

**ONTARIO  
LABOUR RELATIONS BOARD**

**ANNUAL REPORT  
1982-83**



## ONTARIO LABOUR RELATIONS BOARD

<i>Chairman</i>	GEORGE W. ADAMS Q.C.
<i>Alternate Chairman</i>	K.M. BURKETT
<i>Vice-Chairmen</i>	G.G. BRENT E. NORRIS DAVIS RORY F. EGAN D.E. FRANKS R.A. FURNESS R.D. HOWE R.O. MACDOWELL M.G. MITCHNICK C.F. MURRAY M.G. PICHER P.C. PICHER N. SATTERFIELD I.C.A. SPRINGATE

### *Members*

H.J.F. ADE	R.D. JOYCE
D.B. ARCHER	H. KOBRYN
B.L. ARMSTRONG	B.K. LEE
C.A. BALLENTINE	S.H. LEWIS
J.D. BELL	F.W. MURRAY
C.G. BOURNE	J.W. MURRAY
E.J. BRADY	P.J. O'KEEFFE
L.C. COLLINS	R. REDFORD
F.S. COOKE	J.A. RONSON
W.G. DONNELLY	M.A. ROSS
M. EAYRS	W.F. RUTHERFORD
M.J. FENWICK	H. SIMON
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P.V. GRASSO	R.J. SWENOR
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L. HEMSWORTH	W.H. WIGHTMAN
A. HERSHKOVITZ	J.P. WILSON
O. HODGES	N.A. WILSON

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### *Registrar and Chief*

*Administrative Officer* D.K. AYNLEY

*Solicitor; Editor* HARRY FREEDMAN

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Ontario  
Labour Relations  
Board

Office  
of the  
Chairman

400 University Avenue  
Toronto, Ontario  
M7A 1V4

416/965-4193

The Honourable Russell H. Ramsay  
Minister of Labour  
400 University Avenue  
Toronto, Ontario  
M7A 1T7

Dear Mr. Ramsay:

It is my pleasure to provide to you the third  
Annual Report of the Ontario Labour Relations Board for  
the period commencing April 1, 1982 to March 31, 1983.

Respectfully submitted,

A handwritten signature in cursive script, reading "George W. Adams".

George W. Adams, Q.C.  
Chairman

GWA/gm

## MESSAGE FROM THE CHAIRMAN

The Ontario Labour Relations Board continued to examine and refine its administrative processes and support services and to improve the Board's level of service to the community in the face of increasing costs and caseloads at a time of overall government restraint. We developed and installed a computerized information retrieval system in the Board's library and are beginning to use computer technology in the publication and distribution of our Monthly Reports. Our computerized case monitoring system which enables us to "track" cases from the time they are filed to their disposition has been refined to provide other valuable information to enable us to manage the Board's caseload and resources more efficiently. If the Board hopes to cope with the conflicting demands which will be made on it in the future, it must be innovative in all areas of its activities. The issuance of thoughtful decisions continues as an important aspect of the Board's operations but it is only one of several important areas.

For example, while it is generally thought that the Board's primary activity is the adjudication of contested matters, in fact, most of the Board's day to day case disposition is accomplished through the efforts of our field staff. The Board's field program is second to none in Canada and continues to serve the Ontario labour relations community well. The Board is committed to the amicable settlement of the matters which come before it when this is possible.

The reorganization of the field staff last year has proven successful. The Manager of Field Services and the Senior Labour Relations Officers now identify the "tough" cases and devote additional resources to their resolution. The new arrangement has also provided much more effective co-ordination of field activity. Consistent with their need to be thoroughly familiar with labour board practices and developments, all members of the field staff have access to the Board library's research computer and to the Board's legal services. They are therefore able to quickly obtain all key Board decisions relating to any particular assignment in order to assist the parties in reaching a resolution of their dispute without appearing before the Board. The field staff participated as resource persons in a day-long program devoted to the Board's certification processes presented by the Law Society of Upper Canada. In addition to their monthly staff meetings where selected Board practices are considered and reviewed, the field staff had the benefit of a day-long seminar dealing with dispute resolution techniques conducted by Professor Bryan Downie, of the Queen's University Faculty of Business.

However, despite the best efforts of our field staff, many cases require adjudication. As can be seen from the case highlights for this fiscal year, the Board dealt with a number of significant matters and continued to provide innovative solutions where required. During the province-wide strikes in the construction industry in the summer, the Board began to enter into the realm of picket-line regulation, later applying this new approach to non-construction settings as well. The Board continued to refine its approach to petitions and counter-petitions and was required to interpret and apply the *Inflation Restraint Act* and the *Canadian Charter of Rights and Freedoms*. The Board also dealt with a wide variety of unfair labour practice matters ranging from employer freedom of speech issues to whether the imposition of a trusteeship upon a local union violated the Act.

Board decisions were the subject of several judicial proceedings and I am able to report that all but one were dismissed.

This year the Board commenced the issuance of a "Monthly Highlights" publication. The purpose of this initiative is to ensure that the community has notice of Board developments as soon as possible and well before the issuance of our formal Monthly Report.

The Ontario Labour Relations Board occupies a central position in Ontario's labour relations community. Consistent with this role, members of the Board have continued to make important efforts to meet with constituency representatives to explain the Board's activities, as has the Chairman. The Board, it must be realized, is as important an instrument of education as it is one of dispute resolution.

Finally, I wish to record my personal thanks to the staff of the Ontario Labour Relations Board for their substantial efforts over the past year and to the labour relations community for its ongoing support.

## I INTRODUCTION

This is the third issue of the Ontario Labour Relations Board Annual Report, which commenced publication in 1980-1981. This issue covers the fiscal year April 1, 1982 to March 31, 1983.

The report contains up to date information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's function.

In view of the response from the labour relations community, this year the section highlighting key decisions of the Board issued during the year has been expanded. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been well received, particularly by the practising bar. The report will continue to provide a legislative history of the *Labour Relations Act* and note any legislative amendments made to the Act during the year.

A paper entitled "The Labour Relations System in a Time of Economic Conflict" presented by the Chairman of the Board at the P.A.T. Annual Conference in Toronto in April, 1983 is also included in this report.

## II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"...the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today—management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers—something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when the dispute arises in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944. In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:-

"...the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."



