

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

I am pleased to submit the 2005-2006 Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2005, to March 31, 2006.

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

As I only assumed active responsibility as the new Chairperson on January 1, 2006, I take this opportunity to acknowledge the contributions of my predecessor, John Korpesho, to the positive climate of labour relations in the province. My assumption of active duties quickly confirmed that I was the beneficiary of Mr. Korpesho's hard work over the years, particularly his development of a culture of consensus among Board Members when they perform their adjudicative responsibilities.

I would be remiss if I did not express my appreciation to Colin Robinson, the full-time Vice-Chairperson, for being the Acting Chairperson during November and December of 2005 while I was on a leave of absence for the purpose of winding down my practice. Mr. Robinson's assistance since January 2006 has been invaluable to me.

I was pleased with the appointment of three additional part-time Vice-Chairpersons in March of 2006. Michael Werier, Blair Graham and Gavin Wood will be valuable additions to the Board. I was also pleased that Diane Jones accepted another appointment as a part-time Vice-Chairperson. One of my objectives during the next year will be to develop a workable plan for utilizing the expertise of all part-time Vice-Chairpersons on a more regular basis.

I must single out the Staff of the Board for a special "thank you" because they have made my transition to Chairperson a seamless one, particularly as it relates to the administrative component of my duties. I am indebted to them for their experience, guidance, patience and senses of humour.

*William D. Hamilton*  
Chairperson

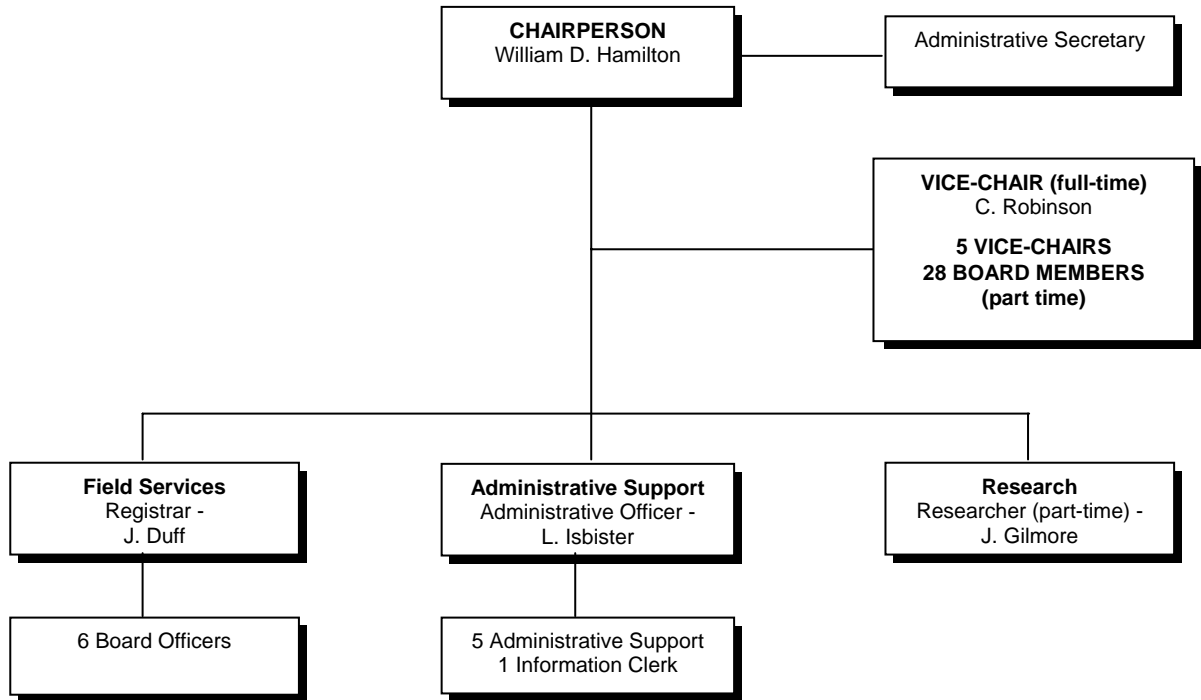


## Table of Contents

---

Minister's Letter of Transmittal	
Chairperson's Letter of Transmittal	
Message from the Chairperson	4
Organization Chart	6
<b>Introduction</b>	
Report Structure	7
Role, Objectives and Mandate	7
<b>Manitoba Labour Board Members</b>	9
<b>Operational Overview</b>	
Adjudication	14
Field Services	14
Administrative Services	14
Research Services	15
Library	15
Publications	15
Web Site & Email Address	15
Information Bulletins	16
Sustainable Development	16
Major Accomplishments	17
Ongoing Activities	17
<b>Financial Information</b>	
Expenditures	18
<b>Performance Report</b>	
Summary of Performance	19
Performance Indicators	20
Performance Measurements	21
<b>Summaries of Significant Board Decisions</b>	
Pursuant to <i>The Labour Relations Act</i>	22
Pursuant to <i>The Employment Standards Code</i>	26
Pursuant to <i>The Workplace Safety &amp; Health Act</i>	30
<b>Summaries of Significant Court Decisions</b>	32
<b>Statistical Tables</b>	34

**Manitoba Labour Board  
Organization Chart  
as of March 31, 2006**



# The Manitoba Labour Board

## INTRODUCTION

### Report Structure

The Annual Report is prepared pursuant to Subsection 138(14) of *The Labour Relations Act*:

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

### Role

The Manitoba Labour Board is an independent quasi-judicial tribunal. As mandated under Section 138(1) of *The Labour Relations Act*, the Board is responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under various statutes. The majority of the applications are filed under the following Acts of the Consolidated Statutes of Manitoba:

*The Labour Relations Act (L10)*  
*The Employment Standards Code (E110)*

The Board also adjudicates matters arising under certain sections of the following Acts of the Consolidated Statutes of Manitoba:

*The Workplace Safety and Health Act (W210)*  
*The Essential Services Act (E145)*  
*The Pay Equity Act (P13)*  
*The Construction Industry Wages Act (C190)*  
*The Remembrance Day Act (R80)*  
*The Elections Act (E30)*  
*The Public Schools Act (P250)*  
*The Victims' Bill of Rights (V55)*

### Objectives

The main objectives of the Manitoba Labour Board are to:

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

### Mandate

The Board is responsible for the administration and/or adjudication of issues arising under the following statutes:

#### ***The Labour Relations Act***

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

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

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

***The Essential Services Act***

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

***The Pay Equity Act***

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

***The Employment Standards Code***

As the wage board appointed pursuant to the *Code*, the Board hears complaints referred to it by the Employment Standards Division regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to *The Construction Industry Wages Act* and *The Remembrance Day Act*. The Board also handles hours of work exemption requests from employers seeking variation from the standard hours of work, and applications for exemption from the weekly day of rest.

***The Public Schools Act***

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

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

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

***The Elections Act***

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

## MANITOBA LABOUR BOARD MEMBERS

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

### Chairperson

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

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

#### **John M.P. Korpesho**

First appointed Chairperson of the Manitoba Labour Board in 1983, he had been with the Board since 1973 during which time he held the positions of Board Officer, Registrar and Vice-Chairperson/Registrar. Mr. Korpesho retired in 2005.

### Vice-Chairpersons

#### **A. Blair Graham**

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

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

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

#### **Arne Peltz**

Appointed on a part-time basis in 2002, he is a chartered arbitrator and carries on an active practice as an interest and grievance arbitrator/mediator in Manitoba. Mr. Peltz has also served as an adjudicator under the *Manitoba Human Rights Code* and the *Canada Labour Code*. He was the Director of the Public Interest Law Centre for 21 years and entered private practice in 2003 as counsel to the firm of Gange Goodman & French, with an emphasis on aboriginal law and civil litigation.

#### **Colin Robison**

Appointed to the Board as full-time Vice-Chairperson in 2003, he holds a Bachelor of Arts (Honours) degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. Mr. Robison was called to the Bar in 1995 and has practiced since that time primarily in the fields of labour and administrative law. He also served as Deputy Chief Commissioner of the Residential Tenancies Commission from 2001 to 2002.

#### **Michael D. Werier**

Appointed on a part-time basis in 2006, he is a partner in the Winnipeg law firm of D'Arcy & Deacon LLP. Mr. Werier carries on a practice as an arbitrator/mediator in Manitoba and as a civil litigator. He is currently chairperson of the Labour Management Review Committee of the Province of Manitoba and is a sessional lecturer in employment law at the University of Manitoba Law School.

#### **Gavin M. Wood**

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

## **Employer Representatives**

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

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

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

Appointed in 1985, she is a Fellow, Certified Human Resource Professional (FCHRP) and holds a Certificate from the University of Manitoba in Human Resource Management. Ms. Black has been employed in senior human resource management positions in a variety of organizations since 1972. She is a member of the Human Resources Management Association of Manitoba and chairs the Strategic Advisory Council. She has also instructed in the Human Resource Management Certificate Program at the University of Manitoba.

### **Christiane Devlin**

Appointed in 2002, she has held senior management positions in which she integrated human resource management with business needs including communication and printing, agriculture, manufacturing, health care retail and co-operatives businesses. Ms. Devlin's human resource management experience includes both unionized and non-unionized workplaces.

### **Colleen Johnston**

Appointed in 1993, she is the Manager, Human Resources for the Manitoba Liquor Control Commission and the President of Integre Human Resource Consulting. Mrs. Johnston is a graduate of the University of Manitoba with a Bachelor of Education and is a Fellow of the Certified Human Resource Professionals (FCHRP). She is a Past President of the Human Resource Management Association of Manitoba (HRMAM), a founding Director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the Canada Labour Code in Ottawa. She has represented Canadian employers at the United Nations in Geneva and is currently an active member of the Designation Review Committee of the HRMAM.

### **Michael Kaufmann**

Appointed in 1990, he had been involved in the electrical contracting industry since 1952. Mr. Kaufmann held several elected positions in the construction industry and was a Past President of the Winnipeg Construction Association and a Past Chairman of the Construction Labour Relations Association. He was Vice-President of State Contractors Inc. and was the Facility Director at the Asper Jewish Community Campus. Mr. Kaufmann was an experienced and valuable Board Member and it is with regret that we advise he passed away in 2006.

