First Session - Thirty-Seventh Legislature

of the

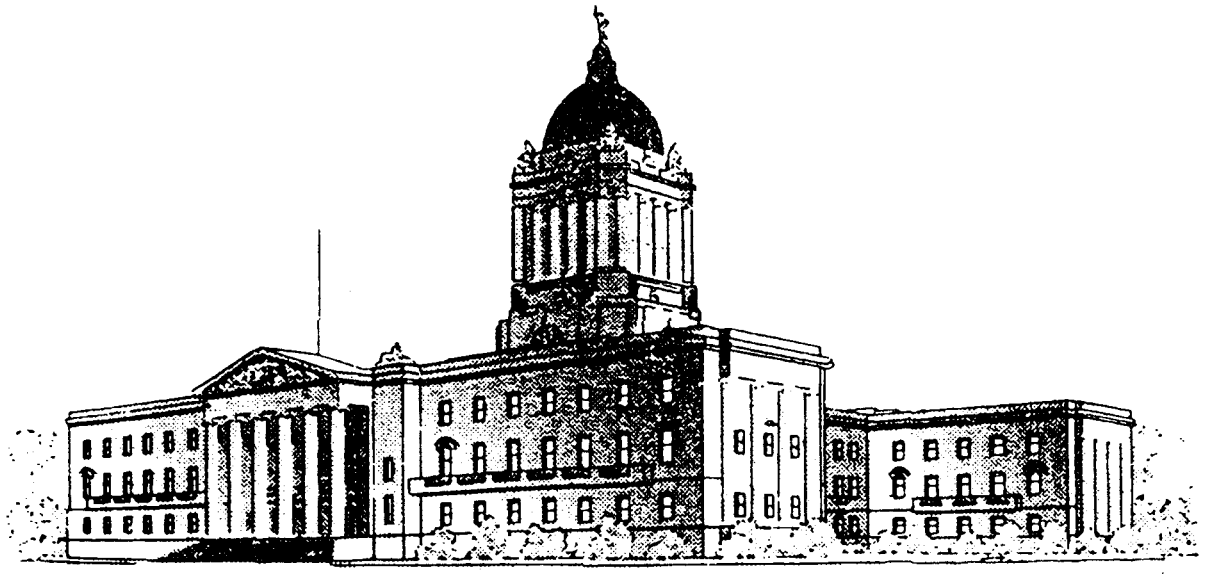
Legislative Assembly of Manitoba

Standing Committee

on

Industrial Relations

Chairperson
Mr. Daryl Reid
Constituency of Transcona



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Tuesday, August 15, 2000

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

VICE-CHAIRPERSON – Mr. Scott Smith (Brandon West)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Ms. Barrett, Hon. Ms. Mihychuk, Hon. Mr. Robinson

Messrs. Enns, Loewen, Nevakshonoff, Reid, Rondeau, Schuler, Smith, Mrs. Smith

WITNESSES:

Bill 44–The Labour Relations Amendment Act (2)

Mr. Paul Moist, President, Canadian Union of Public Employees
Mr. Dan Kelly, Director, Canadian Federation of Independent Business
Mr. Peter Wightman, Executive Director, Construction Labour Relations Association of Manitoba
Mr. Bernard Christophe, United Food and Commercial Workers Union Local 832
Mr. Colin Robinson, Private Citizen
Mr. Randy Porter, Portage Labour Council

WRITTEN SUBMISSIONS:

Bill 44–The Labour Relations Amendment Act (2)

Mr. Jonas Sammons, Alliance of Manufacturers and Exporters Canada, Manitoba Division

MATTERS UNDER DISCUSSION:

Bill 18–The Labour Relations Amendment Act

Bill 44–The Labour Relations Amendment Act (2)

* * *

Mr. Chairperson: Good morning, everyone. Will the Standing Committee on Industrial Relations please come to order. This morning the Committee will resume consideration of the following bills: Bill 18, The Labour Relations Amendment Act, and Bill 44, The Labour Relations Amendment Act (2).

For the information of the Committee members and for members of the public, the NDP caucus chair, the PC caucus chair and the Honourable Member for River Heights (Mr. Gerrard) were advised by letter, dated August 10, 2000, by the Clerk of the Legislative Assembly, that staff from Information Services may be in attendance in order to videotape parts of this meeting for inclusion in the *A Day in the Life of the House* video. As you will notice, Information Services is in attendance today to videotape parts of this committee meeting.

At our last sitting, this committee came to an agreement on the following points. We agreed to hear public presentations before consideration of the bills. We agreed to hear out-of-town presenters before in-town presenters. For absent presenters, we agreed to call names once, before dropping them to the bottom of the list, and then to call names again at subsequent meetings considering these bills before dropping them from the list.

A motion was agreed to setting 15-minute time limits for presentations and a 5-minute time limit for questioning. We agreed to leave presentations open. *[interjection]* A motion was

agreed to or passed if that is agreeable to members of the Committee. We agreed to leave presentations open so that people could come forward at this meeting to present on both bills, 18 and 44.

I will now read the names of the remaining persons who have registered to make public presentations this morning. If there are any presenters in the audience here with us this morning that would like to make presentations on Bill 18, would you please indicate to the Clerk at the back of the room so that it may give you the opportunity to speak on Bill 18.

With respect to Bill 44, I will go through the list of names. We are starting with the out-of-town presenters: Edward Zink, Linda Fulmore, Chris Christensen, Randy Porter. Those are the out-of-town presenters.

For the in-town presenters we have Paul Moist, Doug Stephen, Dan Kelly, Peter Wightman, Bernard Christophe, Colin Robinson, Bruce Buckley, Brian Etkin, Grant Ogonowski, Ron Hambly or Alfred Schlieer, George Floresco and John Friesen, Cindy McCallum or David Condon, Brian Short, George Fraser, Jonas Sammons, Maureen Hancharyk, James Hogaboam, Kenneth Emberley, Darlene Dziewit, Julie Sheeska, Donna Favell, Joy Ducharme, Alice Ennis, Kelly Gaspur, Colin Trigwell, Larry McIntosh, Graham Starmer, Gerry Roxas, Dale Paterson, Jerry Woods, George Bergen, Maria Soares, Neal Curry, Bob Dolyniuk, Bob Stephens, Eileen Lecker, Lydia Kubrakovich, Darrell Rankin, Jim Murray, Todd Scarth, John Mann, Rod Giesbrecht, Buffy Burrell, Albert Cerilli, Richard Chale, David Martin, Ron Teeple, Peter Olfert, Grant Mitchell, Robert Ziegler, John Godard, Lou Harris, Mario Javier. One additional name that has come to the attention of the Committee is Thomas Novak.

For the information of the members of the Committee, Mr. Godard is listed on your forms as an out-of-town presenter. That is a typo. Please make the corrections to your list.

I am advised that Jonas Sammons, who appears on your list as one of the presenters, No. 19, is unable to attend the Committee this morning. He has left with us a copy of his presentation and has asked that this brief be distributed to members of the Committee and be considered as a written submission. Does the Committee grant its consent for this written submission to appear in the committee transcript of this meeting? *[Agreed]*

Those are the persons that are registered to speak this morning. If there is anyone else in the audience that would like to make a presentation and has not yet registered, please indicate to the Clerk at the back of the room here, and we will add your name to the list.

I would like to remind presenters that 20 copies are required of any written version of presentations. If you require assistance with photocopying, please see the Clerk of the Committee.

As a point of information for all in attendance, this committee has been scheduled to meet again, if necessary, this evening, Tuesday, August 15, at 6:30 p.m. As a courtesy, I believe, to persons waiting to make presentations, did the Committee wish to indicate how late it is willing to sit this morning?

Some Honourable Members: Twelve o'clock.

Mr. Chairperson: Is twelve o'clock the will of the Committee?

Mr. Ron Schuler (Springfield): I would suggest, Mr. Chairman, that we start with the presentations, and if we have to go to 12:15 p.m. or 12:30 p.m., I would suggest we would make a decision then. Why would we cut a presentation off halfway through?

Some Honourable Members: Agreed.

Mr. Chairperson: All right, the will of the Committee is that we will have a bit of latitude then for a few minutes past twelve o'clock? *[Agreed]*

Bill 44–The Labour Relations Amendment Act (2)

Mr. Chairperson: I will now call on the presenters as have been indicated, and we will start with Mr. Edward Zink. Is Mr. Zink in attendance?

Floor Comment: No, Mr. Zink is not in attendance. He had a death in the family and will not be able to present at all today. So he will not be here.

Mr. Chairperson: Thank you. The next name on the list is Linda Fulmore. Is Linda Fulmore in the audience? No. The next name on the list is Chris Christensen. Is Mr. Christensen in the audience? The name will drop down the list. The next name we have on the list is Randy Porter. Is Randy Porter in the audience this morning? No, then the names of the above presenters will drop down the list.

The next presenter we have listed this morning is Mr. Paul Moist. Is Mr. Moist in attendance?

Good morning, Mr. Moist, do you have a written presentation? Please proceed.

* (10:10)

Mr. Paul Moist (President, Canadian Union of Public Employees): Mr. Chairman, Madam Minister, members of the Committee, it is CUPE's privilege to represent 23 000 employees in Manitoba in the public and not-for-profit sectors. We are pleased to have the opportunity to appear before this Standing Committee today on Bill 44. We have appeared before all Labour Relations Act amendments dating back the last 25, 30 years, particularly the last 11 years when our act was opened up on three separate occasions, 12 separate changes made to The Labour Relations Act by the previous government, not including Bill 70 and Bill 22, which severely compromised public sector bargaining rights. We use the phrase "rebalancing" to characterize Bill 44 because it does not completely rebalance previous changes made, but it goes in some direction. I will speak to a few of those.

The certification process. A change is being proposed to re-establish the union certification process that governed in respect of certification since 1947 up until 1996. Up until 1992, as you are aware, a 55% threshold was required for automatic certification. That was changed to 65 percent in 1992 and then changed in 1996 to require another vote in every single application, regardless of whether 100 percent of employees had signed a union card. There are only four other provinces that do not have automatic certification based on a percentage of signed cards. Most jurisdictions with an automatic certification have 50 percent plus 1 or 55 percent. This amendment does not take us back to 55 percent, which we believe is an appropriate threshold.

It should be noted that the proposed amendments do not eliminate a secret ballot altogether. If 40 percent up to 65 percent of the employees sign a card, then a vote will be held. If less than 40 percent indicate their desire to form a union, the Labour Board will dismiss the certification application. In instances where a clear majority–the highest threshold in Canada amongst those jurisdictions, five other provinces and the federal government–will have the highest threshold, automatic certification is appropriate.

Another contentious issue is the amendment in the area involving infractions during a strike or a lockout. The previous government introduced legislation that allowed for the firing of an employee for an infraction while on legal strike or locked out. The right to withdraw one's services is fundamental and is a last resort for workers. When this happens, tensions quite often run high. It is quite a different matter for someone to yell at the employer while on the picket line watching them drive scabs into the workplace, as opposed to yelling at an employer while on the job where you might well be disciplined.

