMMITTEE ROSE AT: 12:45 p.m.

WRITTEN SUBMISSIONS:

June 1984
Manitoba Association for Rights and Liberties
425 Elgin Avenue, Winnipeg, Manitoba.

Bill 22 - An Act to Amend the Labour Relations Act and Various Other Acts of the Legislature.

1. The Legislative Review Committee did not concern itself with the substance of Bill 22, but examined it only with an eye to possible infringements on human rights and civil liberties in accordance with MARL's mandate.
2. The following aspects of the Bill seemed to the Committee to present possible infringements in the civil liberties of Manitobans.
   i) The broad powers given to a mediator or conciliation board for Entry and Inspection (Sec. 98, page 59).
   ii) The broad powers of Entry and Inspection (Sec. 121.2(1)(k), page 83).

   In effect the entire rights of the judiciary are being delegated to the Board.

   We recognize the need for the Board to be independent and to have power to implement its mandate. Entry, investigation and interrogation, however, without benefit of a warrant or some form of responsibility other than to the Board itself are, we believe, unnecessarily sweeping and could pose a threat to the right to privacy and a person's right not to make a statement.

   iii)sec. 68(3). The committee notes that this subsection differs from the present Act in that the employee who does not wish to belong to a union on religious grounds must prove that he "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 the employee has a personal belief in these articles of faith."

   A minority of the committee believe strongly that the employee should be permitted to opt out of union or association membership on the basis of personal conscience or conviction, whether or not his/her religious group forbids such membership. The present Act and a Court of Appeal ruling both uphold this position.

   (Dominion Law Reports, Manitoba Court of Appeal, Freedman, C.J.M., Matas and O'Sullivan, J.J.A. Jan. 5, 1976)

   We call this matter to your attention without formal recommendation. It may be that Sec. 68(3) is in contravention of the Manitoba Human Rights Act and the Canadian Charter of Rights. Court rulings have been contradictory. The Board of MARL in considering the minority position of the Legislative Review Committee regarding this section expressed concern that the retention of the original clause in the Labour Relations Act might mitigate against the right to organize and bargain collectively. Any legislation based on the judgment cited above should protect this right.

Prepared by Sybil Shack for the
MARL Legislative Review Committee.

June 28, 1984
The Mining Association of Manitoba Inc.,
Suite 1730 - One Lakeview Square, 155 Carlton Street,
Winnipeg, Manitoba R3C 3H8

Standing Committee on Law Amendments,
Legislative Building,
Winnipeg, Manitoba

BILL 22
An Act to Amend the Labour Relations Act

The membership of the Mining Association are extremely concerned as to the negative effect that some of the proposals of Bill 22 could have on the industrial sector and citizens of Manitoba.

Because of the extremely limited deadline for response, we will only address, in this written submission, some of our major concerns regarding this Bill.

Sec.1(t.1) The effect of this definition is to define a "professional strikebreaker" as someone who "in the opinion of the board" is a professional strikebreaker. This would mean that Manitobans could be found to be lawbreakers, penalized and ordered to pay damages simply because that is the "opinion" of the Manitoba Labour Board and none of that would be subject to appeal to the Courts.

Sec.11.1 Reinstatement:

The proposal that all employees are entitled to reinstatement "when a strike is over". Section 11 presently provides for such reinstatement when "a collective agreement is concluded" and that is the way it should remain.

Secs.22(4) Unfair Labour Practice:

22(6) Proposed section 22(6) says that an unfair labour practice is not an offence. However, the fact of the matter is that an unfair labour practice would be illegal and would subject people to having the Manitoba Labour Board impose penalties upon them and order them to pay damages, even exemplary damages. Such legislation would surely be ultra vires and invalid.

Sec. 26 Rules Restricting Decertificaton:

As certification has been made easier under the proposed amendments, decertification will be made more difficult. The present restricted period of nine months from the date of certification will be extended to twelve months. However, it would be a mistake to suppose that decertification is possible after the expiration of that period. It is actually much longer because a further twelve

month period of protection is available to the Union as of right through the First Contract provisions. After the contract runs out, if a legal strike is called, a further protected period of at least six months (probably twelve) is imposed. It would still be a mistake to suppose that decertification is available after the strike period runs out because as long as the strike is still continuing, in the Union's opinion, the Board has a discretion to refuse to hear otherwise timely applications for decertification. The Board has a further discretion to refuse to entertain such applications if it feels the employer has frustrated bargaining attempts of the Union.

Sec.27(1) Composition of Unit During Strike or Lockout:

This implies that if a Company and a Union manage to enter into a collective agreement "within fewer than 30 days" from the giving of notice to commence collective bargaining, then there must be something wrong with that agreement! That is the very opposite of what the philosophy should be. Companies and Unions should be encouraged to proceed promptly with their negotiations, not the reverse.

Sec.36(1) Wishes of Employees:

This provision states membership cards existing as of the application date shall be conclusively deemed to be evidence of the employees' wish to be represented by a Union. No one will be allowed to change his mind after the application date. Employees who have not been approached and are unaware of an organizing drive until the application is filed will be effectively shut out of the system and disenfranchised.

Sec.36(4) Improper Union Conduct:

The only exception to this rule is that The Labour Board may dismiss an application if proof of improper Union conduct can be established at the Hearing. However, the chances of this happening have been reduced by Sec.36(4) and Sec.38(1).

Sec.69(2) Deemed Fairness Provision:

Bill 22 proposes that a clause be required to be inserted in each collective agreement obliging management to act reasonably, fairly, in good faith and in a manner consistent with the agreement as a whole. No corresponding duty is suggested to be imposed upon the union vis-a-vis the employer. Apart from the obviously unfavourable nature of this clause, it is likely to create a great deal of uncertainty and increased arbitrations.

Sec.75(1) First Contract Legislation:

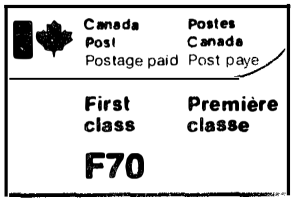
Ever since its introduction in 1982, representatives of business have constantly complained that First Contract Legislation is a bad idea and does not further the objectives stated by the Government when the provision was introduced. Two main reasons have been advanced as representing the major inadequacies:

a) Access to First Contract is too easy. Representatives of business complained that Unions effectively had access to an imposed First Contract as of right because, as a practical matter, the Minister of Labour never refused a Union application. Once the Minister referred the application to the Labour Board, no further discretion existed to decline to impose an agreement.

b) An imposed contract is too attractive. Representatives of business complained that not only was it easy to get an imposed contract but the likely terms of such contract were more favourable than a Union could achieve at the table.

Therefore, because of the serious effect much of the proposed changes of Bill 22 could have on the industrial and economic future of Manitoba, we ask that this Committee give serious consideration to amending the sections we have outlined in this submission.

Respectfully submitted
by the
Mining Association of Manitoba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