The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a wartime move by the Federal Government to centralize labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over "property and civil rights." (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently narrowed so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, "opt in" to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations "in the same form and to the same effect as that... Act which may be passed by the Parliament of Canada at the session currently in progress..." This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the

Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

*The Labour Relations Amendment Act, 1960*, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario*, May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31.) Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

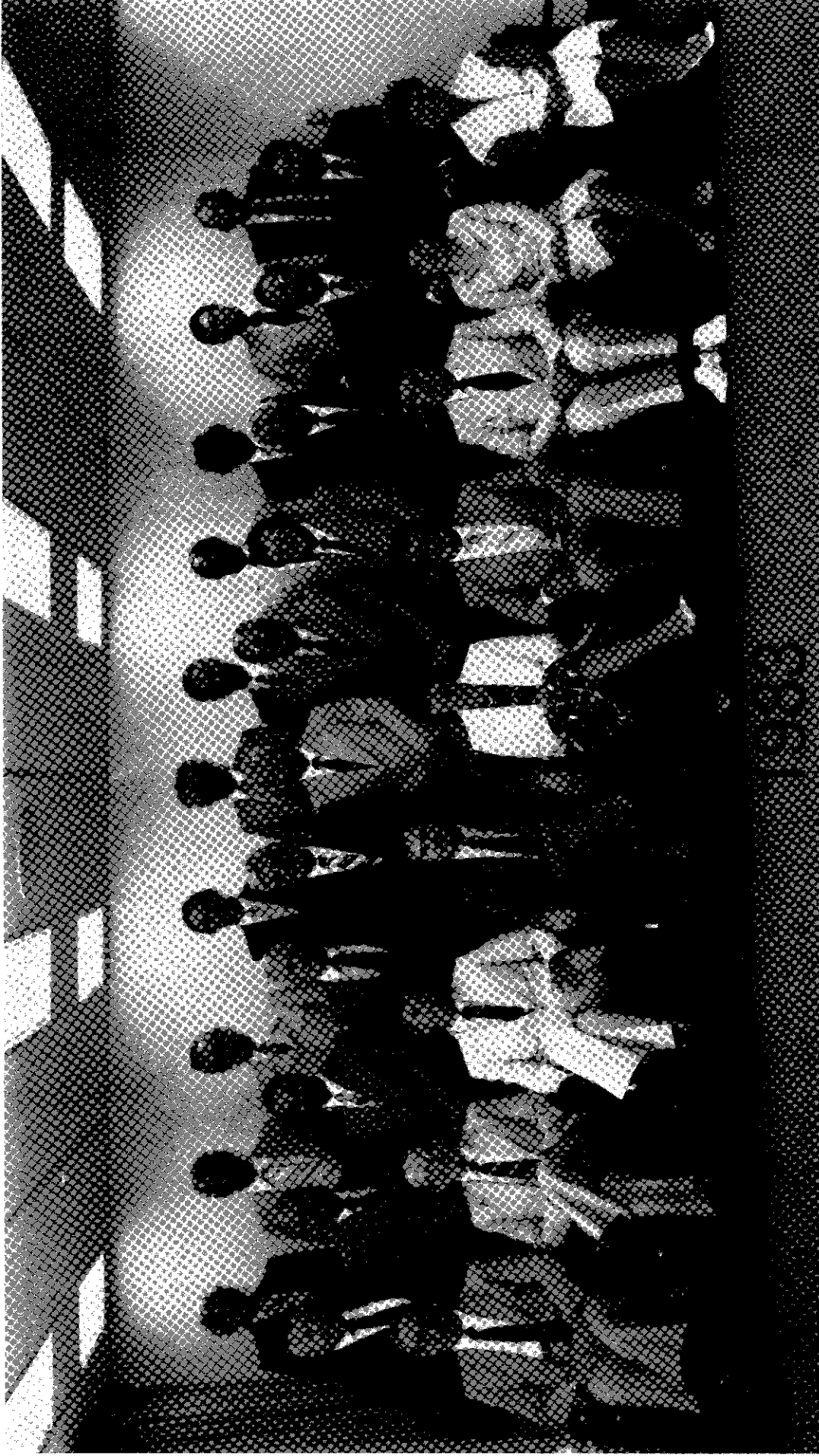
In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, The Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation." This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.

A major increase in the Board's remedial powers under the *Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, *The Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer.

There were no amendments to the *Labour Relations Act* during the year under review.

# THE FULL BOARD AND SENIOR STAFF



*Front Row: (Left to right)*

J. D. Bell, J. P. Wilson, K. M. Burkett, G. W. Adams Q. C. (Chairman), I. M. Stamp, M. Eayrs, D. E. Franks, G. G. Brent, E. Meslin

*Middle Row:*

H. Kobryn, L. Hemsworth, P. V. Grasso, R. F. Egan, W. F. Rutherford, L.C. Collins, J. W. Murray, I. C. A. Springate, W. G. Donnelly, R. A. Furness, M. G. Mitchnick.

*Back Row:*

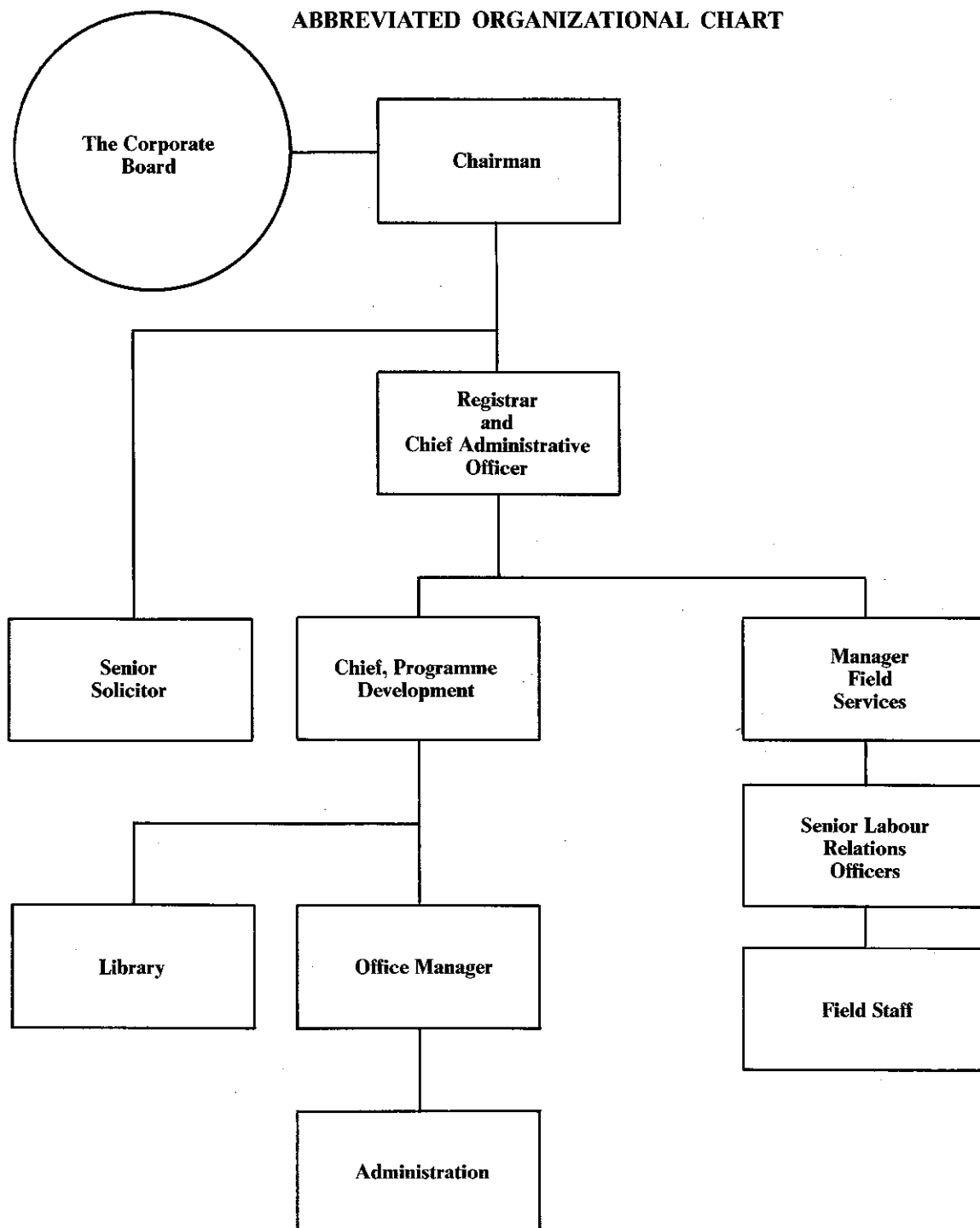
A. Hershkovitz, E. J. Brady, F. S. Cooke, N. B. Satterfield, J. Kennedy, J. A. Ronson, B. L. Armstrong, N. V. Dissanayake, J. A. MacDonald, D. K. Aynsley