Most workers conduct strikes in a peaceful manner. However, on occasion, often as a result of provocation, things escalate. If a serious incident occurs warranting criminal charges, charges are often laid under the Criminal Code. CUPE does not condone violence on the picket line. We train picket captains to maintain a peaceful atmosphere. However, provocation can occur. When it does, workers should not be penalized twice. The fear of disciplinary sanction while on strike serves only to intimidate workers, and we support the amendment in this area.

The expedited arbitration procedure. We support changes which will allow for disciplinary grievances to proceed expeditiously to arbitration. The current legislation allows only

for suspensions of over 30 days in terminations. A move to broadening this is a good thing. However, we are finding increasingly that the employer is protracting the grievance procedure on many important issues. Disciplinary issues are critical, but other grievance subjects, such as wages, promotions, contracting out, are also very important. The expedited process for all grievances would be preferable. Such a system did exist in Manitoba up until 1996. It does not mean that every grievance goes to the expedited process, but it is an option that the parties will enjoy. The parties should have this option, and there should be an amendment to give us expedited arbitration for all grievances properly filed with an employer.

The dispute resolution mechanism proposed in Bill 44 is something that we support. It provides for a binding settlement process after a strike or lockout that has been in effect for longer than 60 days. It would allow employees to vote to determine whether they want this process. If so, then either the Labour Board or an arbitrator would hear the provisions and provide a settlement. This is much like the method used for settling first collective agreements. The work stoppage ends while the settlement is being arrived at. This encourages the parties to negotiate fairly.

To those critics that have said workers will engage in strike action for 60 days simply to get to arbitration, that defies belief, in my view. After two decades of negotiating, I do not know a group of workers that would strike for 6 days, let alone 60, to get to arbitration. Most workers want and expect their unions to negotiate face to face with the employer and come up with a settlement. That is what happens in 95 percent of the cases on behalf of 125 000 Manitobans. CUPE has 2 500 locals representing 490 000 Canadians. That is what happens in 98 percent of CUPE's negotiations across Canada. Finally, our experience with first contract last March was the employer filing for first contract and stopping a strike at three Winnipeg hockey arenas. Then, at the last moment before the arbitration hearing was scheduled, getting in a room and getting with the settlement. They ended the strike action, and that has happened continually since 1985 when it was brought into place.

Mr. Chairman, I mentioned union financial disclosure. I will not elaborate on that except to say that we support the amendment in Bill 44 in that area, and I want to conclude, prior to any questions you may have, to talk about the tone of this debate that has gone on in our community.

It has been a regrettable tone, in our perspective, and much of it is about union recognition, which is a fight that many unions have fought for, for decades in this province. Outside of the Legislative Chamber there is a plaque that was erected in 1994. I negotiated the wording of that plaque with the former Minister of Labour, the Member for Lac du Bonnet (Mr. Praznik), and the former Premier, Premier Filmon, and it recognizes the events of 1919 as a critical event in the history of Manitoba. It also has words to the effect that since that time, successive governments have passed legislation to encourage free collective bargaining on behalf of Manitobans wishing to join unions, to encourage health and safety in the workplace.

We are still having that fight 81 years later about union recognition, and there has been a campaign of disinformation and almost hysteria about second votes, about arbitrations to settle contract disputes. CUPE believes it is in the public interest to settle long strikes and lockouts to get on with work. We think we should continue the work that the Premier (Mr. Doer) started in March with the economic summit.

Last week in the *Free Press* there were two front page stories about labour shortages in Manitoba. That was the single issue that business and labour identified as the key challenge facing our economy right now: labour skills shortages, immigration problems, attracting skilled workers, training workers for the jobs in the new economy. These are the things that CUPE and other Federation of Labour affiliates want to work with the business community on, and I am pleased to say there are many members of the business community that want to work on those things.

Workers having automatic certification rights is not breaking new ground. Workers having the right to their job back after a strike or a lockout is not breaking new ground in this country or this province and workers having the right to a third party option to settle a dispute is not breaking new ground. It is far less than the anti-scab provisions that exist in Québec and B.C., which would be labour's first choice.

So Bill 44 does not redress imbalances that we think cropped up in the last decade, the last 11 or 12 years, but it is a good first step and it deserves the support of this Legislature, and I believe has the support of the community at large. Mr. Chairman, those are our comments, and if there are any questions we will attempt to answer them.

Mr. Chairperson: Thank you very much, Mr. Moist, for your presentation.

* (10:20)

Hon. Becky Barrett (Minister of Labour): Thank you, Mr. Moist, for the clarity with which you made your presentation. In particular, I am pleased to get the first-hand information about the success of CUPE's ability to settle–not only in Manitoba but nationwide–their contract disputes, without resorting to strike or lockout or the need for an arbitration process. Also, your history, the history of the first contract recently with the City, that was very helpful. Finally, the perspective that you placed on this legislation not breaking new ground and the needs that we do have as a community, which both business and labour really need to address, which are the issues that you have raised. I thank you for putting this whole issue into perspective.

Mr. Ron Schuler (Springfield): Paul, good to see you this morning. Thank you very much for your comments. I liked in particular your going into dealing with the fact that what we should be dealing with is labour shortages, skilled labour shortages that the province is facing, and frankly that North America is facing. These are the issues that we should be dealing with, instead of divisive issues like this that we have seen polarize labour and management in Manitoba. Clearly, all of us should be concerned about that.

I also look forward to, perhaps when this is over, sitting down with you and Rob and perhaps Bernie and going over some of those issues. I know I have got a letter out to you and look forward to hearing your response on that.

One of the things that we heard yesterday was a submission by Sid Green. Sid talked about free collective bargaining. It is interesting, in your package on page 2 you talk about the right to withdraw one's service is a fundamental right, and it is also a last resort. That basically capsulizes free collective bargaining. Do you not see that the 60-day clause, as it is being called, is actually the first step in attacking the true free collective bargaining, something that Sid Green laid out for us very carefully last night?

Mr. Moist: Well, Mr. Chairman, firstly to the preamble to that question, I do not think the changes proposed in Bill 44 in their totality are incompatible with us moving forward on the real issues facing our economy, labour force shortages. With respect to Mr. Green, I heard the Interim Leader of the opposition party on the radio this morning giving a lot of credence to Mr. Green's statement about free collective bargaining. Mr. Green appeared before the legislative committee on labour relations on all three occasions that the Act was opened up in the last decade, and the former government ignored his comments on free collective bargaining.

In the abstract, and in my history days at the University of Manitoba, I would not disagree with the fundamental principles that Mr. Green espouses. There is not a government or a citizenry in any jurisdiction in Canada that will rip up their labour relations act and go back to the strike equation where one lays down their tools between rounds of collective bargaining. There was a fundamental deal struck between unions and employers and governments 50 and 60 years ago, and that was workers' unfettered right to strike between rounds of bargaining over grievances. That was eliminated in favour of labour relations acts being enacted, which took away the right to strike between rounds of bargaining and fettered their right to strike, even during rounds of bargaining.

So Mr. Green has made the same speech to successive labour relations committees. He has tried the theories out with the public in Manitoba to no success electorally, and I think they make for interesting historical reference points. They are not very practical to the realities of Canada today.

Mrs. Joy Smith (Fort Garry): Thank you for your presentation, Mr. Moist. The question that I have for you is the concerns in Bill 44 that have been brought forth concerning the right of

strikers to act one way on the picket line and then force employers to hand them back their jobs, regardless of their actions during the picket line. I notice you were talking about yelling in your presentation. You were talking about however provocation could occur. In the Trail-mobile case, Mr. Moist, there was quite a drastic action taken by the strikers at that time. Would you say, in your view as a union person, that they were right in what they had done and that the employer in that case, if it should happen today, should hire them back, or would you say that they had provocation? How would you handle a case like that? Because in Bill 44 when employees are forced to hire back strikers who have produced rather unsavoury behaviour on the picket line, it is worrisome.

Mr. Moist: Through the Chair, we will draw a distinction between Criminal Code charges and convictions and what one might call inappropriate behaviour. The inappropriate behaviour that one encounters on a picket line is spread around. It is not just employees. It is security firms hired by employers. It is, at times, replacement workers, scabs that are hired who have no stake in the company and are gone once the dispute is over. The former provisions, prior to the changes that were brought in place in the 1990s, did not allow for people to retain employment who had committed criminal infractions. The Labour Board is the appropriate body to deal with infractions.

When one is locked out or is on strike, all provisions of the employment relationship are severed. The union pays the benefits to keep health benefits flowing. There is no seniority; there is no wage rate. Every condition of employment is severed subject to the parties ending that dispute.

For one party to enjoy the employer ability to discipline in the same context as you would have the ability to discipline if something goes on in the workplace on a normal day's work is inconceivable. You are not the employer. You have locked your employees out. They do not have seniority any more. They do not have a time card. They are gone. I want to emphasize something that has been lost in the hysteria that often happens with public debate. There is not a union affiliate of the Manitoba Federation of Labour that would condone criminal activity by anybody on a picket line, and there are mechanisms to deal with that. That is a far cry from an employer exercising employer authority in a strike or lockout situation when they do not have employees any longer.

I think the change enacted in Bill 44 is not something to condone criminal activity, if and when that occurs. It is something to restore people to their rightful place in the workplace. If they cannot report to work because they have been convicted of some crime or been incarcerated, they will not have a job. That was the experience in Manitoba and is the experience elsewhere.

Mr. Chairperson: Thank you very much, Mr. Moist, for your presentation here this morning. The time for questions has expired.

The next presenter we have on our list is Doug Stephen. Is Mr. Stephen in the audience this morning? It appears Mr. Stephen is not here. His name will drop to the bottom of the list.

The next presenter we have here this morning is Mr. Dan Kelly. Mr. Kelly, will you please come forward, sir? Do you have a written presentation for the Committee members? You may proceed, sir.

Mr. Dan Kelly (Director, Canadian Federation of Independent Business): Thank you very much for the opportunity to present our members' views to you today. On behalf of the Canadian Federation of Independent Business and our 4250 small and medium-sized business members across the province, I am here to present our strong opposition to the amendments contained in Bill 44, The Labour Relations Amendment Act. CFIB has a large list of concerns with the proposed legislation. However, we will confine our commentary to our three main issues of concern.

Prior to raising our specific issues with the legislation, I would like to express our extreme disappointment with the manner in which this legislation was introduced. As someone who monitors the election platforms of political parties extremely closely, I note that at no time did the NDP outline any intention to make

massive amendments to The Labour Relations Act. In fact, on Labour Day, the Premier (Mr. Doer) outlined the NDP's labour agenda and spoke of the plan to introduce six days of unpaid family responsibility leave for Manitoba employers. Even with this perfect opportunity, he made no mention of plans to amend The Labour Relations Act. In the Premier's Century Summit, which was designed to bring all parties together, labour and management, in a spirit of co-operation, The Labour Relations Act was not brought forward by anyone as a problem facing our province. Even during the recent Throne Speech, no mention was made of any plans to introduce sweeping and historic changes to the Act.