### **Paul J. LaBossiere**

Appointed in 1999, he is currently President of P.M.L. Maintenance Ltd. Mr. LaBossiere is Past Co-Chair of the Employers Task Force on Workers Compensation, a Member of the Winnipeg Chamber of Commerce's policy panels for civic affairs and taxation policy, Parliamentarian and Past President of the Building Owners and Managers Association (BOMA), a member of the Manitoba employers Council (MEC) and is a frequent international speaker on issues pertaining to the maintenance and service industries. He is a Member of the Prairie Theatre Exchange Foundation Trust. His past affiliations include Vice-Chair and Treasurer of the Winnipeg Chamber of Commerce and on the Advisory Committee for the Continuing Education Department at the University of Manitoba.

### **Chris Lorenc**

Appointed in 2003, he is currently President of the Manitoba Heavy Construction Association, President of the Infrastructure Council of Manitoba, President of the Western Canada Roadbuilders and Heavy Construction Association and founding member of the Transportation Awareness Partnership. A lawyer by background, Mr. Lorenc graduated from the University of Manitoba with Bachelor of Arts and LL.B (law) degrees. He is a former Winnipeg City Councilor having served for 9 years between 1983 and 1992. During his tenure on Council, he chaired a number of Standing Committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of cultural, community and hospital organizations.



**Yvette Milner**

Appointed in 1996, she is President of On-Site Safety & Health Management Solutions, a consulting company specializing in assisting companies to manage the risk associated with injury and illness in the workplace. Ms. Milner has expertise and experience in human resources, safety and disability management with past work experience in the public and private sectors. Prior to her current consulting business, she led the Safety and Disability Management practice in the Winnipeg office of Deloitte & Touche. Active in the Winnipeg business community, Ms. Milner is involved in the Manitoba Employers Council and Employers Task Force on Workplace Safety and Workers Compensation. She is a board member of the Manitoba Chamber of Commerce and holds memberships in the Human Resource Management Association of Manitoba and the Manitoba Safety Council.

**Clifford O. Olson**

Appointed in 2005, he had been Executive Vice President, Special Projects, Western Canada, Comstock Canada Ltd. for 25 years and had worked for Comstock since 1955 in many other capacities. Mr. Olson is past President of the Winnipeg Construction Association and past Chairman of the Construction Labour Relations Association of Manitoba. Upon his retirement this year, he has been consulting on a part-time basis.

**David Rich**

Appointed in 2005, he has been employed at Richlu Manufacturing for 39 years and is currently the President and CEO. Mr. Rich is the President of the Garment Manufacturers Association of Western Canada and has been the Chairman of the negotiating committee for 15 years.

**Maurice D. Steele**

Appointed in 1999, he was President of M.D. Steele Construction Ltd. until his retirement in May 1999. Mr. Steele is President of Logan Farms Ltd. and Stradbrook Investments Ltd. both founding partners of the Land Owners Group. He is also Vice-President of the AVL Limited Partnership representing lands north and west of Winnipeg International Airport. He has been involved for a number of years in the construction industry in a managerial capacity.

**Denis E. Sutton**

Appointed in 1983, he has had extensive training in business administration and human resource management and has extensive experience in labour relations in both the private and public sector. Mr. Sutton has served as Chairperson of the Industrial Relations Committee of the Manitoba Branch of the Canadian Manufacturers Association, Chairperson of the Western Grain Elevator Association Human Resource Committee, and Chairperson of the Conference Board of Canada Council of Human Resource Executives (West) and is an active member of many labour relations committees and associations.

**Jim Witiuk**

Appointed in 2004, he is currently Director of Labour Relations for Canada Safeway Limited with responsibility for labour relations matters in Manitoba, Saskatchewan and Ontario. Mr. Witiuk sits on a number of Trusteed Health and Welfare and Pension Plans as a Management Trustee and is a Member of the International Foundation of Employee Benefit Plans. He is a past member of the Employment and Immigration Board of Referees. He currently serves on the Provincial Government's Labour Management Review Committee, serves on that group's Arbitration Advisory Sub-Committee and is an active member of the Manitoba Employer's Council. He is a graduate of Carleton University in Ottawa.

**Mel V. Wyshynski**

Appointed in 2004, he retired from Inco Limited, Manitoba Division in late 2001 after a 40 year career in the mining industry. At the time of his retirement, Mr. Wyshynski was President of the Division and had held that position since 1997. He is also Past President of the Mining Association of Manitoba Inc. (MAMI). He is actively involved in the Dauphin community (Past President of the Dauphin Rotary Club and current President of the Gilbert Plains Country Club) where he has been associated with a number of community initiatives.

## **Employee Representatives**

### **Bernie Atamanchuk**

Appointed in 1985, he had worked with the United Food and Commercial Workers Union (UFCW) from 1964 until his retirement in 2001. During his 36 years of service with the UFCW Local No. 832, Mr. Atamanchuk held various positions including Trustee of the Manitoba Food and Commercial Workers Dental Plan, Director of Organizing, Director of Servicing and Executive Assistant to the President. Prior to joining UFCW, he was employed by Canada Safeway for 6 years. He is a graduate of the Canadian Labour College in Montreal.

### **Robert P. Bayer**

Appointed in 2004, he has been a Staff Representative with the Manitoba Government and General Employees' Union since 1982. Previously, Mr. Bayer was the Executive Director of the Institutional Employees' Union (1975-1982), and Manager of Human Resources for the Canadian Broadcasting Corp. - Winnipeg (1965-1975).

### **Lalah Casselman**

Appointed in 2004, she is the Assistant Business Manager for the International Brotherhood of Electrical Workers, Local Union 2034. Duties in this capacity include negotiating and administration of collective agreements with 4 different employers and all labour relations business from grievances to arbitration. Ms. Casselman is also a union nominee for the Canadian Union of Public Employees, holds a Labour Degree, Mediation Certificate and is a member in good standing with Arbitrator and Arbitration Mediation in Manitoba and AMI Canada. When not involved in labour relations matters, she is working towards attaining All Breed status as a Canadian Kennel Club licensed judge.

### **Clive Derham**

Appointed in 1990, he was formerly employed with the City of Winnipeg. Until his retirement, Mr. Derham was employed as a Staff Representative with the Canadian Union of Public Employees, with primary emphasis being in the health care sector.

### **Irene Giesbrecht**

Appointed in 2002, she has been employed by the Manitoba Nurses' Union since 1978 and is currently Director of Negotiations and Chief Negotiator. Ms. Giesbrecht is Chairperson of the Manitoba Council of Health Care Unions and is a member of various organizations including the Manitoba Nursing Advisory Council, Union Centre Board of Directors and Blue Cross Board of Directors.

### **Jan Malanowich**

Appointed in 1991, she has been employed since 1981 as a Staff Representative for the Manitoba Government and General Employees' Union. Ms. Malanowich is actively involved in collective bargaining, grievance handling and a multitude of associated activities related to the needs of the membership.

### **Doug McFarland**

First sat as a board member from 1988 to 1996, he was reappointed in 2000. Mr. McFarland has been actively involved in labour relations and is currently employed as a Staff Representative with the Manitoba Government and General Employees' Union.

### **John R. Moore**

Appointed in 1994, he is employed as the Business Manager and Training Coordinator for the United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 254. In this capacity, Mr. Moore is also a Representative of the Manitoba Apprenticeship Board. He also is President of the Manitoba Building and Construction Trades Council and Vice-President for the Construction Industry for the Manitoba Federation of Labour.

### **Maureen Morrison**

Appointed in 1983, she has a Bachelor of Arts degree from McGill University and has also completed several courses in labour relations studies. In 1980, Ms. Morrison was hired as a Staff Representative with the Canadian Union of Public Employees (CUPE) and, since 1987, has been employed as an Equality

Representative with CUPE. Her work is primarily in the areas of pay equity, employment equity, respectful workplace training and other human rights issues.

**James Murphy**

Appointed in 1999, he is the Business Manager of the International Union of Operating Engineers (IUOE), Local 987, being elected to this position in 1995. Mr. Murphy held the positions of Business Representative of IUOE from 1987 through to 1995 and Training Co-ordinator from 1985 to 1987. He sits on the Executive Board of the Canadian Conference of Operating Engineers, is currently Vice-President of the Manitoba Building and Construction Trades Council and Vice-President of the Manitoba Federation of Labour. Prior to 1985, he was a certified crane operator and has been an active member of the IUOE since the late 1960s.

**Dale Paterson**

Appointed in 1999, he has been a National Representative with the Canadian Auto Workers Union (CAW) since 1984 and is currently the Area Director for Manitoba, Saskatchewan and the Northwest Territories. Mr. Paterson co-ordinates the activities of CAW in this region and participates primarily in the areas of collective bargaining, arbitration, organizing and other labour relations matters. He is also Vice-President of the Manitoba Federation of Labour and President of the Community Unemployed Help Centre. He also serves on the Board of Destination Winnipeg.

**Grant Rodgers**

Appointed in 1999, he is currently a Staff Representative with the Manitoba Government and General Employees' Union, and has specialized for a number of years in grievance arbitration matters as well as collective bargaining. Mr. Rodgers holds a B. Comm. (Honours) from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board, Big Brothers of Winnipeg and a Director of the Winnipeg South Blues Junior "A" Hockey Club.

**Lorraine Sigurdson**

Appointed in 1990, she has been employed by the Canadian Union of Public Employees (CUPE) since 1986 and is currently the Education Representative. Ms. Sigurdson's duties include organizing and delivering leadership training for CUPE members in areas such as collective bargaining, grievance handling, health and safety, equality issues and communications. Previously she worked for many years with health care workers, first as an activist and as a negotiator of provincial collective agreements, assisting Locals with grievance handling and Local administration. She is an Executive Vice-President of the Manitoba Federation of Labour and was a board member of the Winnipeg Regional Health Authority for 6 years. She is a graduate of the Labour College of Canada.

**Sonia Taylor**

Appointed in 2005, she has been employed since 1991 at a Staff Representative with the United Food and Commercial Workers Union, Local No. 832. Ms. Taylor is actively involved in grievance handling and represents the needs of the membership in industrial and retail sectors.

## **OPERATIONAL OVERVIEW**

### **Adjudication**

During the reporting period the Board consisted of a full-time Chairperson, 1 full-time Vice-Chairperson and 5 part-time Vice-Chairpersons. The remainder of the Board was comprised of 28 Board Members with an equal number of employer and employee representatives. The part-time Vice-Chairpersons and Board Members are appointed by Order-In-Council and are paid in accordance with the number of meetings/hearings held throughout the year. The Board does not retain legal counsel on staff; legal services are provided through Civil Legal Services of the Department of Justice.