*Absent:*

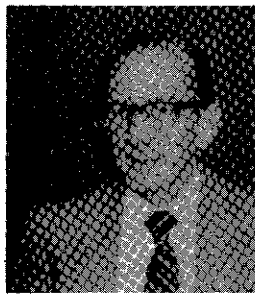
D. B. Archer, C. A. Ballentine, C. G. Bourne, E. N. Davis, H. Freedman, W. Gibson, A. Gribben, O. Hodges, R. D. Howe, R. D. Joyce, R. O. MacDowell, B. K. Lee, S. H. Lewis, C. F. Murray, F. W. Murray, P. J. O'Keefe, M. G. Picher, P. C. Picher, R. Redford, R. J. Swenor, E. G. Theobald, W. H. Wightman, N. A. Wilson.

### III BOARD ORGANIZATION

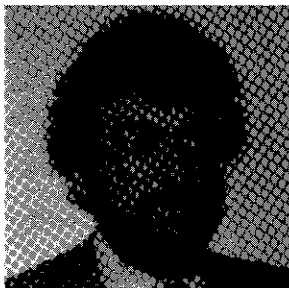
The following is an abbreviated organizational chart of the Ontario Labour Relations Board:



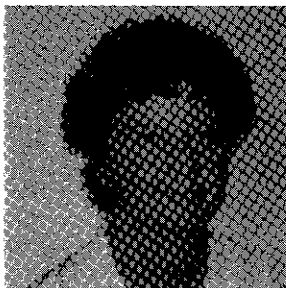
# **SENIOR STAFF**



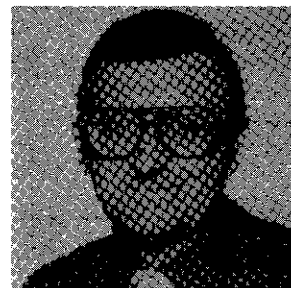
**Don K. Aynsley**  
Registrar and  
Chief Administrative Officer



**Harry Freedman**  
Senior Solicitor



**Eleanor Meslin**  
Chief, Programme  
Development



**Jack A. Macdonald**  
Manager, Field  
Services

## IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act* as follows:

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

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. These appointments are made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the *Labour Relations Act*, R.S.O. 1980, c. 228, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 464. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. During the year under review the Board was required on several occasions to determine the impact of the *Canadian Charter of Rights and Freedoms* and the *Inflation Restraint Act* on the rights of parties under the *Labour Relations Act* and the *Hospital Labour Disputes Arbitration Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Office of the Solicitor.

**(a) ADMINISTRATIVE DIVISION**

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, constraints on its access to public funds, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload, within the resource parameters set for it, underpins much of its contribution to labour relations harmony in this province.

The Chief, Programme Development and the Manager, Field Services report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Chief, Programme Development, Manager Field Services, Senior Solicitor and Officer Manager meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes; office management, case monitoring, and library services.





## **1. Office Management**

An administrative support staff of approximately 60 people, headed by an Office Manager who reports to the Chief, Programme Development, and a Senior Clerical Supervisor processes all the applications received by the Board.

Four primary sections deal with applications:

- (1) The certification section handles all applications for certification, termination and accreditation.
- (2) The sundry section processes all other applications including unfair labour practice complaints, grievances in the construction industry and illegal strike and lock-out proceedings.
- (3) The vote section deals with all representation votes.
- (4) The clerks section reviews evidence in support of, or opposition to, trade unions filed with the Board in certification and termination applications and prepares the material necessary for the Board to conduct hearings and when necessary, attends hearings to assist the Board.

The bulk of the Board's caseload is made up of applications for certification, unfair labour practice complaints and referrals to arbitration of construction industry grievances.

The Registrar's office is responsible for setting hearing dates for all cases and maintaining an up-to-date availability roster of all Vice-Chairmen and Board Members for scheduling purposes.

## **2. Case Monitoring**

As indicated in last year's Annual Report, the case monitoring function has now been computerized. Data on each case is coded on a day-to-day basis as the status changes. Reports are issued weekly and monthly on the progress of each case including time lapse statistics on disposition times, by case type.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can lead to increased productivity and better service to the community.

## **3. Library Services**

The Ontario Labour Relations Board Library employs a full-time professional librarian and a library technician to manage a collection of approximately 900 texts, 100 journals and 25 case reports in areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The Library has approximately 3,500 volumes. The collection includes

decisions from other jurisdictions, including the Canada Labour Relations Board, the U.S. National Labour Relations Board and provincial labour boards from across Canada.

The Library staff provides research services for Board staff and assists the library users.

The Board Library has created a computer index to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date, etc. The system also provides a microfiche index to the decisions. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. It has been reviewed by officials from both the Canada and British Columbia Labour Relations Boards and may be used as a model in the development of their own respective computerized information retrieval systems.