* (10:30)

The first sign the business community had of any changes was a letter from Labour Minister Becky Barrett in May of 2000 which outlined a number of concerns she felt needed to be addressed in the legislation. Despite misgivings, the business community took the Minister's invitation for consultation seriously and kept the proposals confidential. An attachment to her letter indicated all of the areas for which amendments in the current session of the Legislature would be considered. It is important to point out that the binding arbitration provisions were not part of the list of potential amendments for the current session. A second attachment added a few sentences which asked for thoughts on options to resolve collective agreement disputes.

As I mentioned, despite our strong concerns, Manitoba's business community participated in the Minister's process with the hope that our concerns would be taken seriously. It is now abundantly clear that there was never any intention on the part of this government to consider the views of business in developing this legislation. Again, as I stated, the Government gave no indication of any plans to amend The Labour Relations Act until May of this year.

In the future, I am going to pay a lot more attention to what is said by Rob Hilliard, President of the Manitoba Federation of Labour, in order to get a sense of what legislation is in the works. On the morning following the provincial election, Rob Hilliard and I were among the first guests on Charles Adler's program on CJOB. At that time, he indicated that amendments to The Labour Relations Act were his highest priority. Is it a coincidence that the first major piece of legislation in this Legislature, indeed the first strategic move on the part of this new government, is a set of pro-union legislative amendments?

In my six and one-half years of representing small businesses across the three prairie provinces, and with three levels of government, I have not seen an issue raise as much concern amongst CFIB members as Bill 44. I would like all members of the Committee to know that the Minister and this Premier (Mr. Doer) have received over 529 faxes from small business owners outlining their serious concerns with respect to the Bill. In addition, over the course of one weekend, we received 83 e-mail messages from our members expressing their views on the Bill. This total has now grown to over a hundred, and a copy of our members' comments is attached to your presentations.

I would now like to read a few comments from our members into the record. This is from a Winnipeg wholesale company: We are sensing a slowdown in the economy and seeing companies cutting back on spending. This bill will only dissuade further expenditures and convince them to go to more business friendly economies.

A Manitoba heavy construction firm wrote: Our company is owned and managed by two young Manitobans, employs 30-plus people, but we are starting to wonder if our future is in this province.

A Winnipeg clothing manufacturer writes: The secret ballot is inherent to our society, as is the freedom of speech. The only thing to be gained by eliminating the individual's right to a secret ballot is the ability of bullying and intimidating by a few strong-willed union organizers to the true rank and file whom the secret ballot is designed to protect.

Our company has already investigated the possibility of moving any further investment of capital to the United States because of the unfriendly tax atmosphere in Manitoba. The

negative attitude the Government is displaying towards employers in this province with this latest bill makes us feel unwanted and uncomfortable. We have four children, and three have already left to the United States. It will not take much persuasion for us to follow them south.

Please convey my comment to the Minister or Premier (Mr. Doer) of this province responsible for Bill 44, wrote a Winnipeg retail store. If this bill is to pass through parliament, I will seriously consider moving my business out of this province. If the Government is not going to be fair with small business, the NDP will be feeding and clothing a lot of unemployed people in this province.

A Winnipeg heating equipment wholesaler says: I migrated to Canada in 1968 and have employed people from day one and presently am employing 70 Manitobans directly. With the United States actively seeking companies like mine on a continuous basis, there are a lot of options open to me.

A Winnipeg insurance agency wrote: We are very displeased with the action relating to this bill and, as a result, are in discussions with our accounting people on closing our Manitoba operations. How should small businesses interpret the Premier's (Mr. Doer) comments during the election campaign when he said that small business and new entrepreneurs are the engine of the economy? He said by helping them with these clear and achievable commitments, we will help improve the economic prospects for all Manitobans. Is this the kind of help small businesses expected the Premier was suggesting during the election campaign? In fact, the only people this bill will provide for, the only help this bill will provide for small business is in deciding whether or not to remain in Manitoba.

Like the Manitoba business community, the majority of CFIB's membership is not unionized. It should come as no surprise that our strongest concern with the proposed legislation is the plan to end the use of secret ballot votes in the union certification process. It should be noted that CFIB has not called on the Government to make the process of unionizing more difficult, only more democratic. In 1996, CFIB surveyed its members and found that 78 percent supported the use of secret ballots in all cases prior to union certification.

Secret ballots were brought into legislation in 1996 with the strong opposition of organized labour. It should be little wonder why unions would not like secret ballots. As unions have gone about as far as they can with traditional industries and the public sector, they are increasingly looking at small business and the new economy as targets for growth. Small firms are by their nature more difficult to organize, as the owner is more likely to have a hands-on relationship with his or her employees. In fact, in small firms the employees are more likely to be satisfied with their employer relations than in larger businesses or in the public sector.

It should be remembered that the public gives significant powers to unions by means of government legislation. Once formed, a union has the ability to collect dues from all of the members of the bargaining unit, whether or not they wish to be a member of the union. As such, it is incumbent upon government to ensure that the wishes of the employees are duly considered. The best practice that we have to ensure democracy is the right to a secret ballot vote. It is how we elect our politicians; it is how we decided important issues like constitutional reform; and it is how in Manitoba we will now decide whether our taxes should be increased. Should the process of choosing whether or not one wants to be represented by a union not be given the same level of scrutiny?

Throughout this process, I have repeatedly asked one important question. What is the pressing public policy need to eliminate the right to a secret ballot vote? To this point, the only answer I have received from the Minister or Premier is the intention to streamline the workload of the Manitoba Labour Board. As I mentioned, this argument does not hold any water with the business community, as other amendments in this same bill will dramatically increase the workload of the Manitoba Labour Board. This bill also expands the list of items that are eligible to go to expedited arbitration, which will in no small way increase the workload of the Manitoba Labour Board far in excess of any reduction in the workload of the Labour Board due to the ending of secret ballot votes.

Are we ending secret ballot votes because a compelling case has been made that the process of unionizing firms has been made more difficult since their introduction? No. The Minister's own statements acknowledge that the number of union certifications has actually increased since the secret ballot vote was introduced in 1996. Should we end secret ballot votes because a few other Canadian jurisdictions do not have them yet? The answer is no.

As we all know, Manitoba is primarily competing for business with two other jurisdictions, Ontario and Alberta. In addition to a significantly lower tax burden, both these provinces have secret ballots in their certification procedures. It should be noted that, over the last decade, the trend among Canadian jurisdictions has been to implement secret ballots. Only British Columbia has had the secret ballot, only to eliminate it a few years later.

* (10:40)

Is the Government suggesting that it wishes to import the economic and labour policies of British Columbia to Manitoba? Are we ending secret ballot votes because they allow employers time to convince or threaten their employees against forming a union? Again, the answer is no. Current legislation says that if an employer tries to prevent the creation of a union, the penalty is automatic certification without any vote at all. In addition, businesses are not seeking a long certification vote process as exists in certain areas of the United States. We are simply asking for the assurance of a quick vote to take place upon the indication of employee interest in a union.

The Government is also overlooking the practical and symbolic value of a secret ballot. If the Government's goal is improved workplace relations, a secret ballot can actually help. Professor Paul Weiler, one of the most respected authorities in labour law wrote a secret ballot has a symbolic value that a card check can never have. It clears the air of any doubts about the union's majority and also confers a measure of legitimacy on a union's bargaining authority, especially among minority pockets of employees who were never contacted in the initial organization drive. I have personally spoken to a number of business owners who have said that while they do not like dealing with unions, they would be far more willing to work with the union if they trust that the process by which a union was formed was fair.

To date, CFIB has been searching for the pressing need to eliminate secret ballot votes. We have not been able to determine any satisfactory answer beyond making the certification process easier for union leaders too busy counting membership dues to worry about democracy.

I will skip through my comments about binding arbitration and strike-related misconduct, as other organizations have more than adequately expressed our views on that, and I will conclude by saying it is important to put Bill 44 in the context of other anti-business plans on the part of this government. The Government has already announced its intention to introduce an annual review of the minimum wage, the first province in Canada, create six days of family responsibility leave for every Manitoba worker; review WCB benefit levels; implement liability for directors of corporations under workplace safety legislation, among others. Many firms are starting to wonder what anti-business policy is next to emerge from the labour ministry.

In conclusion, I think it is important to note that one of the first labour laws changed by the NDP in B.C. was to eliminate secret ballots in the union certification process. This action served to poison the waters between the provincial government and the business community to such an extent that working together has become virtually impossible. Ending secret ballots, the very cornerstone of democracy, sends a message to the business community that the Government does not value fairness and does not care about the impact such a move may have on the economy of Manitoba.

If the Government passes Bill 44, without guaranteeing the continued use of secret ballots and without dropping the unprecedented binding arbitration provision, it will be sending a message that small businesses and entrepreneurs are not welcome in Manitoba. I urge the Premier, Minister and all MLAs to abandon this very disturbing piece of legislation. While there is a

lot right about our economy, there are also many challenges. Small businesses want to work with your government to address the real problems that we are facing. On behalf of the 4250 members of CFIB, small and medium-sized firms, I urge the Government not to create new ones. Thank you.

Mr. Chairperson: Thank you, Mr. Kelly, for your presentation.

Ms. Barrett: Yes, thank you, Mr. Kelly for your presentation. I have enjoyed meeting with you on the several occasions that we have met on this and other issues. Just on the secret ballot, I know you are aware that three former Conservative governments as well as, I believe, a Liberal government and two New Democrat governments have over the past 50 years stated, and as a matter of fact in 1992, the then-Minister of Labour stated that the certification threshold of 65 percent of cards signed was an indication of support and was in effect a vote. I am wondering if you would care to comment on that 50 years of experience in Manitoba with an automatic certification level.

Mr. Kelly: I guess the question that we ask when that argument has come up frequently, and every time that argument comes up I ask myself the question: What is wrong with moving to additional degrees of democracy? Why are we trying to go backwards? I think, Mrs. Mitchelson, you made a statement on the radio this morning about the fact that women at one point did not have the right to a secret ballot vote, that Aboriginal people did not have the right to a secret ballot vote. I do not know why we would, in Manitoba, a great province and a great place to live, want to remove the right to a secret ballot vote in any procedure where we have now had it.

I am not suggesting for a second that there are not provinces that do not have the secret ballot yet, but I think the important thing to consider is "yet." The trend among Canadian jurisdictions has been to move towards a secret ballot process. Certainly the two major competing provinces with Manitoba, Alberta and Ontario, have the secret ballot process, and I have yet to have you mention, Ms. Minister, any compelling reason to eliminate it. If you could show us that it has really hampered the impact on unions to organize and that there have been employers that have quashed the attempt to unionize a firm, I think that many in the business community would take that a lot more seriously, but unfortunately there has been no evidence. In fact, the evidence you have provided has shown that union certifications have increased after the secret ballot vote was implemented.