### **Field Services**

Field Services is comprised of the Registrar and 6 Board Officers. The Registrar oversees the day-to-day field services of the Board. All applications filed with the Board pursuant to *The Labour Relations Act*, *The Workplace Safety and Health Act*, *The Essential Services Act*, *The Pay Equity Act*, *The Elections Act*, *The Public Schools Act*, and *The Victims' Bill of Rights* are processed through the Registrar's office. The Registrar determines the hearing dates where required and ensures that each application is processed efficiently and in accordance with Board practice.

Reporting to the Registrar are 4 labour relations officers responsible for processing various cases and conducting investigations pertaining to the applications filed with the Board. They are often appointed to act as Board Representatives to endeavour to effect a settlement between parties where there has been, and not limited to, an allegation of an unfair labour practice. The resolution of complaints through this dispute resolution process reduces the need for costly hearings. Officers also perform other functions including acting as Returning Officers in Board-conducted votes, attending hearings and assisting the Registrar in the processing of applications. The officers are responsible for communicating with all parties and with the public regarding information on Board policies, procedures and jurisprudence as it relates to a specific issue or case. They also play a conciliatory role to assist parties in concluding first collective agreements and subsequent agreements. The assistance of the Board Officers in mediation and the dispute resolution process has been favourably accepted by the labour relations community.

Also reporting to the Registrar are 2 Board Officers responsible for processing all *Employment Standards Code* referrals from the Director of the Employment Standards Division, requests for hours of work and weekly day of rest exemption, and expedited arbitration referrals. They attend hearings to record appearances, case law and exhibits and to assist the Board and parties with any issues that might arise. They may also be involved in mediation efforts in an attempt to resolve the issues.

### **Administrative Services**

Administrative Services is comprised of the Administrative Officer, 6 administrative support staff. The Administrative Officer is responsible for the administrative support of the Board including fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures to ensure departmental and government policies are implemented.

Reporting to the Administrative Officer are 5 administrative secretaries responsible for the processing of documentation. The staff of the Administrative Services and Field Services work closely to ensure the expeditious processing of applications.

Also reporting to the Administrative Officer is the Information Clerk who is responsible for the Board's database and for providing copies of decisions upon request.

The administrative support team, including the Board's Researcher, continue to work on upgrading and maintaining the Board's automated database and are involved in the development of the Board's new case management system.

## Research Services

Reporting to the Chairperson, the Researcher is responsible for providing the Board with reports, statistical data, and jurisprudence from other provincial jurisdictions and undertakes other research projects as required by the Board. The Researcher also summarizes and indexes arbitration awards. In addition, the Researcher prepares head notes for the Written Reasons for Decision issued by the Board and compiles the *Index of Written Reasons For Decision*, which is available to subscribers.

## Library

The Board maintains a collection of texts, journals, reports and other publications dealing with industrial relations and labour law in Manitoba and other Canadian jurisdictions. Pursuant to amendments in *The Labour Relations Act* in 1985, all arbitration awards and collective agreements in the province must be filed with the Manitoba Labour Board. Copies of these documents are maintained in the Board's Library and can be viewed by the public in the Board's office, or copies made available in accordance with the fee schedule.

## Publications

Copies of the various statutes and regulations are available for purchase from Statutory Publications, Department of Culture, Heritage & Tourism, 200 Vaughan Street, Winnipeg, Manitoba or may be viewed on their web site [www.gov.mb.ca/laws](http://www.gov.mb.ca/laws). Publications produced by the Board:

*Manitoba Labour Board Annual Report* - a publication disclosing the Manitoba Labour Board's staffing and membership, as well as highlights of significant Board and court decisions, and statistics of the various matters dealt with during the reporting period. This publication may be obtained directly from the Board.

*Index of Written Reasons for Decision* - a quarterly publication containing an index of written reasons categorized by topic, employer and section of the *Act*. This publication is available, on a subscription basis, from Statutory Publications.

The Board distributes copies of *Written Reasons for Decision* relating to certain Board decisions. As noted above, a subscription service for the *Index of Written Reasons for Decision* is available.

Copies of the Board's Written Reasons for Decision and arbitration awards can be accessed through **QL Systems Limited** (Quicklaw).

The Board also provides copies of Written Reasons for Decision and arbitration awards to various publishers for selection and reprinting in their publications.

## Web Site & Email Address

The Manitoba Labour Board's web site at <http://www.gov.mb.ca/labour/labbrd> provides information about the Board and links to other departmental divisions, QL Systems and Statutory Publications.

To provide greater access to the Board and to enhance its delivery in providing timely information, the Board may also be contacted at its email address [mlb@gov.mb.ca](mailto:mlb@gov.mb.ca)

## Information Bulletins

The Board also produces *Information Bulletins* regarding the Board's practice and procedure. The Board did not issue any new information bulletins during the reporting period. The following is a list of the current information bulletins:

- #1 Review and Reconsideration
- #2 Rule 28 – *Manitoba Labour Board Rules of Procedure*
- #3 Adjournments Affecting Continuation of Proceeding
- #4 The Certification Process
- #5 Streamlining of Manitoba Labour Board Orders
- #6 Financial Disclosure
- #7 Fee Schedule
- #8 Arbitrators' List
- #9 Filing of Collective Agreements
- #10 Steps to follow in applying for an Hours of Work Exemption Order
- #11 Steps to follow in applying for a Meal Break Reduction
- #12 Steps to follow in applying for a Permit to be exempted from the Weekly Day of Rest
- #13 Process for the settlement of a First Collective Agreement
- #14 Objections on Applications for Certification
- #15 Manitoba Labour Board's decision respecting Bargaining Unit Restructuring in the Urban Health Care Sector

Copies of the information bulletins may be obtained by contacting the Board office by phone, in writing or by visiting the Board's web site.

## Sustainable Development

Sustainable development is promoted through various activities.

The Board actively participates in the government's Waste Stream Services program to divert waste from landfill. The Board's office has expanded its waste management process to reduce and recycle paper. Office equipment has been upgraded to incorporate double sided copy features.

Efforts to reduce use of fossil fuels include use of facsimile and email communication versus courier vehicle services. Board Members car pool to hearings conducted in rural centres. Staff is encouraged to utilize mass transit to and from work.

The Board gives priority to the acquisition of environmentally preferable products for its supplies.

## **Major Accomplishments**

On November 1, 2005, William D. Hamilton was appointed as the new Chairperson of the Board, following the retirement of John M.P. Korpesho.

In March 2006, the Board appointed 3 new part-time Vice-chairpersons, increasing the part-time Vice-Chair complement to 5.

There were 930 cases before the Board in this reporting period, an increase of 11% from the previous year.

The Board heard 196 matters, involving 143 hearing days. The remainder of the cases dealt with were either administrative in nature or were resolved through successful mediation by the Board's officers.

The Fraser Institute conducted a study of labour relations boards across Canada to measure the transparency of all boards. On October 11, 2005, the Institute released its findings that the Manitoba Labour Board and the Alberta Labour Relations Board "operate in the most open and transparent manner". The transparency measure assesses the level of voluntary disclosure of information, examines the responsiveness to formal requests for information and evaluates the timeliness of making information available.

## **Ongoing Activities and Strategic Priorities**

To be successful at meeting its objectives, the Board recognizes that proper training and orientation are critical - for Board Members, Board Officers and administrative staff alike. Staff development will be strengthened and training opportunities promoted. A succession plan will be developed to ensure continuity and consistency following the retirement of key staff. The Board plans to conduct a seminar for all Board Members and Vice-chairpersons during the next year to share information and experiences and to provide additional Board-specific adjudicative orientation.

The Board is continuing its development of a comprehensive automated case management system. Testing commenced in January 2006 and the system is expected to be operational in 2006-2007.

The Board has long identified the need for more functional space and appropriate furnishings. In 2006 the Board will continue to pursue alternative space options identified by Transportation and Government Services. Replacement of existing desks with proper ergonomic workstations and more appropriate hearing room furniture is also planned.

The Board strives for improvement by reviewing its practices and procedures. During the reporting period, the Board improved administrative processes and in the following year will further revise procedures to increase efficiencies, eliminate duplication and reduce expenses.

In 2006-2007 a new process will be introduced to capture statistics on mediative settlements by Board Officers. This will better reflect the success of the Board's mediative services in meeting its objective to resolve disputes without the need to proceed to the formal adjudicative process.

In order to expeditiously process applications, the Board will continue to examine methods to reduce median processing times. Statistics about median processing times can be viewed within the "Performance Indicators" section found later in this report.

To increase awareness, the Board will continue its public education initiatives. The web site will be expanded to include the *"Guide to The Labour Relations Act"*. Board staff also is available as speakers to organizations and educational institutions to improve understanding of the Board's role.

## 2(e) Manitoba Labour Board - Financial

Expenditures by Sub-Appropriation	Actual 2005/06 (\$000s)	Estimate 2005/06 FTE	Estimate 2005/06 \$(000s)	Variance Over/(Under) (\$000s)	Expl. No.
Total Salaries	1,264.2	17.50	1,234.0	30.2	1.
Total Other Expenditures	343.5		356.1	(12.6)	2.
Total Expenditures	1,607.7	17.50	1,590.1	17.6	

### Explanation Number:

1. *Over-expenditure reflects net severance and vacation payout for retirement of Chairperson, net staff turnover costs, reclassification of three employees and merit increases partially offset by implementation of vacancy management strategies, such as maintaining a staff vacancy, permanent Vice Chairperson on leave without pay and reducing total per diems for part-time Board Members.*
2. *Under-expenditure reflects implementation of expenditure management strategies resulting in reductions in mailing costs, Annual Report translation costs due to payment from a central budget, Board Member and Board Officer travel, office supplies, equipment rentals, computer related charges (including computer hardware leasing costs and buyouts due to expiring leases) and legal fees. These under-expenditures were partially offset by scheduled replacement of laser printers, increased physical asset purchases, increased publications costs, increased staff training costs and payment of The Law Society of Manitoba fees for the new Chairperson.*