#### **(b) FIELD SERVICES**

The Board holds to the view that the interests of the parties and labour relations generally in this province are best served by settlement in the majority of cases. In furtherance of its goal to resolve as many of the matters brought before it as possible without the need for a formal hearing, the Board reorganized its field services division in the previous fiscal year. The Board had previously employed 17 labour relations officers under the direction of a senior labour relations officer. In response to a case load increasing in both volume and complexity, a new position of Manager Field Services was created and three of the Board's more experienced officers, who had previously served as informal group leaders, were promoted to the position of Senior Labour Relations Officer. Mr. J.A. "Jack" MacDonald was appointed to the position of Manager, Field Services effective December 1, 1981. Mr. MacDonald has extensive experience in labour relations and had served as the Board's Senior Labour Relations Officer since December 13, 1976. In the position of Manager, Field Services, Mr. MacDonald is responsible for the overall functioning of the division with particular emphasis upon the setting and monitoring of performance standards case assignments, staff development and inter-Board liaison. The Senior Labour Relations Officers, Mr. S. Netherton, Mr. L. Stickland and Mr. N. Wilson, have each been assigned a team of officers, are responsible for providing guidance and advise in the handling of individual cases, managing the Board's certification day settlement efforts on rotating weeks and assisting with the performance appraisals of the Board's labour relations officers. In addition, the Senior Labour Relations Officers carry an active case load in the field.

The field staff continued its excellent performance in fiscal 1982-83. With the field staff settlement rate running at about 88 per cent on all matters, an increase of three percentage points over the previous year's settlement rate, the impact on the overall administration of the Board is self-evident. The Board's field staff provided the underpinning to the improvement in the time taken for disposing of cases and to the Board's overall excellent performance in fiscal year 1982-83.

The Alternate Chairman supervises field activity, and along with the Manager, Field Services and Senior Solicitor meets with all officers on a monthly basis to review recent developments and program performance.

### (c) OFFICE OF THE SOLICITOR

The Office of the Solicitor, under the direction of the Senior Solicitor of the Board, reports directly to the Chairman. A solicitor assists the Senior Solicitor in carrying out the functions of this office. In addition, each year the Board employs several articling law students to assist in the solicitor's work.

The Office of the Solicitor is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairman and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Office of the Solicitor is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the Office of the Solicitor. When preparation or revision of practice notes, Board Rules or forms become necessary, the Office of the Solicitor is responsible for undertaking those tasks.

The Senior Solicitor is active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, the solicitors prepare written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The Senior Solicitor also advises the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Office of the Solicitor is the representation of the Board's interest in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, the Senior Solicitor in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Office of the Solicitor is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

During the year under review the Courts dealt with ten applications for judicial review. Of these, nine were dismissed and one granted. In that one case, an application for leave to appeal to the Court of Appeal is pending. In another case an application for an injunction to restrain picketing pending the determination of an application for judicial review was dismissed. In one case, leave to appeal to the Court of Appeal was granted and the appeal from the dismissal of an application for judicial review by the Divisional Court is pending. In one case where the Court of Appeal dismissed an appeal from the Divisional Court quashing a Board decision, leave to appeal to the Supreme Court of Canada was refused.

During the fiscal year six applications to stay Board decisions were filed and all six applications were dismissed.

The Office of the Solicitor maintains an information service through which any person may obtain, by telephone, general information relating to the *Labour Relations Act*, the Regulations,

procedures and practices of the Board, and other related legislation. It is also possible for a member of the public to obtain such information at a personal interview with a member of the Board's legal staff. The solicitors also receive and respond to written inquiries coming from the public. In addition to the two pamphlets entitled "Certification by the Ontario Labour Relations Board" and "Rights of Employees, Employers and Trade Unions", the Board will shortly issue a further pamphlet entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board." In September of 1982, the Board commenced a publication entitled "Monthly Highlights". This publication, contains summaries of significant decisions of the Board during the month and other notices and administrative developments of interest to the labour relations community. The Board strives to issue the Monthly Highlights as quickly as possible after the end of each month and already it has been well received by the community. The Board recently revised the Construction Industry Map of Ontario, depicting the geographic areas used by the Board in construction industry certification cases. The Office of the Solicitor is responsible for producing the Board's Annual Report and for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms, of the significant provisions of the Act.

The Office of the Solicitor acts on behalf of the Board in respect of inquiries or complaints brought to the Board's attention by the Ombudsman of Ontario. During the year under review, seven formal complaints relating to the Board were disposed of by the Ombudsman. In five of these complaints, after conducting an investigation, the complaints were found by the Ombudsman to be unsupportable. One complaint was withdrawn and in one the Board was notified that the complainant was satisfied with the Board's explanation.

The Office of the Solicitor is also responsible for the publication of the Ontario Labour Relations Board Monthly Report, a monthly series of selected Board decisions which commenced in 1944. The Senior Solicitor is Editor of this publication, which is one of the oldest and most prestigious labour board reports in North America. The Board has computerized its subscription list to ensure maximum efficiency in dealing with the subscribers to the Report and is also commencing to use its existing word processing equipment to provide the typesetter of the Monthly Report with machine readable manuscript, thus reducing both the cost and time of its publication. The Board has been actively seeking a wider distribution of its Monthly Reports by placing inserts introducing it in other publications mailed by the Ministry of Labour.

## MEMBERS OF THE BOARD

In the year under review, the Board consisted of the following persons:

GEORGE W. ADAMS, Q.C. *Chairman*

Appointed Chairman of the Ontario Labour Relations Board effective September 1, 1979, Mr. Adams holds degrees of B.A. (McM) 1967, LL.B. (Osgoode, with honours) 1970, and LL.M. (Harvard 1971). His professional background includes: law professor at Osgoode Hall Law School, 1971-78; Vice-Chairman Ontario Labour Relations Board, 1974-75; Assistant Deputy Minister of Labour, Province of Ontario, 1975-77; Vice-Chairman, Ontario Education Relations Commission, 1977-79; Chairman, Ontario Grievance Settlement Board 1977-79; and private practitioner with a Toronto law firm, 1978-79. Mr. Adams is the author of numerous books, monographs and articles, the majority of them relating to labour law. He is an experienced arbitrator, mediator and fact-finder. He is a member of the National Academy of Arbitrators and the Law Society of Upper Canada. In the year under review, Mr. Adams presented the following paper: "The Labour Code in the 1980's—The Impact of the Code Beyond the Province"; Pacific Institute of Law and Public Policy Conference, Vancouver, B.C., January 25 - 26, 1983.

KEVIN M. BURKETT *Alternate Chairman*

Mr. Burkett has served as the Board's Alternate Chairman since September of 1979. He was first appointed as a Vice-Chairman of the Board in November of 1975. Mr. Burkett, who holds B.A. and M.B.A. degrees from the University of Toronto, has had much varied experience in industry, trade unions and government prior to joining the Board. Having served as the Research Director/Negotiator of the Civil Service Association of Ontario (predecessor of the Ontario Public Service Employees Union), from 1968 to 1970, he joined the Ontario Ministry of Labour in 1970 as a conciliation officer and was appointed as a mediator in 1972. In 1973 he joined Ontario Hydro as Senior Industrial Labour Relations Officer, a post he held until his appointment to the Board. Mr. Burkett is an experienced arbitrator, mediator and fact-finder, both in the private and public sectors. Mr. Burkett served as the Chairman of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mining Plants in Ontario, whose report was submitted to the respective Ministers of Labour in May 1981.