So I am going to answer your question with a question. What is the compelling public policy reason to eliminate this additional degree of democracy?

Mr. Harry Enns (Lakeside): Mr. Kelly, it has been stated by a number of presenters about the overall concern about the business climate that Bill 44 has created, the message that Manitoba is sending to potential investors. Mr. Kelly, as a politician of some service, having served four Tory governments over the past, I do not mind being called names. I do not mind having signs posted on the boulevard in front of the building calling my party names. I do not particularly like it when they called my colleague "Dog Food Praznik" when he was Minister of Health, but that is part of the political process.

I ask this very seriously. I have never heard a responsible president of organized labour call business owners lunatics, nuts and crazies. I have not heard a single business owner call organized labour or refer to organized labour in that fashion. We heard, just from the last presenter, from Mr. Moist, about the climate that is being created, and yet we have prominent organized labour sitting in this audience applauding the calling of businesspeople lunatics, crazies and nuts. Not one of them, whether it is a Bernie Christophe, whether it is a Paul Moist from CUPE, has taken to task their president of the Manitoba Federation of Labour. As far as organized labour is concerned, any employer or most employers in Manitoba are nuts, crazies and lunatics. Is that adding to the labour relations climate in Manitoba?

Mr. Kelly: Well, it is certainly detracting, I think, from their arguments. I would point out that the first thing that you do when your arguments are absolutely groundless is to degenerate into personal attacks. The business

community has been very, very careful not to degenerate into personal attacks. We have not even addressed organized labour as our focus on this bill. Our complaint is with the Government. The complaint is with the Government. The rhetoric from the unions I let just roll off my back. I have had enough of that over the years. I have been doing this for six and a half years, certainly not anywhere near the length of time that you have been in this position, but I have to tell you that I have not seen the degree of rhetoric on the side of organized labour that I have on this issue. I am not going to let that deter us. We are here to bring a message to the NDP that this bill is bad news for business, and I am not holding the Minister accountable for what organized labour is saying. Rob Hilliard has to deal with his own membership on that issue, and I cannot imagine union members being terribly excited about that kind of rhetoric.

Mr. Chairperson: Thank you, Mr. Kelly, for your presentation here this morning. Time has expired for questions.

The next presenter on the list is Peter Wightman. Is Mr. Wightman in the audience this morning?

Mr. Peter Wightman (Executive Director, Construction Labour Relations Association of Manitoba): Good morning.

Mr. Chairperson: Do you have a written presentation, sir?

Mr. Wightman: Yes, I do.

Mr. Chairperson: Please proceed then, Mr. Wightman.

Mr. Wightman: I do have a written presentation. But I have been sitting through a number of the other presentations, and I do not want to be repeating a lot of the rhetoric that we have heard on both sides. I am not interested in doing that with my 15 minutes.

I represent the Construction Labour Relations Association of Manitoba. Effectively, that organization, just to lay a little bit of background here, represents all the major unionized construction companies in Manitoba. Some are outside Manitoba, come in and do work; they are our members as well. I am also the management chairman for the Labour Management Review Committee, the management caucus, so I was involved with the entire process that led up to where we are here today.

My association, because it represents unionized construction firms, likes to take a little bit of a different tack on issues such as the ones that are before us today. In many respects, it is beneficial to my association if more construction companies in the province of Manitoba become unionized. It has a levelling of the playing field, so to speak. My contractors negotiate with 17 different trades in the province, all of which fall under the Manitoba Building Construction Trades Council, and I am sure you will hear from them at some point during this process.

* (10:50)

We have a history of good relations, of working out our problems, not going to arbitration, not having protracted strikes. All in all, I would say, we have a fairly good labour relations climate, although that is a very nebulous concept at best.

I am someone, I guess you could say, that is in the trenches of the labour relations field in this province and has been so for the last 10 years. There are a few points I want to make about the particular bill, and I just want to underscore some very straightforward points. One item that has not been raised today or yesterday, section 69(1).

During the LMRC discussion process, a proposal was brought forward by the labour caucus that, specific to the construction industry, we deal with the manner in which votes for ratification of collective agreements take place. Currently the Act says "employees" only as opposed to the bargaining unit or the craft unit.

I took the position in that process that we were open to having discussion, to sitting down with representation from the Manitoba Labour Board, i.e., the Chairman, Mr. Korpesho, whose job it is to ensure that the Act is interpreted

appropriately and reasonably. Let us bring this individual into the process, make sure that he can advise us as to the decisions that we are making to make sure that we are making a reasonable learned decision, that we are not doing something quickly, rushed, without perhaps considering all the alternatives.

On July 4, we met with Mr. Korpesho, myself, representatives from the Department of Labour, Mr. Dave Martin representing the Building Trades Council, and we had a very good meeting, a very good discussion. From that meeting, it was Mr. Korpesho's learned advice that we step back from making any amendments to that specific section. The one that has been put forward, i.e., that "craft unit" be included in the legislation, that under the definition of the Act for "bargaining unit" or "unit" already contains the word "craft unit."

Now there was an issue that was raised by the Building Trades that effectively an employer, because of the nature in the construction industry, can lay off somebody with an hour's notice. So coming into a ratification vote the argument they made, well, an employer could lay off all of its employees in the bargaining unit except for two or three people who may be brothers-in-law or brothers or some relation who might be anti-union and the vote would be rejected.

That has never been the history in our field. The CLRAM controls the manner in which our members conduct the vote. It should be pointed out that the agreements that are negotiated by the CLRAM, my organization, set the provincial standards for construction agreements in this province and have done so since the early '70s. We have never had a problem with our votes through our board, agreements that are reached at the bargaining table, then being rejected by the board of directors of the CLRAM. Quite the contrary has occurred.

Back in '98, we had four agreements that were agreed to at the bargaining table by the representative parties that were sent to do the work, were agreed, were signed off with recommendations to ratify to the respective principles. Four agreements were rejected by four different locals' memberships. It is kind of ironic that we find that there is a willingness under the Act to try to expand the scope of who gets to vote when there already seems to be some difficulty on labour's side at times. Again, it is a timing issue to get the deal ratified.

What I am suggesting to you on 69(1) is it is already covered under the Act. It is the position of the CLRAM that the current process works very well. We do not have difficulty with our membership getting votes done. This was an anomaly that occurred in '98. We have had many other agreements over the past 20 odd years. We have never had this situation before. What you have to understand about negotiations is–I think that is something that all of you may not understand–that timing is a critical factor. What the membership wants on May 1 may not be what the membership wants on June 1, and it changes. Bargaining committees can get set-up and misread what the aspirations of their constituents are. I mean, that is part of the process.

So my recommendation on 69(1) to you, as well as what came from the Manitoba Labour Board chairman–I do not know if he is going to be speaking with you today–was that the parties should sit down and evaluate any changes in a calm, cool fashion, not feel rushed into making a change for the sake of making a change, because there are other repercussions that could occur in the interpretation, application of the Act in other sections. The last thing we want to do is make a change in this section and then create other problems for the Manitoba Labour Board that we did not even consider because we never had really the opportunity to spend time to fully review them all. So what we are suggesting here is let us step back from this particular amendment and leave well enough alone on 69(1).

Section 87, the strike. You are on 60 days strike and then allowing an arbitrator of the Labour Board to step in with respect to whether the employees feel that is appropriate. I have to agree with what Mr. Moist said. I mean this concern that you have been hearing from employers that this provision is going to somehow promote long duration strikes by individuals in this province so that they can hopefully get to the point 60 days down the road that they can have an arbitrator step in and grant

them their wishes that they could not achieve at the bargaining table. As somebody that has negotiated hundreds of collective agreements in this province over the last decade, hundreds, in health care and now in the construction industry, I can tell you that does not wash with me, okay. It has never been my experience that that has been the objective of the labour movement in this province to do that, nor has it been the objective of the employers in this province, albeit for maybe a few specific situations on both sides, to get into a strike and let it run on forever, for 60 days, 90 days, whatever.

My concern about this particular provision is that it only allows the employees if the employer makes application. That application is then subject to a vote of the membership as to whether or not it can still go forward to the Board. That is the interpretation I get, and I would appreciate being corrected on that. That is what I am reading in the Bill. Again, it is a one-way street.

Now I understand the Minister has quite rightly said time and time again the whole process of labour relations is to try to level the playing field, create an area of fairness. I do not think inherently that this provision allows for that, where an employer now, if they feel after 60 days that they want to go and have an arbitrator of the Labour Board step in, that that decision has to be reviewed by the bargaining unit and potentially rejected. Where are you? It is subject only to whether or not the bargaining unit themselves see that as being an appropriate process to go forward with. I do not think that is fair, and I think you would agree with me that is not fair.

Going into a strike or going into a lockout is not something that either party goes into lightly. It is all about timing as well, and knowing what the issues are on the table. On that issue, I can appreciate the concern about long protracted strikes and having to deal with them, but the strike-lockout has always been the best way of dealing with those types of situations. It forces the parties to think hard about what they are doing before they get to that point. Again, I do not buy this argument that, well, they are going to go on strike or we are going to lockout, so 60 days down the road we can apply for arbitration. I do not buy that. But again I do not see the need for that kind of amendment in the Act to even deal with that type of strike.

It has been my experience in long-term strikes–and I have been involved with some with Canada Post that went on for longer than 60 days–that even that type of mechanism is not going to ensure that, at the end of the day with an arbitrated imposed settlement, you are going to have labour peace. The best process is to let the parties come back to the table and sort it out. If there is any form of legislation amendment that can do that, that is the best way of dealing with those long, lengthy, protracted situations; forcing parties together; giving the individuals in the Labour Board, the conciliation department, real power to force parties to deal with issues.

They do not right now have that power. They are, basically, messengers back and forth between the parties. They cannot force parties to go to settlement, an area of settlement. That has been my biggest frustration with the way the conciliation department–and I am getting a bit off topic–but that is something that has been missed. I think it is something that you need to focus on. These individuals are very intelligent and well-learned people. They know the process, but they have no real remedial authority to force parties to come to a settlement during conciliation. That needs to be corrected. If anything you do, that needs to be corrected.

So I would suggest you need to look at section 87.1(3). That is the provision I was talking about where the employees get to vote on whether or not the employer's application–I am running out of time. Is that what you are telling me? *[interjection]* Okay. That is all I want to say on that issue.

* (11:00)

Certification votes. Again, this is an issue. The more firms that can be certified in the construction industry, the better for my association, the better for my membership. My membership has spoken loudly to me and has said the whole process of taking away the secret ballot has stuck in their craw for all the reasons that we have heard today from the employer representatives that have come up about democracy and fairness and what not. Again, let me give you my

personal experience for someone who for eight years handled all of the first-contract certifications for the health care industry in this province for Manitoba health organizations, and I am not talking about one or two, I am talking about thirty or forty of them, okay.