## SUMMARY OF PERFORMANCE

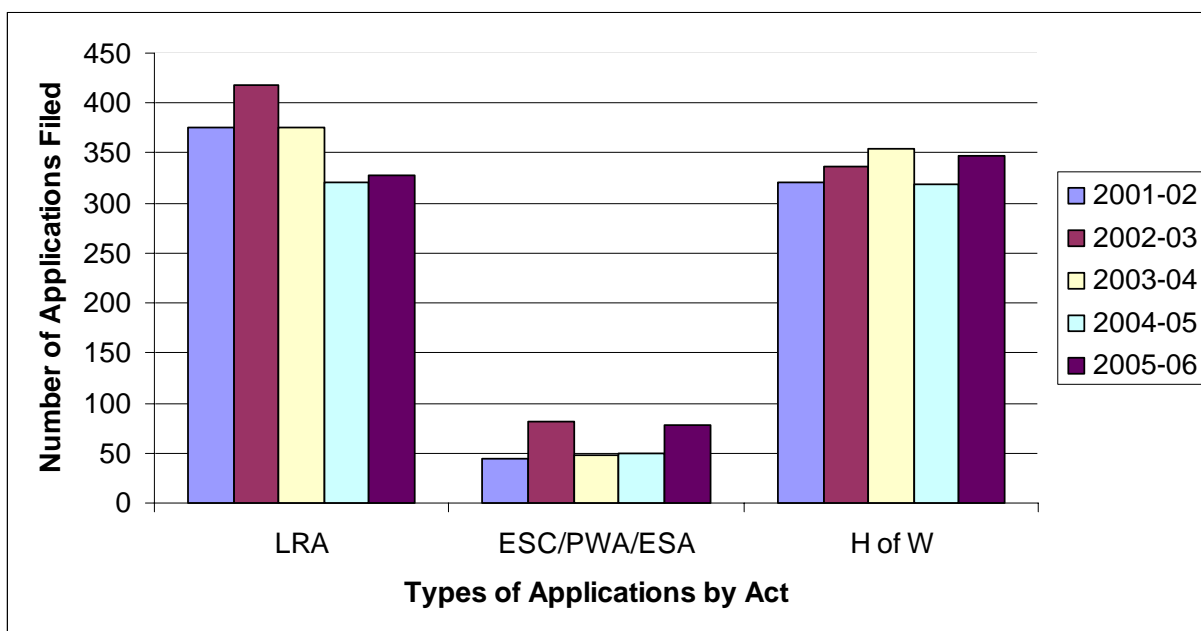
The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes, namely: *The Labour Relations Act*, *The Employment Standards Code*, *The Payment of Wages Act*, *The Workplace Safety and Health Act*, *The Pay Equity Act*, *The Essential Services Act*, *The Victims' Bill of Rights*, *The Elections Act* and *The Public Schools Act*.

The Board's decisions established policy, procedures and precedent and provided for a more sound, harmonious labour relations environment. In an effort to strengthen communications with the parties who deal with the Board, the Board held and will continue to hold consultation and information sessions on specific issues under various statutes, as it deems advisable.

The Board monitors its internal processes to improve efficiencies and expeditious processing of applications/referrals. The Board conducted formal hearings, however, a significant portion of the Board's workload is mediative and administrative in nature. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its Board Officers to mediate outstanding issues and complaints.

During the reporting year the Board continued to receive a high volume of applications and complaints. Cases have increased in complexity and in the number of hearing days assigned. The number of applications filed with the Manitoba Labour Board during the past 5 years (for the period April 1 to March 31) are indicated in the chart below, with hours of work applications shown separately from *The Employment Standards Code*.

**Manitoba Labour Board  
Number of Applications Filed**



## Performance Indicators

What are we measuring and how?	Why is it important to measure this?	What is the most recent available value for this indicator?	What is the trend over time for this indicator?	Comments/ recent actions/report links
1. We are measuring the Board's caseload by looking at the number of cases filed.	A key element in measuring the Board's workload volume is the number of applications made to the Board.	For 2005/2006 (most recent statistic available), the total number of applications filed was 756.  Labour Relations - 327 Employment Standards - 426 Workplace Safety & Health - 2 Essential Services - 1	<i>Increasing.</i>  There was an 8.5% increase from the previous reporting period in the volume of cases filed.	The volume of applications filed has a direct impact on the medium processing days as the Board's staff resources are stretched to absorb increased activity.
2. We are measuring the level of activity by looking at the percentage of cases disposed of.	The Board's objective to handle matters before it in a fair and expeditious manner can be measured by the number of cases processed and closed.	For 2005/2006 (most recent statistic available), the Board disposed of 81% of its caseload.	<i>Improving.</i>  There was a 3% increase from the previous reporting period in the number of cases processed which is significant considering the increase in caseload.	The Board plans to fill a current Board Officer vacancy and as a result, the resolution rate may increase in the next reporting period depending upon the number and type of applications filed.
3. We are measuring cases that are adjudicated by looking at the number of scheduled and actual hearing days.	As mandated by <i>The Labour Relations Act</i> for the fair and efficient administration and adjudication of responsibilities, the number of adjudicated matters is indicative of the Board's responsiveness in resolving disputes by providing decisions that enable a stable labour relations environment.	For 2005/2006 (most recent statistic available), there were:  432 hearing dates scheduled, with 186 dates that proceeded.  In 2004/2005 there were 508 hearing dates scheduled and 333 dates that proceeded.	<i>No trend yet established.</i>  This is a new indicator, and only the second year that the number of hearing dates scheduled has been measured.  The level of adjudication is conditional upon the number of cases disposed of without the need of the formal adjudicative process. Applications may be withdrawn by the parties, resolved through mediation, or processed administratively.	This indicator helps the Board assess disputes resolved with the assistance of mediation by Board Officers and illustrates the Board's progress against a desired outcome.
4. We are measuring the expeditious processing of applications by looking at the number of medium processing days.	The number of medium processing days is indicative of the complexity in the various types of applications dealt with by the Board.	For 2005/2006 (most recent statistic available), the medium processing days were:  Labour Relations - 48 days. (410 cases) Employment Standards - 7 days (527 cases)	<i>Variable.</i>  A trend has been established for hours of work exemption requests (ESC).	Processing days for certain types of labour relations applications will vary greatly due to circumstances beyond the Board's control. (e.g. settlement discussions between the parties)  See following page for more detailed processing times.



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

## Program Performance Measurements of the Manitoba Labour Board

April 1, 2004 - March 31, 2006

Indicator	Actual 2004-2005	Actual 2005-2006
Percentage of Cases disposed of	79%	81%
Number of votes conducted	27	31
Median processing time (calendar days):		
<i>Labour Relations Act:</i>		
Certifications	18	22
Decertifications	40	46
Unfair labour practice	78	94
Duty of fair representation	67	45
Expedited arbitration	44	41
Board rulings	92	234
Amended certificates	91	44
First contracts	61	35
<i>Workplace Safety &amp; Health Act</i>	79	122
<i>Essential Services Act</i>	nil	nil
<i>Elections Act</i>	nil	nil
<i>Employment Standards Code:</i>		
Employment Standards Division referrals	94	101
Hours of work exemptions	7	6

In addition to applications filed, and pursuant to *The Labour Relations Act*, the Board also received and filed copies of collective agreements and arbitration awards. In addition to the 2,503 collective agreements on file, there are 1,996 arbitration awards and 633 written reasons for decision in the Board's collection (a 2.7%, 3.6% and 2.6% increase respectively from the previous reporting period). Copies of collective agreements, arbitration awards and written reasons are available upon request, many of which are now available electronically, and in accordance with the Board's fee schedule.

From April 1, 2005 to March 31, 2006, 432 hearing dates were scheduled and 186 proceeded.

Detailed statistical tables and summaries of significant Board decisions can be found later in this report.

## **SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO *THE LABOUR RELATIONS ACT***

Burntwood Regional Health Authority - and - Manitoba Medical Association - and - University of Manitoba  
(Interested Party)

Case No. 199/04/LRA

April 27, 2005

**APPROPRIATE BARGAINING UNIT - EMPLOYEE - INDEPENDENT CONTRACTOR - Board held that physicians deemed to be independent contractors by the Employer were employees under *The Labour Relations Act* as the Employer supplied facilities and equipment for the physicians and controlled the patient load through the appointment booking process.**

The Association sought a determination that certain physicians working with the Employer were to be included within an "all physician unit" for which the Association was the certified bargaining agent and were not independent contractors. The Employer contended that the physicians, who fell into two groups, being general practitioners and specialists, were independent contractors.

**Held:** The Board heard testimony from seven physicians. Some were, depending on the contracts into which they entered, deemed by the Employer to be employees, while others were independent contractors. The Board found that the Employer supplied both types of physicians everything they needed to practice their profession. This included space, heat, light, supplies and support staff at no cost to them. If patients did not show up for appointments, the physicians' salaries did not decrease. There was no change in their salaries if they saw fewer patients one-day and more the next. They did not hire, terminate, discipline or manage the support staff. Both "employee" and "independent contractor" physicians were required to participate in the on-call rotation. Their patients' records remained the property of the Employer. Leaves, including vacation and education leaves, had to be approved by the Director of Administration. The Board was satisfied that the physicians in question were not carrying on a business on their own behalf. They were performing a service within a facility of the Employer. There was no chance of financial gain or loss within the parameters of either contract. The Employer owned the facility and furnishings, including examination tables and equipment. The Employer set the hours of work within the office setting, and controlled the patient-load seen by a particular physician, through the appointment booking process. A physician was not subject to any charges for those services. Therefore, the Board was satisfied that the individuals fell within the definition of "employee" for the purposes of The Labour Relations Act.

Burntwood Regional Health Authority - and - Manitoba Association of Health Care Professionals - and -  
Diane Moreau

Case No. 295/04/LRA

June 9, 2005

**PRACTICE AND PROCEDURE - CHARTER OF RIGHTS AND FREEDOMS - Official Language - Employee filed Review Application asserting she had the right to be heard in French - Initial application filed in English, hearing evidence and argument presented in English and right to be heard in French not asserted until after Dismissal Order issued - Request to be heard in French not timely - Review application dismissed.**

**PRACTICE AND PROCEDURE - Hearings - Fair - Employee claimed she did not have the right to call witnesses or to question the union witness - Board noted she did not request that witnesses be summoned and compelled to give oral or written evidence, nor did she request opportunity to question union witness - Rights to fair hearing not infringed.**

**PRACTICE AND PROCEDURE - CHARTER OF RIGHTS AND FREEDOMS - Official Language - Authorities submitted and Brief of the Attorney General of Manitoba do not support Employee's argument that the Board's staff obligated to actively offer services in French.**

The Employee filed an application for an unfair labour practice. The Union requested that the application be dismissed as the Employee failed to disclose a *prima facie* case and had unduly delayed filing her application. The Board held a hearing into the preliminary issues and dismissed the application. The Employee requested

that the Board review its dismissal. She asserted that she had a right to be heard and understood in the French language. She also submitted that her rights to a fair hearing were infringed as she claimed she did not have the right to call witnesses or to question the union representative who attended the hearing for the Union.