GAIL G. BRENT *Vice-Chairman*

A part-time Vice-Chairman since 1977, Mrs. Brent graduated in 1965 with a B.A. from the University of Toronto and with a LL.B. from Queen's University in 1968; she was called to the Bar in 1975. Mrs. Brent taught law at Queen's University from 1970 and 1974, and at the University of Western Ontario from 1974 to 1977. She was appointed to the permanent list of approved arbitrators of the Labour-Management Arbitration Commission in 1974, and since 1977 has been an active arbitrator and adjudicator. She has been an arbitrator with the Ontario Police Arbitration Commission since 1974. In 1980 Mrs. Brent was appointed as a Commissioner of both the Education Relations Commission and the Colleges Relations Commission.

E. NORRIS DAVIS *Vice-Chairman*

Mr. Davis, who holds the degree of LL.B. (Sask.) 1938, was first appointed to the Board as an employer representative in 1948. From 1952 to 1953 he served as the Chairman of the Board. In

1953 Mr. Davis left the Board and during the next 15 years held several positions in corporate personnel and industrial relations, including a number of years as President of Carling O'Keefe Breweries of Canada Limited. Mr. Davis returned to the Board as a part-time Vice-Chairman in 1977.

RORY F. EGAN      *Vice-Chairman*

Mr. Egan completed his undergraduate work at St. Michael's College, University of Toronto in 1938. After the intervening world war, Mr. Egan earned a law degree from the same university in 1945. Called to the Bar in the same year, he engaged in the practice of law, and served for one year as Assistant Crown Attorney in St. Thomas, Ontario. In 1954 he joined A.V. Roe as Legal Assistant to the Vice-President of Industrial Relations. Mr. Egan returned to private practice with a law firm specializing in labour relations law in 1959. In 1963 he left his law practice to devote his time to chairing boards of conciliation and arbitration. Mr. Egan was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1966 and in 1974 was designated Alternate Chairman. He was appointed Chairman of the Ontario Police Arbitration Commission in 1976. Mr. Egan retired from the Board in 1979, but has continued to serve as a part-time Vice-Chairman.

DON E. FRANKS      *Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980.

RON A. FURNESS      *Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.

ROBERT D. HOWE      *Vice-Chairman*

Mr. Howe was appointed to the Board as a part-time Vice-Chairman in February, 1980 and became a full-time Vice-Chairman effective June 1, 1981. He graduated with a LL.B. (gold-medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law Professor at the Faculty of Law, University of Windsor. From 1977 until his appointment to the Board, he practised law as an associate of a Windsor law

firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator.

RICHARD O. MacDOWELL      *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit.

MORT. G. MITCHNICK      *Vice-Chairman*

Mr. Mitchnick was appointed as Vice-Chairman of the Board in November, 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board.

CORRINE F. MURRAY      *Vice-Chairman*

Mrs. Murray joined the Board as a Vice-Chairman in August 1982. Prior to her appointment, she practised labour law with a Toronto law firm for six years. During this period, Mrs. Murray had acted as lecturer on the subject of labour law for numerous management groups. Having graduated from Dalhousie Law School, Halifax, Nova Scotia, she was subsequently called to the bar in British Columbia and Ontario.

MICHEL G. PICHER      *Vice-Chairman*

Mr. Picher holds the degrees of A.B. (Colby College, Maine 1967), LL.B. (Queen's University, 1972) and LL.M. (Harvard, 1974). He was appointed a Vice-Chairman of the Board in 1976. Prior to his appointment, Mr. Picher taught law as Assistant Professor in the Faculty of Law at the University of Ottawa from 1974 to 1976. He is an experienced arbitrator, mediator and fact-finder.

PAMELA C. PICHER      *Vice-Chairman*

Mrs. Picher was appointed a Vice-Chairman of the Ontario Labour Relations Board in 1976. She is a graduate of Colby College, Maine (A.B., 1967) and Queen's University (LL.B., 1973). She is presently working towards a LL.M. degree from Harvard University, the required thesis having been completed. Prior to joining the Board, Mrs. Picher was an Assistant Professor at the University of Ottawa Law School. In 1975 she was commissioned by the Law Reform Commission of Canada to write a paper for the Administrative Law Section, which she presented in July, 1976. Mrs. Picher has several other legal publications to her credit and is an experienced arbitrator and fact-finder. In June of 1981, Mrs. Picher moved from full-time to part-time status.

**NORMAN B. SATTERFIELD** *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Labour Relations Committee of the Canadian Manufacturers' Association.

**IAN C.A. SPRINGATE** *Vice-Chairman*

Mr. Springate has been a Vice-Chairman of the Board since May of 1976. He has degrees of B.A. with distinction, (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator.

**Members Representative of Labour and Management**

**HOWARD J.F. ADE**

Mr. Ade was appointed as a management representative Board Member in January, 1972. Having retired from the Royal Canadian Mounted Police in 1957, Mr. Ade joined Standard Industries Limited as its Director of Labour Relations. He has served as Chairman of the Labour Relations Committee of the Canadian Construction Association and the Labour Bureau of the Ontario Federation of Construction Associations. He has also been a member of negotiating committees and labour relations committees in various sections of the construction industry. Mr. Ade has served as labour relations advisor and consultant to several employers and employer associations in the construction industry. He retired from the position as Board Member in August, 1982.

**DAVID B. ARCHER**

One of the most senior persons on the Board, Mr. Archer was appointed as a part-time Board Member representing labour in 1948. He is a past president of the Textile Workers' Union (Local 1) and also of the Toronto and Lakeshore Labour Council. Mr. Archer was a vice-president of the Canadian Labour Congress and for several years held the position of President of the Ontario Federation of Labour. The other numerous offices Mr. Archer has held include Executive Member of the Ontario Economic Council, and Member of the Prime Minister's Advisory Committee on Economic Policy. He retired from his position as Board Member in August 1982.

**BROMLEY L. ARMSTRONG**

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in March of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr.



Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board.

#### CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

#### JOHN D. BELL

Mr. Bell has been a full-time Member of the Board representing management since 1970. He was employed for 33 years at Massey-Ferguson Limited in various personnel and industrial relations capacities prior to his appointment to the Board. The last position he held at the Company was Director of Personnel and Industrial Relations, Industrial and Construction Machinery Division. Mr. Bell retired as a full-time Board Member in August, 1982 and was subsequently re-appointed as part-time Board Member.