Prior to the change in '96, I can tell you carte blanche in every single case the employers–and in many respects many of the employees whom I spoke with afterwards–doubted the manner in which they were certified. They did not feel comfortable with it. All the way through negotiations they doubted that the actual majority of people had not been consulted, had not been given the opportunity to sign a card. Now I do not know if that is true or not. All I am telling you is that was the perception out there, and then that always spilled out onto the bargaining process–delay, delay, delay. I would hear time and time again from employers: My people do not want this union. They do not want anything to do with this union. It is just a small, disenfranchised group of individuals. They achieved a number as per the Act, a percentage number of those employed in the bargaining unit, and now we are sitting here having to deal with this group.

Once the change came through in '96 for secret ballots, it levelled the playing field. It forced employers, and it gave myself the opportunity to say to employers: Look, 80 percent of your employees in the bargaining unit voted, and 80 percent of them accepted the situation. So you have to step away; you have to accept that this is the situation and let us get on with it. It always promoted better negotiations. It provided for respect at the table, and it stopped the delays.

The labour group has been saying: Remove it. We have heard about the statistics. We went through all that in LMRC. The statistics clearly demonstrate that once this change went in in '96 it did not make certifications go through the toilet. In fact, they went up slightly, so it is a wash. That secret ballot process is absolutely fundamental to the acceptance of employers to the new situations that they find themselves in, and I strongly suggest to you, at your peril, that if you want to deal with harmony and labour relations issues in this province, that is a fundamental issue. If you remove that, I really feel that, for somebody in the trenches, again, you are opening up that Pandora's box, the level of complaints, the difficulty that then spills out at the bargaining table, because people feel disenfranchised about it. They do not feel that they actually had a voice.

Now I have heard from my labour colleagues that only those individuals that are card-carrying union members should even get to vote, should even have the opportunity to vote on deals down the road, et cetera. Again, when you go into this type of situation on a first contract, I often think of a quote of Winston Churchill, during the Potsdam Conference, yes. He was chatting with Premier Stalin, and he asked him about the nature of his country. He said he understood that everybody in the Soviet Union was equal. Mr. Stalin turned to Mr. Churchill and winked at him, and said: Yes, we are all equal, but some are more equal than others. I do not think that is the kind of message that we want to send to employers and employees in this bargaining unit by removal of the secret vote. I think it is a fundamental issue. It allows people to feel that they are part of the process, and they are all equal in determining their future.

This misconduct issue–

Mr. Chairperson: Mr. Wightman, we have gone well over the time allocated for presentation. We would like to thank you for your presentation–

Some Honourable Members: Leave.

Some Honourable Members: No.

Mr. Chairperson: Is it the will of the Committee to provide leave?

Some Honourable Members: No.

Some Honourable Members: Leave.

Mr. Chairperson: Leave has been denied. We will now move to the questions portion of the presentation.

Ms. Barrett: Just on two points that you made earlier on the conciliation mediation and the vote, we have announced that we will be moving

an amendment that will remove the employee vote in the alternate dispute resolution section, section 87, and the conciliation mediation, the process will very closely follow the first contract. So the role of conciliation and mediation is very much a part of the process here that has worked very well I believe in first contract legislation. So I just wanted to give you that information.

Mr. Wightman: Can I respond to that? On your perception about how well it has worked in first contract, again I want to be very clear here. I am not making a negative comment about those individuals in the Department of Labour who deal as conciliation officers; very capable, very bright people, excellent, excellent staff they have there. Unfortunately, they do not have strong remedial powers to force parties to come to settlement. When I use the word "force," I mean to really pressure, okay.

I have often thought that going to conciliation should be something that the parties, labour, management, should want to avoid, because now you are letting a third party in who is going to influence the manner in which you get a deal. That should be something that, at your peril, you want to go down that road, because you are going to be forced to start dealing with issues in a way from a strategic standpoint during negotiations. Because it is all about strategy and it is all about timing, as I said. You are going to be forced to deal with issues in a way that you do not want to deal with them. So I just send that message out to you. If you are considering doing anything on that, that is I think a focus that you should have.

Mr. Enns: Mr. Wightman, you were about to comment on the misconduct question here when it was indicated that your time had run out. I wonder if you could respond to my question about what you were about to say.

Mr. Wightman: Yes, I appreciate that. You have heard all the case law. You have heard about the Trailmobile case, back in '96, why the decision was made by the government of the day to make that particular amendment. Again, I have had the misfortune of having to deal with a number of strikes on a provincial and on a national basis, and I have seen acts of violence and inappropriate conduct on both sides that would shock you. My learned labour leaders, representatives, know full well that when they are addressing their bargaining unit members, who are going to be walking a picket line, they tell these people, look, maintain your cool, you are going to have things potentially said to you, you are going to see things that are going to really upset you. As the strike continues, the frustration builds. I know that these individuals explain these situations to their bargaining unit members. They do not want to see their bargaining members lose control, get violent, do an inappropriate conduct, throw a brick, throw a stone, throw a bottle. They do not support that kind of conduct.

We got into these discussions at the LMRC, and it was very clear that they do not support that kind of inappropriate conduct. That is not the society that Canada is all about. It has been posed as a threat, if you do this, you are going to lose your job. My goodness, if you did that in any other situation, you would lose your job. Is it inappropriate to take that levelling issue away from a striking individual? I have been a striking individual, I know what it is all about. I am not someone coming up here who has not been involved in strikes. I personally have been involved in long, protracted strikes.

As a striker, I know what it is all about. It only takes one individual to lose control, and if they can lose control with impunity, you have the mob mentality and all hell breaks loose. I say to the Minister and I say to this government: Look out, because you are going to be sending a message out there, okay, that that kind of conduct is–and I think we have heard it before–the get-out-of-jail card. That is not the message you want to send. It does not allow my learned labour colleagues the opportunity to say to their membership: Look, if you lose control, you may lose your job, so settle down. Let us be professional about this as best we can. Let us be calm. Let us get our message across to the public.

* (11:10)

The one thing the public, in my experiences, hates more than anything else are violent picket

line situations. They instantly lose respect for everybody involved, and my labour colleagues know this. I do not understand the concern here to remove this particular section. It has never been a problem since '96. Under the current legislation it stipulates that if you do fire somebody through strike-related misconduct, it is reviewable by the Labour Board. So there is this third-party opportunity already available that the parties can avail themselves of.

I think the big picture is that it is not the issue that is being portrayed here as a levelling of the playing field. That, somehow, having striking workers having the option of acting inappropriately and then having their job reinstated, I think that is hogwash, quite frankly. You do not want to see that. My learned colleagues, I know, will agree with me on this point. They do not like seeing that kind of conduct either.

The relations that most of these labour representatives are involved in are very sophisticated with their employers. They have professional people, the employers do, as well as labour, organized labour, that understand a case law, know what is acceptable in the form of disciplinary conduct. If they do not, you go to the Labour Board and the Labour Board will handle it for you.

We have not had many cases of it. Why? Because, again, you have a body of professional people in this province that understands the case law and deals with these situations in a very straightforward and intelligent fashion.

Mr. Chairperson: Thank you, Mr. Wightman, for your presentation. Time has expired for questions.

Mr. Wightman: Thank you.

Mr. Chairperson: The next presenter we have on the list is Mr. Bernard Christophe. Please come forward, sir. Do you have a written presentation for members of the Committee?

Mr. Bernard Christophe (United Food and Commercial Workers Union Local 832): Yes, I have. My assistant will distribute my brief. Thank you.

Mr. Chairperson: Please proceed, Mr. Christophe.

Mr. Christophe: Thank you. Mr Chairperson and members of the Committee, my name is Bernard Christophe, and I have been a full-time union representative in this province for 41 years.

I am familiar and I have been personally involved in unionizing new workplaces and negotiating collective bargaining agreements. I have been involved in strikes and lockout disputes, handling of grievances and arbitration cases for our membership. I welcome the opportunity to appear before you today on the amendment to The Labour Relations Act, which I consider as a step in the right direction, but should not be the last step, to restore the balance of power between employers and unions.

Even with these amendments, the balance of power is still heavily tilted in favour of employers. The previous Conservative government, legislative session after legislative session, tilted the power in labour relations in favour of employers by amending The Labour Relations Act as indicated on the last page of my presentation, Exhibit F, in 12 different areas, which obviously was a payoff to their friends in the big business community without any justification.

I might add that also in the previous government throne speeches they did not indicate that they intended to drastically change The Labour Relations Act in the province of Manitoba, and they give the employer an opportunity in fact to stop the employee from belonging to a union of their choice or to allow an employer to eliminate unions from the workplace, often through long, protracted strikes. This sometimes resulted in people losing their jobs. In addition, they passed an amendment in regard to financial statements and political donations which was not necessary because unions are democratic organizations and decisions such as the payment of support for political activities is sanctioned by the membership.

I also will deal with the position of the Chamber of Commerce and the Business Council in regard to amendments of this act who have

worked themselves into a frenzy over the possible consequences of what it does to employers. Their stance, in my opinion, is hypocritical; their statement false and misleading; and they are not telling the public the real reason. In fact, in simplest terms, many employers want to be free of trade unions in this province. You know, interestingly enough, nobody on this committee, with the greatest respect, has asked those employers: Why is it against the interest of employers that these amendments be made? So they say, well, they will not invest in this province. Why will they not invest in this province? Why will they not come to this province? The why has never been asked by any of the journalists who simply have mouth-pieced the business community.

There is only one honest employer in this province who had the guts to say what it was. This is Mr. DeFehr. On that one issue he is honest. He said he does not want the union in his place. Why does he not want a union in his place? That is the next logical question, and that question has never been asked. I will tell you why. Because they want to deny their employees the democratic right, first of all, to choose a union. They do not want democracy in the workplace. They do not want their workers to sit down with the employers and have a say in what their working condition is going to be and in what their wages are going to be. They want, in fact, to continue to pay them whatever they want to pay them, to fire them whenever they want, to give them whatever health benefit they want to give them. That is the real reason here. You know, interestingly enough, those employers who are so outspoken–and Mr. Kelly says he does not understand where the evidence is–are non-union employers. How many unionized employers have appeared before this committee? Very few in reality.

Those who are unionized have found out the benefit of having a union. It brings stability in the workplace. It gives an opportunity for an employee to voice a dissatisfaction, to present their grievances, to negotiate benefits on a regular and systematic basis. Some of the most efficient companies in this country have unions. Canada Safeway is one of the most efficient supermarkets in this country. Westfair as well. General Motors and many others. This has not stopped business to prosper, to succeed. In fact, in many instances it has. It is encouraged in the preamble of The Labour Relations Act that collective bargaining should be encouraged. If it is so, then it should be easy for employees to belong to unions and more difficult as the employers have, in fact, done by amending The Labour Relations Act.