**Held:** The Board recognizes that individuals appearing before the Board have the right to be heard in either official language. However, in this case, the issue was not the Employee's right to be heard in the French language, but was the timeliness of her request. She did not assert her right to be heard in French until after the Board issued its Dismissal Order. She filed her initial application and the numerous accompanying documents entirely in English. At the Board hearing concerning the unfair labour practice application, the Employee attended and presented evidence and argument in English. She did not indicate prior to or during the hearing that she wished to be heard in French. The Application for Review did not specifically indicate why she waited until after the Dismissal Order was issued to inform the Board that she wished to be heard in French. The Board noted it would not be fair to the other parties to have to go through the process a second time due to the Employee's failure to make a timely request to be heard in French. The Employee also contended in her application for review that the Board's staff was obligated to actively offer services in French. The Board found that the authorities submitted by the Employee or the Brief of the Attorney General of Manitoba did not support that assertion. As to her claim that she was not allowed to call witnesses at the hearing, the Board noted that she did not request that the Board summon and enforce the attendance of a witness and compel them to give oral or written evidence. She also did not request the opportunity to question the union representative who attended the hearing. The Board concluded that the Employee's request to be heard in French was untimely and her rights to a fair hearing were not infringed. As a result, the Board dismissed the application for review.

National Elevator & Escalator Association ("NEEA"), Kone Inc. and Otis Canada Inc. - and -International Union of Elevator Constructors, Local 102

Case No. 89/05/LRA

October 24, 2005

**STRIKE - VOTE - Illegal strike - Voting Constituency - Held Union failed to comply with provisions of section 93 of *The Labour Relations Act* when it permitted members who were not in bargaining unit or employed by Employer to participate in strike vote - However, ballots cast in error did not automatically invalidate entire vote - Of ballots cast by all who voted, only one was not in favour of strike - Despite secret ballot, employees in the unit clearly either supported strike action unanimously or by a massive majority - It would not make labour relations sense to declare strike to be illegal.**

The Union held a strike vote. Of the 59 ballots cast, 30 were cast by members of the bargaining unit and 29 were cast by local members not included in the bargaining unit or employed by the Employer. The results of the vote were 58 in favour of a strike and one not in favour. The Employer applied for a Board Determination that the Union had engaged in an illegal strike. Specifically, the Employer alleged that the Union failed to comply with the provisions of section 93 of *The Labour Relations Act* when it permitted members who were not employees in the bargaining unit to participate in a strike vote. The Union replied that it permitted all members of the local, including members covered by another collective agreement, to vote in such circumstances given that "by virtue of the 'hiring hall' concept, members of Local 102 are affected by the terms and conditions of both Collective Agreements and in certain situations, can move from one Collective Agreement to another." Alternatively, in the event that the Board did not agree that the Union had elected the correct voting constituency, the decision of the majority of employees in the bargaining unit was clearly evident and had elected to authorize a strike.

**Held:** The Board was satisfied that the proper voting constituency, as provided by subsection 93(2), was "the unit represented by the bargaining agent." In the present case, clearly certain individuals who were not in the bargaining unit also voted. They should not have been permitted to do so. All of the employees who participate in a strike vote must face the same potential jeopardy. In the present case, the employees of "the independents" who voted in favour of a strike did not actually face the prospect of a strike. However, the fact that an individual or individuals cast a ballot in a strike vote in error did not automatically invalidate the entire vote. In the present case, although a secret ballot was employed, the employees in the unit clearly either supported strike action unanimously or by a massive majority. The Board was satisfied that it would not make labour relations sense to declare the strike to be illegal.

**UNFAIR LABOUR PRACTICE - DISCRETIONARY CERTIFICATION - ORGANIZATIONAL CAMPAIGN - Employer Interference - Employer's letter to employees; attachment, and Power Point presentation was clearly directed at employees in an attempt to interfere with formation and selection of a union - Employer's actions intended to and had a "chilling effect" on organizing drive - Discretionary certificate issued.**

The Union started an organizing drive to certify the employees of the package gas plant. The Employer couriered documentation to the homes of the affected employees consisting of a cover letter and a three-page statement, headed "Be Informed." Management from the regional office held meetings with the employees during which it presented a Power Point presentation discussing the Union versus non-union information. Management also informed employees that, if they asked to revoke their membership cards, a copy could be faxed to the Manitoba Labour Board's office. One employee testified that management informed them they would not be getting the annual raise because of the certification application. Also they would no longer receive profit sharing if the plant became unionized. The Union filed an unfair labour practice application alleging the Employer contravened sections 5, 6 and 17 of *The Labour Relations Act* and requested that a discretionary certification be issued.

**Held:** Section 32 of *The Labour Relations Act* expressly states that the protection for free speech that it provides does not apply if the person expressing the view interferes with the formation or selection of a union. The Board was satisfied that the letter to the employees; the attachment, and the Power Point presentation went beyond what is contemplated by sections 6(3)(f) and 32(1) and constituted a contravention of section 6 of the *Act*. In the covering letter, the Board noted that in the sentence "It is important, if you do not want to be represented by the Teamsters, that you do not sign a union card", the only words underlined were "do not sign." The attachment to the letter had little or nothing to do with statements of fact or opinion reasonably held with respect to the Employer's business. The timing of the Employer's actions was clearly directed at the employees in an attempt to interfere with the formation and selection of a union by the employees. The Board noted that subsequent to the Employer meetings, one employee withdrew his membership card and the Union was able to sign only one new card. Clearly, in the Board's view, the actions of the Employer were intended to, and had, a "chilling effect" on the organizing drive. The Board, noting the membership support at the date of application, determined and was satisfied that the appropriate remedy for the Employer's contravention of section 6 of *The Labour Relations Act* was discretionary certification.

**DUTY OF FAIR REPRESENTATION - Employee claimed Union failed to effectively and accurately present grievance at arbitration proceedings and did not request judicial review - Except in extreme cases Board does not function as appellate tribunal to scrutinize conduct of a union or its counsel during presentation of an arbitration - Based on material filed, Union did not breach Section 20 of *The Labour Relations Act*.**

The Union filed a policy grievance in which it alleged that bargaining unit employees were being forced to work overtime. The grievance was heard by an arbitrator who dismissed the matter. The Employee filed an application with the Board in which he charged that the Union failed to effectively and accurately present the policy grievance at the arbitration proceedings. He also charged the Union for not requesting a judicial review on the ruling. The Union's Reply indicated that it investigated the "forced overtime" issue with the Employment Standards Division and sought legal advice prior to filing the policy grievance. The Union's case at the arbitration hearing was presented by an experienced National Representative. Upon receiving the arbitrator's extensive written reasons, the National Representative spoke to legal counsel regarding the arbitration. Counsel reviewed the decision and determined that the "necessary grounds to appeal" the arbitrator's decision were not present.

**Held:** The Board considered a previous Board decision, *Bednarski and U.S.W.A., Local 4095*. That panel of the Board concluded that Section 20 does not exclude judicial review. It then outlined criteria for any future

application which alleges a breach of Section 20 by reason of a union's decision not to commence judicial review proceedings. One of the criteria was that, except in extreme cases the Board does not function as an appellate tribunal to scrutinize the conduct of a union or its counsel during the presentation of an arbitration. That Board also stated that "the extreme or exceptional circumstances alleged by an applicant should be revealed on the face of a Section 20 application, thereby enabling the Board to assess whether a prima facie case has been established either on a review of the application itself or at the outset of a hearing." In the present case, having fully investigated the possibility of seeking judicial review with counsel and soliciting the legal opinion, the Union then concluded that it would not proceed and it informed the affected members of its decision promptly. The Board was satisfied that the application did not reveal any extreme or exceptional circumstances that could lead to a determination that the Union has breached section 20(b) of the **Act** by virtue of its refusal to initiate judicial review proceedings. With respect to the Applicant's assertion that the Union failed to "accurately or effectively" present the policy grievance, the Union replied that the case was presented by a skilled and experienced National Representative. The application did not contain any specifics regarding the manner in which the grievance was inaccurately or ineffectively presented by the Union. Further, the Applicant has not asserted anything of an "extreme" nature which would lead the Board to scrutinize the conduct of the arbitration case by the Union. The Board was satisfied, on the basis of the material filed, that the Union has not breached section 20(b) of the **Act**. As per Section 140(8) of the **Act**, the Board found this case to be without merit and that it should be dismissed.

Boeing Canada - and - National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 2169 - and - Sivasothy Satgunam  
Case Nos. 525/05/LRA and 649/05/LRA  
March 10, 2006

**DUTY OF FAIR REPRESENTATION - PRACTICE AND PROCEDURE - Oral Hearing - Board dismissed unfair labour practice application and review application based on written submissions - Board not required to hold an oral hearing - Subsections 30(3)(c) and 140(8) of *The Labour Relations Act* provide that the Board may decline to take further action on the complaint at any time during the application process.**

The Employee filed an application alleging that the Union failed in its duty of fair representation. The Board, after reviewing material filed by the respective parties, dismissed the application after determining that the Applicant failed to establish a *prima facie* case that the Union acted in a manner that was arbitrary, discriminatory or bad faith, or that it failed to take reasonable care to represent the interests of the Employee. No hearing was held. The Employee filed an application for review and reconsideration. She contended that the Board should have conducted a hearing to deal with the issues.

**Held:** The Board noted that the Applicant's allegations of voter irregularity were an internal Union matter and were properly addressed through the appropriate internal process. With regards to the application for review and reconsideration, the Board was satisfied that no new evidence had been provided that would constitute a reasonable basis for review and that the particulars provided in the request for review were not such as to affect the Board's original Decision. In support of its decision to dismiss, the Board relied on subsection 30(3)(c) of ***The Labour Relations Act*** which states that the Board may "at any time decline to take further action on the complaint" and subsection 140(8) of the **Act**, which states "where, in the opinion of the Board, a request, application or complaint is without merit or beyond the jurisdiction of the Board, it may dismiss the request, application or complaint at any time." The Board is satisfied that the issues have been thoroughly canvassed by the Court of Appeal of Manitoba. On the issue of providing an opportunity for an oral hearing, the Court stated that the Board is a specialized tribunal that has the power to set its own procedure. The Board noted that the argument of the right to an oral hearing has been considered and dismissed by the courts. A number of court cases have found that a labour board may determine, and proceed to dismiss a complaint, on the basis of written submissions filed by the parties. As to the review process itself, the court noted that it is a procedure designed to possibly avert the court process by giving the aggrieved party a second opportunity to convince the Board of the validity of its position or to convince the Board that it has misapprehended the evidence. This the Board can do according to its rules and procedure with or without a formal hearing as it thinks best.



## SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO *THE EMPLOYMENT STANDARDS CODE*

Nygaard International Partnership Associates - and - John Baron  
Case No. 732/03/ESC  
April 12, 2005

**NOTICE - Employment agreement required employees to give 30 days notice while Employer had right to accept termination immediately without further remuneration - Held unequal notice periods for Employer and employees was contrary with Section 62(b) of *Employment Standards Code* - Provision allowing “termination immediately without further remuneration” was null and void - Employee entitled to wages in lieu of notice.**

**NOTICE - Exceptions - Employer argued Employee willfully neglected his duties - Held Employer did not demonstrate employee acted voluntarily or intentionally - Employee was placed in a position which may not have been suited to his experience and education - He tried to work to best of his abilities but his efforts were undermined by inappropriate behaviour of others - Claim for wages in lieu of notice allowed.**

The Employee was hired as the Distribution Manager. When the previous Distribution Manager returned to the position, the Employee was offered the position of Sales Administration Manager. Before accepting, the Employee advised management the position was outside the scope of his experience. Ten months after being in the position, he resigned as he found the working environment became increasingly hostile. As per the employment agreement, he provided 30 days’ notice of his resignation. The agreement provided that each party was to provide 30 days’ notice but the Employer had the right to accept the termination immediately without further remuneration. The Employee worked eight days of the notice period when management advised him that the employment relationship was concluded. The Employee filed a claim with Employment Standards which awarded him wages in lieu of notice. The Employer appealed the Order since pursuant to the employment agreement it accepted the resignation of the Employee. Alternatively, the Employer testified that the Employee was responsible for inaccurate shipments and was unable to communicate with and maintain suitable professional relationships with certain colleagues. Therefore, as per section 62(h) of ***The Employment Standards Code***, the Employee was not entitled to notice as he acted in a manner that amounted to willful neglect of duty.

**Held:** The Code provides that parties can agree to vary the notice period, but does not expressly state they may agree to one notice period for the employer and another for the employees. Interpreting section 62(b) to allow unequal notice periods is incompatible with the object of the **Code** to prevent the exploitation of employees, and could render the provisions of the **Code** with respect to notice pointless and futile. The portion of the employment agreement that provided the Employer may accept the Employee’s “termination immediately without further remuneration” was contrary to the **Code** and, as a result, null and void. The Board also considered the alternative argument that the Employer was allowed to terminate employment without notice for willful neglect of duty. The use of the term “willful” in section 62(h) of the **Code** suggests that an employer must demonstrate that the employee acted in a manner which was voluntary or intentional. The Employee was placed in a position which may not have been suited to his experience and education. He worked diligently and showed early promise in the role. The Board was satisfied that he tried to work to the best of his abilities. However, his efforts were undermined by the inappropriate behaviour of others. Therefore, the Board did not accept that he acted in a manner that constituted willful neglect of his duties. Therefore, the Board determined he was entitled to receive \$2,423.12 for wages in lieu of notice.

Nygaard International Partnership Associates - and - John Baron  
Case No. 732/03/ESC  
April 12, 2005

**NOTICE - Employment agreement required employees to give 30 days notice while Employer had right to accept termination immediately without further remuneration - Held unequal notice periods for Employer and employees was contrary with Section 62(b) of *Employment Standards Code* - Provision allowing “termination immediately without further remuneration” was null and void - Employee entitled to wages in lieu of notice.**

**NOTICE - Exceptions - Employer argued Employee willfully neglected his duties - Held Employer did not demonstrate employee acted voluntarily or intentionally - Employee was placed in a position which may not have been suited to his experience and education - He tried to work to best of his abilities but his efforts were undermined by inappropriate behavior of others - Claim for wages in lieu of notice allowed.**

The Employee was hired as the Distribution Manager. When the previous Distribution Manager returned to the position, the Employee was offered the position of Sales Administration Manager. Before accepting, the Employee advised management the position was outside the scope of his experience. Ten months after being in the position, he resigned as he found the working environment became increasingly hostile. As per the employment agreement, he provided 30 days' notice of his resignation. The agreement provided that each party was to provide 30 days' notice but the Employer had the right to accept the termination immediately without further remuneration. The Employee worked eight days of the notice period when management advised him that the employment relationship was concluded. The Employee filed a claim with Employment Standards which awarded him wages in lieu of notice. The Employer appealed the Order since pursuant to the employment agreement it accepted the resignation of the Employee. Alternatively, the Employer testified that the Employee was responsible for inaccurate shipments and was unable to communicate with and maintain suitable professional relationships with certain colleagues. Therefore, as per section 62(h) of **The Employment Standards Code**, the Employee was not entitled to notice as he acted in a manner that amounted to willful neglect of duty.

**Held:** The Code provides that parties can agree to vary the notice period, but does not expressly state they may agree to one notice period for the employer and another for the employees. Interpreting section 62(b) to allow unequal notice periods is incompatible with the object of the **Code** to prevent the exploitation of employees, and could render the provisions of the **Code** with respect to notice pointless and futile. The portion of the employment agreement that provided the Employer may accept the Employee's "termination immediately without further remuneration" was contrary to the **Code** and, as a result, null and void. The Board also considered the alternative argument that the Employer was allowed to terminate employment without notice for willful neglect of duty. The use of the term "willful" in section 62(h) of the **Code** suggests that an employer must demonstrate that the employee acted in a manner which was voluntary or intentional. The Employee was placed in a position which may not have been suited to his experience and education. He worked diligently and showed early promise in the role. The Board was satisfied that he tried to work to the best of his abilities. However, his efforts were undermined by the inappropriate behaviour of others. Therefore, the Board did not accept that he acted in a manner that constituted willful neglect of his duties. Therefore, the Board determined he was entitled to receive \$2,423.12 for wages in lieu of notice.

Nygaard International Partnership Associates - and - Ryan Kolynchuk  
Case No. 731/03/ESC  
May 2, 2005

**WAGES - Training Costs - Employment agreement provided that an employee who resigned within first 24 months of employment would reimburse Employer half the cost of orientation and training program - Employee resigned after being employed 10 months - \$790.35 deducted from his final cheque - Training included performing actual work of position - Board not prepared to allow deduction because Employee was productive during training period and was entitled to wages for his labour; deduction was an attempt to penalize Employee for leaving his position within first 24 months; and "individuals in training" not exempt from Minimum Wage Regulation.**

When the Employee commenced employment, he signed an employment agreement which included an orientation and training clause. The clause provided that if an employee voluntarily terminated his employment during the first twenty-four months, he must reimburse the Employer for two weeks' salary representing one-half of the cost of training. The Employee terminated his employment after 10 months. Pursuant to the training clause, a deduction of \$790.35 was made from his final cheque. He admitted that he knew that the Employer was going to make the deduction. However, he contended that he was only provided with limited training during his first four weeks of employment. Further, the orientation and training program was largely irrelevant to the duties of his position and that the knowledge and skills that he acquired were not transferable to other employment.

**Held:** The training program consisted of macro and micro training. Macro training related to practices and

information for all new employees to learn. The Board accepted that the macro training was largely specific to how the Employer wished its employees to function and was not particularly transferable to other professional endeavours. The micro training the Employee received was tailored to his specific position and the tasks associated with it. The micro training largely consisted of him learning by doing the actual work of a junior accountant and having any mistakes pointed out by his superiors. The orientation and training clause specifically states that the Employee was not to commence his “specific employment responsibilities and resulting productivity until after the completion of the four-week orientation and training program.” The evidence was clear that the Employee did perform the duties of a junior accountant and was productive during the four-week period. Therefore, the Employee was employed to do work by the Employer, and he was entitled to wages for his labour. In addition, the Board concluded that the clause was an attempt to penalize an employee for leaving his position within the first 24 months. The Board would not enforce such a provision. The Board also noted that while section 2 of *Minimum Wages and Working Conditions Regulation* indicates that the *Employment Standards Code* does not apply to certain volunteers and trainees, it does not exclude “individuals in training.” The orientation and training provided to the Employee was not a program implemented or approved by any of the entities noted in the *Regulation*. For all the above reasons, the Board was not prepared to allow the deduction from the Employee's wages.

Frank Kenjak t/a Aries Courier Service - and - Jeffrey Fulton  
Case No. 650/04/ESC  
May 19, 2005

**INDEPENDENT CONTRACTOR - EMPLOYEE - Bicycle courier performed duties under Employer's strict direction and control for its benefit and courier did not exercise any significant independent decision-making authority - Held courier was an “employee” under *The Employment Standards Code* - Claim for wages allowed.**

**EMPLOYEE - JURISDICTION - Bicycle courier not insurable for EI or CPP not determinative whether he was an employee under *The Employment Standards Code*.**

The Employee, who was a bicycle courier, submitted a letter to the Employer in which he expressed that he wished to continue working, however, if several concerns were not addressed, the Employer ought to consider the letter to be two weeks' notice of his resignation. Fifteen minutes after he submitted the letter, he called the dispatcher to ask where his next pick-up was. She allegedly told him that he already was taken off the list of people who worked for the company and that he should go home. The Employee filed a claim with Employment Standards seeking wages, general holiday wages, vacation wages, wages in lieu of notice and reimbursement for unauthorized deductions. The Employer appealed the Order arguing that the Employee was a subcontractor and never was an employee.

**Held:** While the employment contract indicated that all Owner-Operators/subcontract drivers were self employed, the Board and the courts have acknowledged that the crucial test in determining whether an individual is an employee or an independent contractor is the degree and nature of control and direction exercised over the individual who claims to be an employee. Although he supplied his own bicycle, he derived all of his work from the Employer's dispatch. The amount of work he received, the rate charged for the service and the remuneration he received was controlled by the Employer. His hours and days of work, the order of deliveries, the routes that he followed and even the timing of his meal or rest breaks was strictly controlled by the Employer. He followed a “dress code”, wore Employer identification, and was obligated to use manifests or weigh bills provided by the Employer emblazoned with its logo. The dispatcher made it clear that she was his “boss” and that he was obliged to follow her direction, failing which consequences would flow. The Board concurred with the Employee that he would not have been able to work for another employer while performing duties for the Employer. Although he was compensated by commission rather than by an hourly wage did not necessarily mean that he was not an employee under the Code. The Board considered that the Employee was found not to be EI or CPP insurable, and that the Board was not persuaded that it ought to conclude from that fact that he was not an “employee” under the Code. Its jurisdiction in the matter was to determine whether or not he was an “employee” under the Code. The term “employee” is defined in the Code as “an individual who is employed to do work” The Board was satisfied that the Employee was employed by the Employer and performed duties under its direction and control for its benefit and he did not exercise any significant independent decision-making authority. Accordingly, the Board concluded that the Employee was an “employee” under the Code and his claim for wages was allowed.