#### C. GORDON BOURNE

Mr. Bourne has been a part-time Member of the Board representing management since April of 1977. Between 1945 and 1977, he was employed by Molson's Brewery (in Quebec and in Ontario) in various personnel and industrial relations capacities. Among the offices Mr. Bourne held prior to his appointment to the Board include: Director of the Montreal Personnel Association (1952-54); Director (1962-67) and President (1966-67) of the Personnel Association of Toronto; Member of the Canadian Manufacturers' Association Ontario Labour Relations Committee (1963-77); and Member of the Ontario Brewers' Industrial Relations Committee (1955-77).

#### E. JIM BRADY

Mr. Brady was appointed a part-time Member of the Board representing management in November, 1979. He was employed in various capacities in personnel and industrial relations for 34 years prior to his appointment. He spent the majority of this time at Kimberley-Clark of Canada Limited, where he became Director of Industrial Relations in 1972. In 1975, Mr. Brady was appointed Vice-President of Industrial Relations of the Abitibi-Price Inc. Group.

#### LEONARD C. COLLINS

Mr. Collins was appointed a part-time Member of the Board representing labour in November, 1982. Prior to joining the Board Mr. Collins had been very active in the trade union movement in Ontario. From 1945 to 1960 he held various positions with Local 232 of the United Rubber

Workers, including the positions of Vice-President from 1950 to 1954 and President from 1954 to 1960. Since 1960 he has been an International Field Representative for the United Rubber Workers and since 1971 has from time to time served as acting Director of District 6. Mr. Collins is very experienced in labour board and arbitration board proceedings.

#### F. STEWART COOKE

In October, 1981, Mr. Cooke was appointed as a full-time Board Member representing labour. Having served in the Army in the early 1940's, Mr. Cooke studied Economics and Law at Victoria College for two years. Mr. Cooke's career with the United Steelworkers of America commenced in 1948 when he joined its staff. In 1949, he was elected secretary of the Hamilton Labour Council of the Canadian Congress of Labour. In 1953, Mr. Cooke was appointed Supervisor for the Hamilton area, a position he held until March, 1971. In 1956, he was elected Secretary of the merged Hamilton and District Labour Council of the Canadian Labour Congress. In 1962 Mr. Cooke was elected Vice-President of the Hamilton and District Labour Council. In March of 1971 Mr. Cooke was appointed District Representative of the Steelworkers District 6. Subsequently, Mr. Cooke held several key positions with the Steelworkers, including International Representative, before being elected Director of District 6 in 1977, a position he held until September, 1981. From 1972 to 1977 he was a Vice-President of the Ontario Federation of Labour. Mr. Cooke has served on the executive boards of numerous public, social and charitable organizations and has held several positions on the executive of the New Democratic Party of Canada including the position of Vice-President, from 1967 - 1980. He has represented the Canadian Labour movement at many conferences, including the Iron and Steel Committee of the International Labour Organization, in Switzerland, 1969, and the International Metalworkers Federation Iron and Steel Conference in Belgium, 1969. Mr. Cooke has also been on delegations to the U.S.S.R., Japan, Sweden, Norway, Finland, France, and Holland.

#### W. GORDON DONNELLY

Mr. Donnelly was appointed a part-time Board Member representing management in 1979. Having obtained a B.A. (1939) and B.C.L. (1947) from McGill University of Montreal, he practised law in the Province of Quebec. In 1947 he joined the Aluminum Company of Canada Limited, where he progressed from Industrial Relations Supervisor, Shawinigan Works, to Vice-President Personnel and Industrial Relations, Alcan Products Limited, Toronto, Ontario 1970.

#### MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. A graduate of the University of British Columbia. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he had held include: Director of Labour Relations of the Ontario Federation of Construction Associations, 1970; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel, 1972; Director of Industrial Relations, Kaiser Canada, 1974; Manager of Industrial Relations of the SNC Group, 1975; and Executive Director of the Construction Employers Co-ordinating Council of Ontario, 1979. Mr. Eayrs is also a past Chairman of the National Labour Relations Committee of the Canadian Construction Association.

#### MICHAEL J. FENWICK

Mr. Fenwick was appointed a part-time Board Member representing labour in October, 1976. Since 1940 he has been involved in organizing, negotiating and appearing before arbitration and conciliation boards and has participated in many other facets of union activity. Employed by the Steelworkers Organizing Committee (CIO), which was later renamed the United Steelworkers of America, between 1940 and 1954 Mr. Fenwick administered the business affairs of the Union's locals in Oshawa, Whitby, Ajax, Bowmanville and Port Hope. In 1954, he was promoted to Assistant to the Director of District 6 and he served in that capacity until his appointment to the Board. In November, 1982, Mr. Fenwick retired from his position at the Board.

#### WILLIAM GIBSON

Mr. Gibson was appointed a part-time Board Member representing management in 1978. He has been employed by Robert McAlpine Limited since 1954 and is Vice-President of that company with a portfolio that includes the responsibility for labour relations for the Company's operations throughout Canada. Mr. Gibson has been very active in the field of labour relations involving contractors and has held several key positions in various construction contractors' associations.

#### PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was transferred to the District 6 office of the Steelworkers and appointed District Representative in charge of co-ordinating, organizing and special projects.

#### ANNE S. GRIBBEN

Ms. Gribben, a registered nurse by profession, obtained a B.A. from the University of Toronto in 1968, in addition to her nursing qualifications. Her nursing career at the Toronto Western Hospital included 13 years served in a supervisory capacity. She has served on various committees of both the Canadian Nurses' Association and the Registered Nurses' Association since 1950. An Executive Officer of the former District No. 5, Registered Nurses' Association of Ontario from 1960, during 1964-65 she was involved in its re-organization into the present-day Metro Toronto Chapter. Ms. Gribben joined the Employment Relations Department of the Registered Nurses' Association of Ontario in 1965, and became its Director in 1968. Ms. Gribben relinquished that post in 1974 to become the Chief Executive Officer of the Ontario Nurses' Association. She was appointed a part-time Board Member representing labour in 1975—the first woman to be appointed as a Board Member of the Ontario Labour Relations Board.

#### LLOYD HEMSWORTH

Mr. Hemsworth has served as a part-time Member of the Board representing management since August of 1975. Having obtained a B.A. degree (1939) from the University of Western Ontario, he returned to complete a management training course at that university in 1954. Mr. Hemsworth is

also a part-time Member of the Public Service Staff Relations Board. Prior to his appointment to the Ontario Labour Relations Board, Mr. Hemsworth held several key positions in the personnel and industrial relations departments at Canadian Industries Limited, Kimberley-Clark of Canada and de Havilland Aircraft. Mr. Hemsworth has presented lectures and papers at numerous universities and seminars.