In regard to interim certification, we support, of course, a reinstatement of same insofar as certification votes and the reduction of the threshold be even lower is because, in fact, employees in this province are not free to join the union of their choice without threats and intimidation from their employer.

We have listed as evidence, from Mr. Kelly and others, the case of Marusa Telemarketing Company which invariably fired the identified union organizer. Tyler Gardner is a real person. He has a family to support, and he had to put his job on the line just to have a union.

IGA–Burrows, terminated Krapchinski at Maples. I am reading from page 20. Thomas Knott who worked on an organizing drive for 4 months was fired.

Price Chopper, Julie Sheeshka was fired.

Faroex, four people were fired.

Sobering Security. Four key union organizers were fired. In fact, the first time it was so bad that the Labour Board refused to count the vote and order certification. Then there was a decertification application shortly after. Three people voted. They voted to keep their union. Shortly after that those three people were fired.

In the Airliner, Mr. Manchelanko and Mr. Chatelaine were terminated.

Blue Line Taxi. Here is a good example of the lack of freedom, and this is done to intimidate workers. One of the people who left the voting poll shook hands with this man over there who is a union organizer. Shortly after that, he was fired. The people were given $500 if they voted against the union. Captive audiences are held by employer, and this happened. This happened.

As soon as a notice goes up on a bulletin board that a vote, a so-called secret ballot and free vote will take place, the employers go all out in order to threaten, intimidate, coerce the employees. The evidence I have listed, I have not made that up. This was brought up before the Labour Board, and in the case, for example, of Faroex, another conniving technique of the employer was to dismantle one machine and take it somewhere else until the vote was taken, the union was successful and then at that time, he brought the machine back.

Now, if you think it is there for the employer to be more comfortable to have a vote, the real reason is for employers to stop their employees belonging to the union. The only reason why in many other provinces and in this province for 40 years there was no vote is because the fathers of this Legislature realize that there is no equality between employers and employees when it comes to certification, and the only way to ensure that there is in fact no interference is to have the card signed in the privacy of their home and the employee deciding that way.

If you think it is easy to go into a home and have an employee sign a card, you have never been involved in certification. If you believe that those people are intimidated, you are wrong. People, the citizens of this province are intelligent people and only make decisions after they ask questions. The Manitoba Labour Board verified that those cards have in fact been taken and signed properly.

You know, the interesting thing is, all kinds of employers now have been convicted of interference with the rights of people to join unions. You know, in 41 years in this province, there has not been one single union organizer who has been convicted of fraud in negotiating or in signing people into the union. That is the reality of the workplace. Those employers out there do not, obviously, get involved in union organizing, do not talk to the employers I have listed there, do not know what is going on, but the only reason they do not want changes, as I say, is because they simply do not want a union in their workplace. So what I am saying is that the automatic certification should be lowered to 55 percent in order to stop interference by the employer, as it was for a long time.

* (11:20)

The issue of arbitration after 60 days, my colleague explained rather well. Then people do not go on strike just because they are going to go to arbitration. There are people out there who make little money, and if they go on strike, they make even less. It is not their intention in life to walk for 60 days. I do not think too many of you have been on the picket line and walked for 60 days and seen other workers replacing them and going to work and believe that indeed that is what should happen, so listen. This arbitration process is there to act as a deterrent. Employers and unions, if they do not want a third party to impose a settlement on them, what they do and do most often is to reach, in fact, an agreement, and that is an enlightened process.

Some of you here in this room and before have said: Well, look, we should continue the strike and lockout process. Well, now, some also say we should change. The strike and lockout process is the caveman or cave person's way. You go out on the picket line and you try to beat each other to a finish when in fact it hurts the employer, it hurts the employees and it hurts the customers. To avoid a strike or have a process to shorten the strike is in the interest of everybody in this province. It is a win-win for everybody, and employers who have a case in giving whatever they want to give will have the same chance and opportunity in front of an impartial arbitrator to present their case. So what are they worried about? Good employers normally settle their collective agreement without any problem.

Finally, on expedited arbitration procedure. Again, you are not union members, many of you, but there are often grievances that are not resolved quickly, so the previous government brought about expedited arbitration procedure which speeds up the process of grievances being resolved. In that particular instance, any and all grievances were resolved very quickly. To only bring it for disciplinary action is not sufficient. I have, in fact, listed a real example of real people on page 23 of my presentation, of grievances other than disciplinary action which have, in fact, lasted up to a year. Now, Mike Harris, the friend of the business community, the darling of the business community, has, in fact, expedited arbitration on all instances. That is not against

the economy of Manitoba to restore that. That is pro-employees and that should be restored.

Finally, in regard to picket line violence, I am very familiar with this. I can tell you that very often it is a set-up by the employer. If you look at the picture that I have listed on page 27, this is a famous picture of the Westfair strike on June 25, 1987, and here is a perfect set up. The person with the baby is not a customer, and that is not her baby. She is Kathy Gates. She became labour relations for Westfair Foods and she was deliberately going through the picket line, had phoned *The Winnipeg Sun* or whatever newspaper it was, in order to try to create an incident to show how those poor little customers and baby going through the picket line were abused by these big bad people. The only incident of violence of a substantial nature did occur at that time. A manager, a produce manager, shortly after he went back home, took a gun and shot his neighbour because he thought it was a striker trying to fool around with his car. That person is a paraplegic for the rest of his life. What I am saying is, No. 1, the removal of this is necessary because otherwise people could be fired simply by telling the boss to go to hell.

So I encourage this government, in conclusion, to not only pass these changes but the others I have mentioned to bring back the freedom to join the union without any interference and also to shorten strikes which is a far better way than hitting each other over the head on the picket line, which is outdated and indeed should be removed. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Christophe.

Ms. Barrett: Thank you, Mr. Christophe. I think we all appreciate not only your verbal presentation but the information and the examples of your personal experience and those of the members of your union. I think it is always helpful to have not only a discussion about issues and theories but also personal information, information of a historical perspective, what actually has happened, to give us some context as we discuss and debate these issues. So thank you very much for your presentation.

Mr. Schuler: Bernie, thank you for your presentation. Certainly we have heard a lot of different perspectives and have been looking forward to hearing you put your comments on the record. I listened to what you had to say with great interest, and I look forward to perhaps having the opportunity to sit down with you and Rob and Paul and perhaps we can have coffee together. I know I have sent a letter to all of you, and you have responded in a most intriguing fashion. It would be nice to sit down and discuss some of these things.

In one of the presentations, the discussion was that perhaps the focus should be less on divisive issues and dealing more with the labour shortages, with the shortages of skilled labour that we are experiencing not just in Manitoba but across North America and even dealing with immigration so that as jobs start to become vacant and we cannot fill them, we start looking at filling those jobs. Did you want to comment on that particular presentation?

Mr. Christophe: I think there is no question there is a shortage of workers in this province, particularly in the garment sector, which I also represent. I understand that this government and the previous government has an initiative to bring workers, and I think that is good.

Your description of this bill being divisive is not correct. I think the business community through their ad have made it so. Interestingly enough, when unions, even before, were certified through the card check, which is, by the way, thoroughly scrutinized by the Manitoba Labour Board–they verify their signatures and so on. What I am saying, Mr. Schuler, is that there are about four million workers in Canada who belong to unions. Once they are unionized, if they do not like the union, they can decertify them, and it has happened to us on occasion.

So what I am saying is that if the collective bargaining process is indeed in the interest of the public, then I think you, Mr. Schuler, should welcome the opportunity to have more employers unionized so that democracy in the workplace exists, so there are happy employees. When there is a grievance, when there is a union they can go and use the grievance procedure. When there is no union, they tell them if you do

not like it, you can quit, or if you do that, and I do not like you, I am going to fire you. This happens in the real world where there is no union. That is why they come to us.

There are good employers out there. Do not get me wrong. We know them and we deal with them often, but there are those who are not good, who mistreat their employees, who ignore health and safety and all others. This is why the process of collective bargaining in a free country is encouraged.

Mrs. Smith: Thank you for your presentation, Mr. Christophe. You made the comment that you did not think that Bill 44 is divisive. Could I have some of your comments? We have seen the advertisement, you mentioned the business. There was also advertisement in retaliation from a union as well. You make the comment on this lunatic fringe announcement, that businesses are in the lunatic fringe. How do you feel as a union person yourself in terms of building the teamwork and the aspects? You have said there are many good employers. How do you reconcile this statement?

* (11:30)

Mr. Christophe: I think it is taken out of context in this sense. Mr. Hilliard and I spoke extensively, not about that, but about the position the Federation of Labour should take. I think he was reacting to the ad; he was reacting to what business was saying, which was false and misleading.

I mean, there is a statement I just read not too long ago: We do not know how many businesses will not come into the province of Manitoba because of Bill 44. What a statement to make. He does not know, but he uses it as a reason. My God, there are thousands of people who would have joined the union if Bill 44 existed. I mean, that does not make sense.

So, in answer to your question, I think he was referring to the ad and not to the person. I know my friend, Mr. Harry Enns, has made the most of it, and it is amusing, but nobody can say that any business person has been medically certified as lunatic. I do not think that was what Mr. Hilliard was saying. He was angry. He was angry at what the business community was saying, which was false and misleading, and that is why he said that. I do not think he has any certified statement from a medical doctor that those people are lunatics.

Mr. Chairperson: Thank you very much, Mr. Christophe, for your presentation. Time has expired for questions.

The next presenter on the list is Colin Robinson. Is Colin Robinson in the audience? Please come forward. We are circulating the written presentation from Mr. Robinson, and when you are ready, Mr. Robinson, please proceed.

Mr. Colin Robinson (Private Citizen): Thank you very much. My name is Colin Robinson. I am a labour lawyer in the city of Winnipeg, and I practise exclusively in the area of employment and labour law.

You have my written presentation. I am going to go over many parts of it. Some parts, I have been here almost as long as all of you have over the last two days, and I will not go over all of it ad nauseam. The principal necessity of all employment and labour legislation is to reduce the inequality and bargaining power that exist between employees and employers.

The amendments to The Labour Relations Act set out in Bill 44 advance the fundamental principles set out in the preamble of the Act and the spirit of modern Canadian labour legislation. Moreover, the amendments fairly and reasonably address the inequality that exists between employers and employees; that is consistent as well with what the Supreme Court of Canada said in the *Machtinger* case where they said: The alleviation of inequality must be the fundamental remedial principle of all labour legislation.

I am disturbed with the tenor of the debate that has gone on. It reminds me, and I have set out starting at page 3 of my brief to you, much of the comments that were made in 1985 in that round of changes to The Labour Relations Act. I have the ad here that was put out by some of the business groups at that time: You will see a dark cloud over Manitoba. The claims then were that those labour law changes, that free collective

bargaining as we know it in Manitoba is finished. Big Brother will now make decisions for us. Many will leave Manitoba to establish their businesses in other provinces. Many young Manitobans will leave. The same kind of complaints that you have heard today. These groups were wrong then, and they are wrong now.