Native Reflections Inc. - and - Charlene Berg

**EVIDENCE - WAGES - Overtime - Employee submitted pay stub recording overtime pay and a deduction to negate the pay - Employer contended pay stub was created with software Employee had at home - Evidence was clear and convincing that the Employer's computer records did not indicate deduction from overtime wages was made.**

**NOTICE - Abandonment - Employee refused to work when company president did not apologize for berating her- Refusal to work amounted to Employee abandoning her position and Employer not liable to pay wages in lieu of notice.**

The Employee, who worked as an administrator, claimed that the company president angrily berated her for a shipping error. The Employee advised the president that she would not return to work unless he apologized to her, but he refused. The Employee did not return to work after that conversation. She waited until pay day the following week and then called the office to inquire as to whether her cheque was available. She spoke with the president who wished to know certain information regarding matters relating to the business. The Employee refused to provide him with the information requested until such time as he provided her with her cheque. The president refused and the Employee filed a claim for wages, overtime wages, vacation wages and wages in lieu of notice. She submitted a pay stub to support her position that she was owed overtime pay. The pay stub recorded overtime pay and a corresponding deduction in the same amount, negating the payment. The president indicated that the Employee had been provided with a copy of the Employer's accounting software for her use at home, and he speculated that she had the ability to create the pay stub with that computer program. The Employee denied doing so. The Employee's successor testified that she reviewed the Employer's computerized payroll records and could find no evidence of the deduction having been made. Even if the deduction had been deleted after the fact, the system would have a record of the change.

**Held:** The Board was satisfied that the Employee issued an ultimatum to the president and that she refused to work when the apology was not forthcoming. In refusing to work, the Employee abandoned her position. In such circumstances, an employer is not liable to pay wages in lieu of notice. Further, the Board was satisfied, on the balance of probabilities, that the Employee had been paid all outstanding wages and that she was not entitled to any further overtime pay. The Employer's evidence that the computer records did not indicate a deduction from overtime wages earned was clear and convincing. There were no other records indicating that the Employee worked overtime which had not been compensated for by the Employer. Additionally, the Employee's evidence as to the dates, times and circumstances requiring the working of overtime was vague. Accordingly, the Employee's claim was dismissed.

Broadway Messenger & Courier Ltd. - and - David Thiessen  
Case No. 602/04/ESC  
January 23, 2006

**INDEPENDENT CONTRACTOR - Courier driver spending majority of time servicing two accounts was not an independent contractor - Employer set rates to be charged all his customers, and paid driver when customers paid their accounts - Employer gave driver radio, manifest, waybills, signage and covered his duties when necessary - Driver worked essentially for the benefit of the Employer - Held driver was an employee.**

The issue to be determined by the Board is whether the Employee was an employee, as defined by *The Employment Standards Code* or was he an independent contractor, as argued by the Employer. The Employee, who was a courier driver, owned his own vehicle, paid his own insurance, fuel and repairs and was paid bi-monthly, based on a commission rate of 75% of all deliveries made. The Employer gave the Employee the radio, manifest, waybills, customers, signage and drivers to cover his duties when necessary. He was required to be in his vehicle by 8:00 a.m. and had to call in on the radio to advise he was on. If he was late on the air, he wouldn't be given calls for those clients he normally served. The Employee further testified that he did not work for anyone else and that it was his understanding he could not work for anyone else or use his vehicle for any courier business other than the Employer. The Employee said that he was dispatched by the Employer on other accounts, but that 75% to 80% of the time he was doing deliveries for two customers who called him directly. The Employee took issue with the characterization that his regular accounts were his

personal accounts. He said that the rate charged to them was set by the Employer, and similar to all his customers, the Employer billed them and then paid the Employee.

**Held:** The Board found the Employee worked essentially for the benefit of the Employer. The terms and conditions under which the Employee performed his duties were the same as for two previous employees. Those employees had also appeared before the Board which found them to be employees. The Employer had filed Leave to Appeal but the court denied leave. The Board found that just because the majority of the Employee's time was spent servicing two or three accounts did not mean he was an independent contractor. We note that the Employee called in to the dispatcher to advise when he had received a call on his cell from one of those customers. The rate charged to them was set by the Employer, at its sole discretion, just as the rate was set for other of the Employer's customers. If the Employee couldn't service them, then another courier was sent. The accounts for services rendered were prepared and issued by the Employer, based on manifests which were required by the Employer to be submitted by the Employee. The Employer, in turn, was paid by the customer. The Employee never issued accounts on his own behalf to these or any customers, nor did he receive payment personally for them, but rather was paid bi-monthly by the Employer. Therefore, the Board was satisfied that the Employee was an employee of the Employer. It confirmed the monies owed to him as determined in the Employment Standards Code Order.

## **SUMMARIES OF SIGNIFICANT BOARD DECISIONS PURSUANT TO THE WORKPLACE SAFETY AND HEALTH ACT**

Hi-Tec Industries - and - Abram Janzen, Enrique Janzen Jr., Enrique Janzen Sr. & Kathy Janzen  
Case Nos. 699/04/WSH, 700/04/WSH, 701/04/WSH, 702/04/WSH  
September 22, 2005

**TIMELINESS - Employees, who were all family, filed timely appeals of Workplace Safety and Health decisions to the Board but original complaints not brought until 2 years after employment was terminated and 3 years after workplace safety incident - Board held that while some latitude may be extended to the employees whose inexperience required they take extra time to determine appropriate course of action, delay was extreme and reasons advanced did not persuade the Board that matters ought to proceed.**

The Employees, a father, mother and their two sons, worked for the Employer. On February 21, 2001, one of the sons suffered a serious workplace injury. Workplace Safety and Health conducted an investigation which resulted in the Employer being fined. December 7, 2001 was the last day the son worked for the Employer. In February 2002, the other family members went on vacation but did not return to work as scheduled. They were suspended and ultimately dismissed by the Employer in April 2002. On February 24, 2004, a complaint was initiated with Workplace Safety and Health claiming that all of the members of the family were wrongfully dismissed for reasons related to the workplace safety and health investigation. A Workplace Safety and Health Officer dismissed the complaints. The four family members appealed the decision to the Director who upheld the Officer's decision. Finally; the family filed timely applications for appeal with the Board, in accordance with section 39(2) of **The Workplace Safety and Health Act**. At the commencement of the Board hearing, the Employer raised a preliminary issue submitting that the Board should not hear the appeal as the Applicants grossly delayed in the filing of their complaints to Workplace Safety and Health. The complaints were not brought until 22 months after the three family members' employment was terminated; 26 months after the son quit; and 3 years after the workplace safety incident.

**Held:** Labour relations boards and the courts have acknowledged that employment related matters ought to be dealt in a timely manner. The essential principle is that parties ought to be entitled to expect that claims not asserted within a reasonable time will not be allowed to re-emerge later, lest the requirements of a fair hearing be threatened. While the **Act** does not speak of any time limit for the filing of the complaint, the Board has the authority to determine whether a complaint is timely when it comes before the Board in an application for appeal of the Director's decision. Pursuant to section 142(1)(m) of **The Labour Relations Act**, the Board may "exercise such powers and perform such duties and functions as may be incidental to the powers, duties and functions of the board and objects of this or any other Act ... " The Board found that the 22 or 26 months delay in filing the complaints was extreme and further accepted that the Employer was thereby prejudiced.

The Employees' reason for the delay was that they were not provided with timely information regarding how to advance their claims. While some latitude may be extended to parties who are unaware of their statutory rights or whose inexperience requires that they take extra time to determine the appropriate course of action and formulate a complaint, there must be some limit to the delay. In the present case, the delay was extreme and the reasons advanced did not persuade the Board that the matters ought to proceed. The Board unanimously determined that the Employees unduly delayed in the filing of the complaint and that the applications ought to be dismissed.

Tolko Industries, Manitoba Solid Wood Division - and - Director, Workplace Safety and Health Division  
- and -Cormorant Logging and Construction (Interested Party)  
Case No. 611/05/WSH  
March 21, 2006

**APPEAL - Suspension of Improvement Order pending appeal - Order issued as result of death of an employee - Board declined to exercise discretion to suspend Order for concern of endangering worker safety; relatively minor degree of prejudice to Employer to comply with the Order prior to its appeal being heard as Order merely contemplated review of Employer's procedures; and on face of the record success of appeal could not be determined - Board concluded that it should not exercise discretion granted under section 39(7) of *The Workplace Safety and Health Act*.**

An Improvement Order was issued as a result of a fatal accident when machinery broke through the ice on a winter ice road. The Employer requested that the Board suspend the operation of the Improvement Order pending the determination of its appeal of the decision of the Director of Workplace Safety and Health. The grounds for appeal were that it was not a "prime contractor" as suggested by the Director. The Employer also submitted it would be prejudiced by having to comply with the Order prior to its appeal being heard and decided by the Board.

**Held:** The primary concern of the Board in considering whether to exercise its discretion granted in subsection 39(7) of *The Workplace Safety and Health Act* to suspend the operation of an order was the potential impact upon worker safety. In the present case, the event that caused the Workplace Safety and Health Officer to attend at the site was the death of an employee. Given the inherent danger associated with ice roads and the unresolved question of the Employer's responsibilities under the *Act* in relation to ice road construction, the Board determined that suspending the order could endanger worker safety. The Board also considered whether there would be substantial prejudice to the Employer if the Order was not suspended given the compliance date for the Order was prior to the dates scheduled for the hearing of the appeal. The Order, on its face, merely contemplated that the Employer review its procedures to be followed to safeguard safety and health when another employer or self-employed person is involved in the work of ice road construction. The Employer had not submitted any information to the Board to suggest that the review of procedures was unduly onerous, time consuming, costly or that it was impossible to carry out. Accordingly, the Board was satisfied that the degree of prejudice to the Employer of not suspending the Order was relatively minor. Nevertheless, it appeared to the Board that the main issue on appeal was not the review of procedures mandated by the Order, but whether the Employer was a "prime contractor" and what its obligations were with respect to the construction of ice roads. The Board attempted to make a preliminary evaluation of the relative merit of the appeal. On the face of the record, the outcome of the matter was not clear or obvious. Without the benefit of evidence and argument from the parties at the hearing, it was not possible, for the Board to determine that the appeal was likely to be successful. Therefore, the Board concluded that it should not exercise the discretion granted to it under the *Act* and dismissed the Employer's request.