#### ALBERT HERSHKOVITZ

Mr. Hershkovitz has served as a part-time Board Member representing labour since 1976. He has been the Business Agent of the Fur, Leather, Shoe and Allied Workers' Union, Locals 82 and 62, since 1956, and a Vice-President of the Ontario Federation of Labour since 1974. In 1977 he became the President of the Ontario Provincial Council, United Food & Commercial Workers' International Union. In addition to holding these offices, Mr. Hershkovitz has been a Member of the Board of Referees of the Unemployment Insurance Commission since 1960 and for many years has acted as a union nominee on boards of arbitration.

#### OLIVER HODGES

Mr. Hodges has been a full-time Board Member representing labour since 1967. In 1943, he became the Representative and Director of Education, National Union of Shoe and Leather Workers, CCL. Between 1948 and 1950 he was a Representative of the CCF Labour Committee. In 1950 he became the Hamilton area representative to the Canadian Congress of Labour and he held this office until 1954, when he became the Canadian Director of the United Glass and Ceramic Workers of North America, CLC, AFL-CIO. Between 1965 and 1967 Mr. Hodges served on numerous conciliation and arbitration boards as union nominee. During the period 1943 and 1965, he was a candidate for the CCF and NDP in municipal, provincial and federal elections. Mr. Hodges retired from his position at the Board in August, 1982.

#### ROBERT D. JOYCE

Mr. Joyce has been a part-time Member of the Board representing management since September, 1977. He joined Canada Packers Limited in 1974 and became its Corporate Relations Manager in 1965. He was also elected to the Company's Board of Directors that year. During his career at Canada Packers, Mr. Joyce was actively involved in negotiation, conciliation and arbitration proceedings and also served on many boards of arbitration as employer nominee. Mr. Joyce has been called upon to serve on commissions and task forces appointed by governments on several occasions. As a member of the Canadian Manufacturers Association Industrial Relations Committee, Mr. Joyce has conducted many industrial relations seminars. He has also provided an employee relations consultation service for management for several years.

#### HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario, 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on

Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

#### BRUCE K. LEE

Mr. Lee has served as a part-time Board Member representing labour for the past three years. He was President of the UAW Amalgamated Local 252, Toronto, for 19 years. During that time, he served on various Union committees and delegations, both in Canada and the United States. In 1964, Mr. Lee was appointed to the UAW organizing staff.

#### STEPHEN H. LEWIS

Mr. Lewis was appointed as a part-time Board Member representing labour in 1979. Educated in the University of Toronto and the University of British Columbia, Mr. Lewis taught in Africa before entering politics in 1963. He was a Member of the Ontario Legislature from 1963 to 1977. During this time, he held the positions of Leader of the New Democratic Party of Ontario and Leader of the Official Opposition in the legislature. Since his retirement from active politics, Mr. Lewis has been engaged in a career as a columnist, broadcaster and lecturer. He has also been active in the trade union movement and is experienced in the arbitration process and other facets of collective bargaining. On several occasions he has been appointed to Disputes Advisory Committees under the *Labour Relations Act* as a representative of labour.

#### JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics and well as a M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second war War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies before becoming Vice-President of International Labatt Brewing Co. in 1979. He held this position until his retirement in January of 1982.

#### F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In 1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

#### PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britian and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe

was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of CUPE and presently holds the office of Ontario Regional Director of C.U.P.E., and Vice-President of the Ontario Federation of Labour.

#### ROBERT W. REDFORD

Mr. Redford has been a part-time Member of the Board representing management for the last four years. Having graduated from Queen's University with a degree of B.A. (Economics) in 1963, he joined Canada Packers Inc., where he worked for 16 years in the employment relations function. His final position at Canada Packers was Corporate Manager, Personnel Services. Mr. Redford is currently the Executive Directive of the Personnel Association of Toronto and the Personnel Association of Ontario.

#### JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

#### MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

#### WILLIAM F. RUTHERFORD

Mr. Rutherford has been a full-time Member of the Board representing labour for three years. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 and 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

#### HARRY SIMON

Mr. Simon has been a part-time Board Member representing labour since July of 1974. He became actively involved in the labour movement in 1926. From 1943 to 1956 he was the Canadian representative to the American Federation of Labour. From 1958 to 1974, Mr. Simon was the Ontario Regional Director of Organization of the Canadian Labour Congress; he was also a Member of the Labour-Management Arbitration Commission from its inception in 1969 until its abolition in 1979. In addition to these appointments, Mr. Simon has served on various boards and commissions representing the Ontario Federation of Labour and the Canadian Labour Congress. In 1982, Mr. Simon retired from his position at the Board.

## INGE M. STAMP

Appointed a full-time Board Member representing management in August, 1982, Ms. Stamp comes to the Board with many years of experience in the personnel and labour relations field at Bechtel Canada Limited. Having joined that firm as Senior Secretary to the Vice-President of Labour Relations in 1969, Ms. Stamp became Administrative Assistant in 1974 and Labour Relations Assistant in 1975. In 1977 she was appointed labour relations representative, a post she held prior to her appointment to the Board. In this capacity, Ms. Stamp was appointed, by the Industrial Contractors Association of Canada, as a member of several employer bargaining agencies designated to negotiate collective agreements on behalf of management. Ms. Stamp has been very active in the functions of the Industrial Contractors Association of Canada and since 1979 has served as treasurer responsible for the General Funds and the Ontario Industry Funds. She has represented Bechtel Canada Limited at negotiations of the Boilermaker Contractors Association and annual conferences of the Canadian Construction Association.

## ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dominion Foundries and Steel Ltd., Hamilton, since 1970 and is presently its Assistant Secretary. He is Vice-Chairman of the Canadian Manufacturers' Association Legal Advisory Committee on Environmental Law and also serves on the Legislation Committee, the Sub-Committee on Corporation Law and the Environment Quality Committee of that organization.

## E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. Active in the trade union movement since 1971, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in the grievance procedure and arbitration. At present, Mr. Theobald is employed by George Brown College, as a teaching master in the Mechanical Design and Construction Department.

## W. H. WIGHTMAN

Mr. Wightman was first appointed to the Board 1968, becoming a full-time member in 1977, and resigning from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canadian Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical Centre Advisory Council on Occupational Health and Safety. His writing credits include papers

presented at the World Employment Conference in Geneva and symposia at Vienna and Panama City. He is a graduate of Clarkson College (BBA'50) and Columbia University (MS'54) where he lectured while engaged in doctoral studies.

#### JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. He has been the Labour Relations Consultant to the Electrical Contractors Association of Ontario for the last 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

#### NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.



**Executive Board Room**



## STAFF DEVELOPMENT

In an effort to maintain a continuing rapport between the Board and the industrial relations community and to keep the Board and its staff abreast of current thinking within the labour relations community, the Board met with several employer and trade union organizations and members of the practising bar during the past year. In addition, Board staff members attended labour relations conferences on a regular basis. Several members of the Board and the Chief Programme Development presented papers at conferences in San Francisco, New York and Hull, Quebec.