The trite refrain of some of the groups that we have heard from, "if it ain't broke, don't fix it," misses the point entirely. The regulation of labour-management relations is an organic process which ought to be subjected to regular review and scrutiny in an attempt to address a complex and ever-changing relationship.

Policy options, which hold out the promise of reducing industrial conflict, are in the best interests of labour, employers, and most importantly, the public. Far from hindering economic development, the amendments ought to be embraced for creating a climate in which fewer days are lost to strikes and other sources of potential industrial conflict are avoided. Also underpinning the arguments of some of the business groups–and I think you heard during Mr. Carr's presentation about how he and his members are in competition with worldwide–is that economic competitiveness can only be achieved by winning a race to the bottom in terms of social and labour standards.

I have outlined on page 4 of my brief something that Professor George Adams said. Professor Adams, for those of you who do not know, is not only a professor, he is probably the leading arbitrator and neutral in the province of Ontario, our equivalent to Wally Fox-Decent here in Manitoba. He was a judge, he was a deputy minister of Labour, and he is the most experienced practitioner of alternative dispute resolution in the country. What he said, in a recent article where he reflected on 20 years of collective bargaining in this country, is this:

Simply put, collective bargaining is a valued process and access to it and its administration ought not to be subject to unreasonable hurdles. Access, in particular, must be made as transparent as possible, and in this sense, the Legislature would simply be reasserting the continued importance of collective bargaining. This process, I believe, needs such reaffirmation. Canadians do not want to be the victims of "social dumping," i.e., the lowering of our labour and employment standards to the lowest common denominator of competitor nations, nor should we be.

Then he goes on to say this: Fortunately, there is no inevitable link between inferior or frozen social standards and a country's competitiveness. In fact, more the reverse is true.

Economic competitiveness is dependent on a well-educated, able and motivated workforce along with entrepreneurial initiative and innovation. These amendments that are proposed do nothing to take away from any of those components.

I turn to the automatic certification with 65% employee support. It seems to have engendered a lot of debate here. A simplified certification procedure in an appropriate case involving automatic certification had, prior to 1996, been in place in this province for approximately half a century. I believe that reforming The Labour Relations Act by reinstating automatic certification in appropriate cases advances the interests of employees' unions and employers and the public. The amendments also, as we have heard, bring Manitoba's labour laws in line with the majority of other Canadian jurisdictions. At present, in all Canadian jurisdictions except Alberta, Nova Scotia and Ontario, a union may be certified without a vote of employees if it can satisfy the Labour Board that it has secured a sufficiently high level of unequivocal membership evidence. Accordingly, the amendments place Manitoba in the middle of the pack relative to other provinces and the Canada Labour Code in terms of automatic certification.

* (11:40)

Let us talk a little bit about the cards, the membership evidence. Evidence that an employee is a member of a union as of the date of the filing of the application for certification is, pursuant to Section 45 of The Labour Relations Act, conclusively deemed to be evidence of the employee's wish to have the union represent him or her. Unions demonstrate the support by having employees sign cards. It is also notable

that the Act specifically prohibits, in section 45(4), unions from engaging in acts of intimidation, fraud, coercion or threatening to impose a pecuniary or other penalty to compel or induce a person to become a member of a union. The Manitoba Labour Board is granted the jurisdiction to dismiss an application for certification where there is proof of one of those violations. So, as such, employees are not out there alone being intimidated without any recourse. If there is intimidation or fraud they can make an application to the Labour Board, and the Board has the ability to throw out that application for certification.

The argument has been made here that a vote of employees gives credibility to the process for employers. I find that argument a little bit troubling. Signing a membership card is, in essence, entering into a contractual relationship with a trade union. What ordinarily happens is that a person is asked to sign and that signature–and there is often the payment of an amount of money–says that I the member would like the trade union to be my exclusive bargaining agent in matters related to employment. It is a contractual right.

Fundamental underpinnings of our economy are freedom of contract. How can employer groups say that they do not ascribe any legitimacy to a legal contract between an employee and a trade union and that the only way they can see any credibility in this process is if there is a vote?.

In regard to the vote, I have heard Professor Paul Weiler, who I agree is one of the leaders in Canadian industrial relations, his words taken, I think, out of context. I have quoted him from his most recent book which is *Reconcilable Differences*. He talks about how a vote is not necessary. Let me quote that for you. It is on page 6 of my brief: Still I think we should not overemphasize the urgency of the legal task of refining the model for union representation decisions. Let us be clear about the nature of the choice being made by the employees. There is an inherent fallacy in the political analogy. The employees are not making a momentous choice, one which should be carefully hedged with ceremonial trappings ultimately allowing the employees to make up their minds in the solemnity of the voting booth in the same way that citizens do about their governmental representatives. The fact is that a trade union does not have governmental authority over the unit of employees. The trade union gets a piece of paper, a licence to bargain on their behalf, which is by no means the key to the vault.

Weiler is right. This is not akin to voting for an elected representative. In fact, automatic certification is to be preferred for a couple of very substantial reasons. First of all, if you order a vote there is the potential mischief of having employers interfere with the free right of employees to select their trade union, to indicate to them–and by all means I encourage you to review the records of our Labour Board and other labour boards across the country to say that if you select a trade union we are going to close the plant, you are going to lose your job, there is going to be less work. Automatic certification, where the union demonstrates 65 percent or more, relieves employees of the burden of fending off those attacks.

Mr. Hilliard yesterday mentioned a case, Tucker and Sheet Metal Workers International. It is a case before the Manitoba Court of Appeal. The panel was Twaddle, Justice Huband, former leader of the Liberal Party and Justice Monnin. They considered the automatic certification process, and they hold in this 1999 case that automatic certification without a vote or a hearing was consistent with the principles of administrative law and the Charter of Rights. Here is what they said: Without regulation the freedom to unionize has its pitfalls. An employer might exert improper influence on its employees to resist unionization or at least to select a union more favourable to them. It is sometimes thought that a tribunal such as this board–he was speaking of the Manitoba Labour Board–must always give interested parties the opportunity to be heard. This thought, however, is an oversimplification of a complex rule. In the field of labour relations, it is not uncommon for statutes to provide for certification without a hearing. There are many reasons for this, not the least of them being the need for prompt decision and the need for confidentiality of union records. Certification without a hearing has been held at the highest level not to abrogate the principles of natural justice as long as those interested have

had an opportunity to put forward their arguments.

Section 45(1) of The Labour Relations Act does not lessen freedom in this regard in any way. For administrative convenience, it merely assumes that a voluntary member of a union on a given day would wish the union, to which he or she continues to belong, to represent him or her in the bargaining process. So we see that the Court of Appeal has given credence to this process. I also note that this process will unburden the Manitoba Labour Board from conducting Labour Board supervised votes when the result is, frankly, a foregone conclusion in many certifications.

I see I only have a couple of minutes. I am going to talk a little bit about expedited arbitration. I think that the decision to extend expedited arbitration to all discipline cases is an excellent one. My practice is primarily in appearing before arbitration boards, and I can tell you that the delay in having arbitrations proceed is absolutely unconscionable. It can take a year, sometimes more, for arbitrations to proceed, and this amendment will go some distance towards that. Frankly, it is my view that expedited arbitration ought to be extended ultimately to all grievances once again. It is in the best interest of labour relations.

I have made some comments on page 12 of my brief about how long delays have a real negative impact on arbitrations in that, obviously, witnesses' memories erode over time and the quality of evidence that is heard by an arbitrator is negatively impacted by that delay, and this amendment makes good common sense if only to avoid that mischief.

Briefly, because we are running out of time, the arbitration during a work stoppage, the first contract arbitration that has been in effect in Manitoba has worked I think very well. In my experience, it is used by employers quite frequently. The last first contract arbitration that I was involved in involved employees at the Victorian Order of Nurses. There was a small clerical unit of about 30 employees who went out on strike, and the employer elected to impose first contract arbitration. Myself and Grant Mitchell ultimately resolved that without the necessity of a hearing.

Expedited arbitration and interest arbitration it is important to note, and employers should be aware of this, does not involve in the imposition of Cadillac agreements. I have quoted my friend, Mr. Mitchell, at pages 15 and 16, who goes into his experience with interest arbitration and his experiences, as mine, that arbitrators try to replicate the collective bargaining process, that it is not a huge win for trade unions.

Mr. Chairperson: Thank you, Mr. Robinson. I am sorry to interject, but we are well past the allotted time for presentations. We will move to questions now.

* (11:50)

Ms. Barrett: Just a brief comment. Thank you for your presentation verbally, but I am looking forward to reading your written brief which has in it a number of very interesting elements that will help us in our deliberations. So thank you very much for your presentations, both oral and written.

Mr. Schuler: Colin, I would like to thank you. I had a look through your most interesting legal brief that you presented for the Committee. On page 4, the last paragraph, there is something that gives me a little bit of concern, and you talk about the economic competitiveness is dependent upon a well-educated, able and motivated workforce along with entrepreneurial initiative and innovation, something clearly we all agree with. Then you go on to say: "The proposed amendments do nothing to detract from these essential elements of a well functioning economy." Basically, what you are saying is Bill 44 has no detrimental effect on the entrepreneurial initiative.

My question to you, Colin, is: Could you tell us which business it is that you risked your home, RRSPs and everything that you have to start a business, to get that entrepreneurial blood flowing in your veins, that you hired individuals, unionized clearly, so that you would have the authority to speak on behalf of the entrepreneurial class in Manitoba and make a statement that says that Bill 44 will have no effect on the entrepreneurial spirit in Manitoba? Can you tell us, based on which of your life experiences do you make comments like that, that gives you the authority to speak for entrepreneurs in this province?

Mr. C. Robinson: Thank you, Mr. Schuler. I deal with employers and employer groups each and every day of my working life. I, frankly, have an outstanding relationship with them, and I think I have a very good understanding of their needs and their priorities. I can tell you that, in my view, these amendments will improve labour relations in this province. They will reduce conflict. They will be cheaper for employers. Let me give you one example from my particular sphere of expertise, which is arbitration.

Expedited arbitration is far cheaper in the end for employers. It provides them with the confidence of having a result that can be relied upon. It creates a workforce which is under less stress because an employee who has a cloud hanging over him or her because of an outstanding grievance can have it heard within two months from start to finish, rather than a year and a half. There are a number of reasons, and, frankly, it is far more cost efficient. I would also think that an employer who is involved in a bitter, lengthy labour dispute would be pleased to be able to invoke the provision to apply for arbitration. In fact, as I was explaining to you during my presentation, look at the Victoria Order of Nurses involved in a long strike with their clerical employees, and at that point they invoked first contract arbitration. A deal was very quickly settled between the parties with the involvement of counsel, without, I might add, actually going through with the arbitration process, so that is the life experience that I am basing those comments on.