## SUMMARIES OF SIGNIFICANT COURT DECISIONS

Nygaard International Partnership Associates - and - Sharon Michalowski  
Court of Appeal of Manitoba  
Manitoba Labour Board Case No. 735/03/ESC  
Docket No. AI 04-30-06024  
Heard by Justice Philp  
Delivered September 9, 2005

The Employer sought leave to appeal the order of the Manitoba Labour Board in which the Board determined that the Employee was entitled to receive overtime wages and wages in lieu of notice from the Employer. The Employee was employed as a Retail Merchandise Supervisor. Prior to commencing her employment, the employee signed an employment contract that provided her salary was inclusive of all hours required to be worked to fulfill her duties. The contract also contained a provision that either party was entitled to thirty days notice to terminate the employment agreement. The Employer had the right to accept an employee's notice of termination immediately with further remuneration. When the Employee delivered a letter of resignation, the Employer exercised that right and terminated her employment immediately without further compensation. The Employee filed a wage complaint to the Employment Standards Division which ordered that the Employer pay her \$10,240.68, being wages owing to the employee plus an administrative fee. The Employer requested the matter be referred to the Board. The Board found that the employee was told by her supervisor before the employment contract was signed that she would not be entitled to overtime pay, but that she would be compensated for extra hours with time off in lieu of overtime pay. Further, a contract of employment entered into between an employer and an employee must clearly indicate the number of hours of work and the rate of pay. In this case, the term of the employment contract that presumed to provide a salary "inclusive of all hours required to be worked" was inconsistent with the Code. Accordingly, in consideration of all of the above and the positions of the parties, the Board accepts that Michalowski is entitled to payment, at overtime rates, for hours worked in excess of the standard hours of work established by the Code. With respect to the employee's claim for wages in lieu of notice, the Board concluded that the portion of the employment agreement allowing the Employer to immediately terminate Michalowski following receipt of her resignation was contrary to the Code and was null and void.

**Held:** The Court found that the Employer had raised important questions of statutory interpretation which were isolated from the facts of the case. As a result, the Court granted leave to appeal on three questions. First, whether the Board erred in law when it decided that an employment contract that presumes to provide a salary "inclusive of all hours required to be worked" was inconsistent with the Code. Second, whether the Board erred in law in admitting extrinsic evidence to alter the overtime provision in the written employment contract of the parties. Third, the Board erred in law when it decided that a termination notice period established by an agreement between an employer and an employee pursuant to section 62(b) of *The Employment Standards Code* must apply equally to both parties and that the parties had established a notice period of 30 days.

Hi-Tec Industries - and - Abram Janzen, Enrique Janzen Jr., Enrique Janzen Sr. and Kathy Janzen  
Court of Appeal of Manitoba  
Manitoba Labour Board Cases No. 699 - 702/04/WSH  
Dockets No. AI 05-30-06261, AI 05-30-06262, AI 05-30-06263, AI 05-30-06264  
Heard by Chief Justice of Manitoba Scott  
Delivered January 23, 2006

The Employees, who were all family members, filed an application for leave to appeal from the Manitoba Labour Board's dismissal of their claims alleging discriminatory action contrary to section 42(1) of *The Workplace Safety and Health Act*. One of the employees suffered a hand injury while at work. The Employer was fined \$10,000 as a result of the accident. A month later, the Employer dismissed all four Employees. Two years later, the Employees filed claims of discriminatory action against the Employer. After investigation, an officer of Workplace Safety and Health dismissed the claims. The Employees appealed that decision to the Director of Workplace Safety and Health. The Director dismissed the claims, wherein he concluded that the prosecution initiated against the Employer did not cause it to discriminate against the Employees and affirmed the decision of the Workplace Safety and Health officer. The Employees then appealed to the Board pursuant to section 39 of *The Workplace Safety and Health Act*. The Board

dismissed the appeals based on undue delay in filing the original complaints. The Board concluded that it had broad powers to regulate its own processes. Therefore, it had the authority to consider the timeliness of a complaint and dismiss the appeal if there was extreme delay.

**Held:** During argument, the four Employees (who throughout had represented themselves) relied almost entirely on the father to speak on their behalf. He was simply unwilling or unable to address the critical question before the court mandated by section 39(9) of the *Act*. While the courts can go some way to assist self-represented litigants, it cannot make their arguments for them. Therefore, the Court found the Board made a decision, reasonable on the face of it, that it had the authority to dismiss an appeal for "extreme delay." In the absence of a compelling argument to the contrary, leave to appeal should not be granted.



TABLE 1

**Statistics Relating to the Administration of *The Labour Relations Act* by the Manitoba Labour Board  
(April 1, 2005 – March 31, 2006)**

	Cases Carried Over	Cases Filed	Total	Disposition of Cases			Number of Cases Disposed	Number of Cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	20	53	73	43	5	6	54	19
Application for Revocation	5	11	16	13	2	0	15	1
Application for Amended Certificate	9	18	27	16	0	2	18	9
Application for Unfair Labour Practice	27	44	71	3	9	33	45	26
Application for Board Ruling	43	17	60	3	2	4	9	51
Application for Review and Reconsideration	6	13	19	0	16	1	17	2
Application for Successor Rights	1	12	13	9	1	1	11	2
Application for Termination of Barg. Rights	1	1	2	1	0	0	1	1
Application pursuant to Section 10(1) <sup>1</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 10(3) <sup>2</sup>	1	2	3	2	0	0	2	1
Application pursuant to Section 20 <sup>3</sup>	9	21	30	0	22	0	22	8
Application pursuant to Section 22 <sup>4</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 53(2) <sup>5</sup>	0	2	2	1	1	0	2	0
Application pursuant to Section 58.1 <sup>6</sup>	1	0	1	0	0	0	0	1
Application pursuant to Section 69, 70 <sup>7</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 76(3) <sup>8</sup>	0	3	3	2	0	1	3	0
Application pursuant to Section 87(1) <sup>9</sup>	0	2	2	0	0	1	1	1
Application pursuant to Section 87.1(1) <sup>10</sup>	0	1	1	0	0	0	0	1
Application pursuant to Section 115(5) <sup>11</sup>	1	11	12	4	0	4	8	4
Application pursuant to Section 130(10.1) <sup>12</sup>	0	19	19	18	0	1	19	0
Application pursuant to Section 132.1 <sup>13</sup>	0	0	0	0	0	0	0	0
Application pursuant to Section 146(1) <sup>14</sup>	0	0	0	0	0	0	0	0
Referral for Expedited Arbitration <sup>**</sup>	10	97	107	-	-	-	100	7
<b>Totals</b>	<b>134</b>	<b>327</b>	<b>461</b>	<b>115</b>	<b>58</b>	<b>54</b>	<b>327</b>	<b>134</b>

<sup>1</sup> When an Application for Certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the Application is disposed of.

<sup>2</sup> Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this section are for an extension of this period of up to 90 days.

<sup>3</sup> Duty of Fair Representation

<sup>4</sup> Access Agreements

<sup>5</sup> Employer request for investigation whether bargaining agent failed to exercise bargaining rights

<sup>6</sup> Business coming under provincial law is bound by collective agreement

<sup>7</sup> Complaint re ratification vote

<sup>8</sup> Religious Objector

<sup>9</sup> First Collective Agreement

<sup>10</sup> Subsequent agreement to first collective agreement

<sup>11</sup> Request for the Board to appoint arbitrators

<sup>12</sup> Extension of Time Limit for expedited decisions

<sup>13</sup> Disclosure of information by unions

<sup>14</sup> Prosecution of employer's organization or union

\*\* See Table 3

TABLE 2  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES**  
**(April 1, 2005 – March 31, 2006)**

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending	Vote Conducted but not counted
Certification	24	2018	14	2	0	8	0
Revocation	7	219	6	1	0	0	0
Termination of Bargaining Rights	0	0	0	0	0	0	0
Board Ruling	0	0	0	0	0	0	0

TABLE 3  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION**  
**(April 1, 2005 – March 31, 2006)**

Cases Carried Over	Number of Referrals Filed	TOTAL	Number of Cases Mediator Appointed	Disposition of Cases				Number of Cases Disposed	Number of Cases Pending	
				Settled by Mediation	Settled by Parties	Settled by Arbitration	Declined to Review			Withdrawn
10	97	107	40	34	21	17	1	27	100	7

TABLE 4  
**STATISTICS RELATING TO HOURS OF WORK EXEMPTION REQUESTS PURSUANT TO *THE EMPLOYMENT STANDARDS CODE***  
**(April 1, 2005 – March 31, 2006)**

Cases Carried Over	Number of Applications Filed	TOTAL	Rulings Made	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
15	348	363	349	0	8	357	6

TABLE 5  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE PAYMENT OF WAGES ACT***  
**(April 1, 2005 – March 31, 2006)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
1	0	1	0	0	0	0	1

TABLE 6  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE***  
**(April 1, 2005 – March 31, 2006)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
17	78	95	48	12	0	60	35

TABLE 7  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY & HEALTH ACT* BY THE MANITOBA LABOUR BOARD**  
**APPLICATION FOR APPEAL OF DIRECTOR'S ORDER**  
**(April 1, 2005 – March 31, 2006)**

Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
7	2	9	4	3	7	2

TABLE 8  
**STATISTICS RELATING TO THE ADMINISTRATION OF THE *ESSENTIAL SERVICES ACT* BY THE MANITOBA LABOUR BOARD**  
**(April 1, 2005 – March 31, 2006)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	1	1	0	0	0	0	1

TABLE 9  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT* BY THE MANITOBA LABOUR BOARD**  
**(April 1, 2005 – March 31, 2006)**

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

TABLE 10  
**FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED**  
**(April 1st, 2005 - March 31st, 2006)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31, 2005
-------	----------	---------------------	------------------------	-----------------------------

New Applications this Reporting Period:

International Union of Operating Engineers, L. 987	Rural Municipality of Tache	August 17, 2005	Withdrawn	
International Union of Operating Engineers, L. 98	Zenith Paving	February 14, 2006	Pending	