Mr. Schuler: Colin, you have yet to mention any business that you are involved with. Clearly you are not an entrepreneur. You did not answer that question, and clearly you have not risked anything to create a business. My question to you is: What is it that gives you the authority to speak on behalf of the entrepreneurial class of the province to say Bill 44 will not harm the entrepreneurs of this province? I think you have clearly laid that out in your document on page 4, where with authority you seem to say that "the proposed amendments do nothing to detract from these essential elements of a well functioning economy." Again, on what authority do you make that kind of a statement on behalf of the entrepreneurial class of this province?

Mr. C. Robinson: I believe I just answered that question. I am a labour lawyer in this city. The only work that I do is involving employers. I have extensive experience in that area, and I would be shocked if the employers that I deal with would have any trouble with reducing their arbitration costs, with reducing industrial conflict in the workplace. I would be shocked and frankly concerned if that were the case, and I do not think it is.

Mr. Chairperson: Thank you, Mr. Robinson, for your presentation here this morning. Time has expired for the questions.

I would ask the indulgence of members of the Committee. We have an out-of-town presenter who had been listed as No. 4 on your list this morning, Randy Porter, who was unavoidably delayed due to highway construction. I am wondering whether members of the Committee would consider allowing Mr. Porter to make a presentation here this morning. *[Agreed]*

Mr. Porter, please come forward, sir. Do you have a written presentation for members of the Committee?

Mr. Randy Porter (Portage Labour Council): No, I am sorry I do not.

Mr. Chairperson: Please proceed, sir.

Mr. Porter: Mr. Chairperson, committee members, I am pleased to have this opportunity to make the views of the Portage Labour Council known to you on the contents of Bill 44, The Labour Relations Amendment Act.

The Portage Labour Council is chartered by the Canadian Labour Congress and represents over 2000 organized workers in Portage la Prairie. We believe the balance of power between employers and workers was changed significantly in favour of employers in 1996, when changes were made to The Manitoba Labour Relations Act. Those changes were seen by us to be designed to weaken our existing unions and make it harder to organize new locals.

Bill 44 is seen by us as a first step to restoring the balance of power between employers

and union members. Bill 44 will end the useless practice of filing financial reports with the Manitoba Labour Board, which was supposed to make it easier for our members to get financial information on their union, when in fact it was always available to them in greater detail with explanations at their local meetings in Portage as opposed to having to contact Winnipeg to get information from the Labour Board.

Another important change with Bill 44 is the ability of certification without a Labour Board vote. It is not that we are against voting, but why should we have to vote twice for the same thing when we go to organize a workplace. It is because employees have asked us to organize them, then they have signed cards indicating they want to join after learning about the benefits of belonging and how unions are run.

If you have a significant majority already voting in favour by signing cards, why would you need another vote? We in Portage have experienced one of our large employers whose employees were trying to get certified and because of the time it took to do a vote with the Labour Board, there were several rumours going around and one was that if a union was certified at the plant they would close up and move elsewhere.

This sounds similar to what the organization for business has also said. It is threats that we are going to lose something if we organized. This is clearly a case of intimidation to stop the certification, and it worked because it allowed extra time for the intimidation to happen. Bill 44 could prevent this in the cases of a clear majority.

We believe that changes contained in the amendments of Bill 44 will help to make a more harmonious working relationship between employees and workers because it restores some of the balance of power between employees and employers. We appreciate that the provincial government has introduced this bill which will help to remove barriers to unionization of our province and restore some of the imbalance of power created by the previous government. I thank you for this time to speak.

Mr. Chairperson: Thank you, Mr. Porter, for your presentation here this morning. Any questions?

Ms. Barrett: Thank you very much for coming and sharing again some personal experiences. I think they are very helpful, as we may or may not have specifically been involved in our past lives with the processes that we are discussing in Bill 44. It is always helpful to have perspectives from people who have actually participated in the organizing process. Thank you very much. I am glad we could get you in this morning.

Mr. Porter: I appreciate that. Thanks.

Mr. Chairperson: Are there questions? Seeing none–Mrs. Smith.

Mrs. Smith: I thank you very much for coming in from Portage and making your presentation today. I just have a question about the democratic vote in terms of a secret ballot. I am not sure that your arguments would be something that workers would appreciate on the line. Could you give me some further reasons as to why a democratic vote is not on your top priority list?

Mr. Porter: In my past experience, when I have been involved in actual organizing, what usually happens is the employees come to us and say: Look, we are interested in becoming organized. We believe that we are being treated unfairly, and we would like somebody to do that speaking up for us. So, first of all, it takes them to contact us and it involves them in a process that they are not really familiar with, and they are just checking us out. Basically we go to them. We give them the information in regard to what is happening and how it works.

* (12:00)

In one particular case that I was involved in in Altona, it was very intimidating. We were meeting in a motel room and there were cars across the street taking pictures of people going in there. They were just going in there to actually exercise their democratic right to join a union. I do not know about you, but I found it very intimidating my first time in actually seeing that kind of thing take place. We were under surveillance, for what? We were offering people an opportunity to exercise their democratic right.

In those kinds of cases it is very intimidating. The example I gave, as in Portage, is all

these rumours were flying around and it actually changed people's minds, not because they did not want to be unionized. They did not want to be out of a job because they heard the employer was going to run. We heard several people talk about that today.

I am a worker on the floor, and I know what it is like. If there is a threat of my job, of losing my job, I may make the wrong decision, and it is based on intimidation. It is not based on the fact of what I really want. As far as I am concerned, I see that if you changed that and did not go to the actual secret ballot, which is actually a simpler form of voting than going out and actually signing a card and meeting people that you do not know, it is a lot more involved process than just going to a secret ballot.

My experience is that it does not change with the secret ballot. It usually goes up. Again, that is my experience.

Mr. Chairperson: Thank you very much, Mr. Porter. No other questions. Thank you very much for your presentation here this morning.

The hour being past 12 noon, what is the will of the Committee?

An Honourable Member: Rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 12:02 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 44

Introduction

The Alliance of Manufacturers & Exporters Canada ("Alliance") is a national business association with very strong divisional representation in each province. Our members are responsible for about seventy-five percent of Canada's manufactured output and over ninety percent of our country's manufactured exports.

In brief, the Alliance has three primary areas of concern with Bill 44:

eliminating the vote requirement from the certification process;

unilateral settlement of collective agreements by arbitration after a work stoppage; and

the inability to discharge for misconduct during a strike or lockout.

It is our view that these three changes will upset the delicate balance between businesses and labour that exists currently and will have a significant negative impact on the Manitoba economy, jobs and prosperity.

While unions have an important role to play in our economy and provide balance in the workplace, it is not appropriate for government, without a demonstrated need, to interfere in that balance with legislation that tips the scale in favour of one side (labour) over the other side (employers).

Global business is evolving at an extremely rapid pace, and the competition to attract and grow industry is now truly international. Jurisdictions that create uncompetitive climates for business are more likely than ever before to be bypassed by the players in the new economy whose options are worldwide. Once a business leaves or invests outside Manitoba, that business may be lost forever, along with the associated tax revenues and jobs.

1. Eliminating the Voting Requirement from Certification Process

The current procedures work. They provide workers with an opportunity to freely determine by secret ballot whether they wish to be represented by a bargaining agent.

There is no risk that continuing the current process will harm labour relations in our Province. The Alliance submits, however, that there are downside risks in returning to an old system where votes, in particular circumstances, are not allowed. In our view, the vote, if it does nothing else, accomplishes two goals:

1. it provides employees a private and confidential opportunity to express their wishes for or against a particular bargaining agent; and

2. the employer is left with the clear and express view of his or her employees.

Whether or not the employer likes or dislikes the result of the vote, there can be no argument that a vote conducted by the Manitoba Labour Board ("Board") was fair; and that the result must be accepted.

Further to the above two goals, the Alliance submits that providing employees with a fair and free process to express their wishes in all certification votes, is consistent with the preamble to The Labour Relations Act ("Act"):

> . . . it is in the public interest of the Province of Manitoba to further harmonious relations with employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees. . . .

If employees choose by secret ballot, that they wish to be represented by a union then, in our view, employers will be more inclined to accept that result and to move the process forward, i.e. start collective bargaining, and less inclined to complain about the process and resist collective bargaining.

3. One concern raised with the vote process is that it presents an opportunity for employers to exert influence over employee choice. This concern is, with all due respect, without merit, our reasons for the foregoing statement are as follows:

   the current Act provides for an expedited process - seven days in which to have the vote conducted. This process can only be varied where the Board determines that such is necessary;

   the Act provides significant unfair labour practice penalties, should an employer attempt to influence an employee's vote. These penalties include, providing the Board with the power to grant discretionary certification, i.e. certification with no vote; and

   today's workforce is better educated and more sophisticated then those of years past. Today's employees, in the privacy of the voting booth, can weigh the arguments pro and con and make their own decision in respect to a bargaining agent.

2. Unilateral Settlement of Collective Agreements by Arbitration after a Work Stoppage

The Alliance submits that this proposal is a fundamental change to a core value of the labour relations system and the Act.

No other jurisdiction in Canada or the United States has such a system. In our view, that is because such is inconsistent with the underlining premise of collective bargaining, i.e. that the parties will bargain, make compromises and reach an agreement they both can live with.

This proposal takes a key portion of the labour relations system, and fundamentally changes it. Such a proposal, in our submission, is a recipe for disaster. Such a step ignores that the Act and our system of labour relations are premised on both parties having the right to compel the other through economic means (strike or lockout) to accept the terms of the other.

No one would argue that collective bargaining, where it is in place, works and most employers and unions are able to resolve their issues without resulting to work stoppage. Nevertheless, the right to initiate a work stoppage is a critical element in compelling both employers and unions to negotiate with a view to reaching a collective bargaining agreement.

From a practical view, there is merit in the position that this significant change to labour relations will result in more strikes, not less. With this proposed legislation, the risk can now be quantified by both employers and unions. The balance of the current system is usurped by this fundamental change. This may be a change that was spawned by good intentions, but, in our view, this fundamental change will reap a bitter harvest for employers, unions and employees.

3. Discharge for Misconduct during a Strike or Lockout

The Alliance submits that the provisions currently in the Act are balanced and fair for

employers, unions, and employees. In particular, the current provision in the Act relating to relating to misconduct during a strike or lockout:

do not eliminate the onus on the employer to make its case to an independent third party; and

do not eliminate the onus on the employer to meet the standard of just cause.

There is no dispute that strike and lockout are stressful situations for all involved. Nevertheless, such does not excuse irresponsible or unlawful behavior.

4. Summary

In our view, this Bill in its current form does more to harm than to assist labour relations in our province. Further, passage of this Bill will result in a perception that Manitoba is a bad place to do business. The result of that perception will be less investment in our province, fewer good jobs and as a result all citizens will have reduced opportunities for a healthy standard of living, and our governments will have less opportunity to pay for the services that all citizens expect.

The Alliance of Manufacturers and Exporters Canada, Manitoba Division