A day long seminar was organized for the Vice-Chairmen of the Board to reflect upon the Board's efforts at fulfilling its mandate under the Act and to examine possible means of making procedural improvements. The seminar was addressed by key-note speaker, Prof. David M. Beatty, who spoke on "Bargaining Unit Configuration." The seminar was also addressed by Ian Scott, Q.C. of the Toronto law firm of Cameron, Brewin and Scott; his topic was "Judicial Review of Labour Board Decisions."

The Board also held a day-long seminar for its field officers. The seminar on "Dispute Resolution Methods" was conducted by Professor Brian Downey of the Queen's University School of Business.

The Board actively participated in a seminar devoted to examining certification and unfair labour practice proceedings before the Ontario Labour Relations Board entitled "Organizing the Non-Union Company", sponsored by the Law Society of Upper Canada. The Senior Solicitor acted as Planning Assistant and was involved in the preparation of the written materials used by the participants. The Senior Solicitor, Solicitor Registrar, and Manager, Field Services, together with members of the field staff served as resource persons at the study sessions.

During the year, the Senior Solicitor of the Board conducted two seminars for the Board's support staff dealing with Board's function under the *Labour Relations Act*.

## V. HIGHLIGHTS OF BOARD DECISIONS

### Timing of Ratification Vote to Avoid Termination Application Is Lawful

A termination application combined with an unfair labour practice complaint was filed by a group of employees. The latter alleged the violation of the rights of the complainants with respect to strike and ratification votes, and that voters were coerced into ratifying a collective agreement. The complainants sought to adduce evidence of a termination petition to establish that at the time of the ratification vote, the union did not have the support of the majority of the employees.

The question here was whether the union deliberately manipulated the ratification and strike vote procedures to intimidate and coerce employees into accepting a collective agreement, in order to avoid the timely filing of a termination application.

The Board found that there was nothing unlawful about a union planning and timing the ratification and strike votes in order to maximize its own protection against termination applications. It was irrelevant whether, at the time of the conduct of the votes, the union did not enjoy the support of the majority of employees. The issue was whether the union had conducted itself in an unlawful manner. On the evidence the Board held that the union had not. The refusal by the union to permit the complainants to have their counsel at a union meeting called to explain the tentative agreement was not unlawful. A union is entitled to restrict its meetings to employees. The Board voted that if different groups of employees brought their own counsel to union meetings, the union's affairs would come to a standstill. There was ample opportunity given to employees at the meeting and there was no evidence that they were deprived of their freedom of choice at the vote. Because the section 89 application failed, the ratification of the agreement was valid and the subsequent termination application was untimely. (*Beatrice Foods (Ontario) Limited*, [1982] OLRB Rep. Apr. 519.)

### Sub-Contracting Not a Sale of a Business

Molson's had a hospitality room at its brewery premises. This room was demolished and replaced by a new expanded hospitality room which was to provide services of a higher quality and sophistication. As part of this upgrading, the food catering and supply of hostesses for the new facility were contracted out to two independent agencies. The applicant trade union, which held bargaining rights for the employees in the old hospitality room, claimed that there was a sale of a part of a business within the meaning of section 63 of the *Labour Relation Act*, between Molsons and the sub-contractors or alternatively that Molsons and the sub-contractors were related employers within the meaning of section 1(4) of the Act.

It was found that there had been no sale. The business of operating the hospitality room was not transferred to the sub-contractors. Molsons still ran the business although it has engaged the sub-contractors to run it better. Nor are the sub-contractors related employers. While some sub-contracting arrangements may be characterized as joint ventures and therefore falling within section 1(4), that was not the case here. The sub-contractors are independent agencies, with their established employee complement, operated for the benefit of their specialized services to a variety of purchasers of which Molson's was only one. (*The Charming Hostess Inc.*, [1982] OLRB Rep. Apr. 536).

### **Discipline Imposed on Designated "Competent Person" Unlawful Under the *Occupational Health and Safety Act***

The complainant, an employee of the respondent employer was appointed as a "competent person" under the provisions of the *Occupational Health and Safety Act*. In that capacity, it was his responsibility under the regulations, to inspect and certify the work area as safe. The complainant felt that the sandblasting procedures adopted by employees of a sub-contractor were unsafe and despite demands by management refused to certify the work area as safe. The employer, who disagreed that the area was unsafe wrote a disciplinary letter to the complainant. The complainant complained that he was disciplined for his exercise of rights under the Act.

The Board found that the complainant's belief that the work area was unsafe was held in good faith. Since he was discharging his responsibility under the Act in refusing to certify the work area as safe, the imposition of discipline was contrary to the Act. (*Imperial Oil Ltd.*, [1982] OLRB Rep. Apr. 580).

### **Employer Entitled to Request Expedited Arbitration**

The employer requested the Minister to appoint an arbitrator under the expedited arbitration provision section 45 to hear a discharge grievance filed by the union. The Minister referred the question, as to whether he had the authority to make the appointment at the employer's request, to the Board under section 107. The union objected, stating that only the grieving party has access to the expedited arbitration procedure.

The purpose of the section was to provide a less costly and time consuming procedure to obtain arbitration. There was no policy reason to limit access to this procedure to the grieving party. While the statutory language is not as clear as one would desire it to be, the Board preferred an interpretation which would allow access by either party to the collective agreement. (*Marshall Gowland Manor*, [1982] OLRB Rep. May 707).

### **Union Not Required to Involve All Employees in Organization Campaign**

During the drive to organize a union, meetings were held to which, it was alleged, certain employees known to be against the union were not invited. The Board found it unnecessary to assess conflicts in the evidence concerning whether these employees were invited. Refusal to invite or to permit attendance by all employees in the proposed bargaining unit at an organizational meeting neither violates the Act nor provides a basis for setting aside a representation vote. Organizers are no more required to invite every potential bargaining unit member to an organizational meeting than they are to approach every employee and invite him or her to join the union.

Further, the presence of the union's agent for the count at the respondent's premises on the afternoon of the pre-hearing representation vote did not destroy the secrecy of the ballot or create a situation in which the vote would be unlikely to disclose the true wishes of the employees. His arrival prior to 4:15 p.m. was quite reasonable in view of the Officer's suggestion that the polling booth might be closed before 4:15 if all eligible employees had voted. Also his presence outside the polling area prior to the closing of the poll could not have affected the validity of the vote in any way since no one cast a ballot during that interval. Thus the Board declined to direct that a further representation vote be taken. (*Windsor Machine & Stamping Limited*, [1982] OLRB Rep. May 791).

### **Counter-Petition Relevant on Termination Application**

An application for a declaration terminating the union's bargaining rights was filed with an accompanying petition bearing the signatures of more than 45% of the employees in the bargaining unit. A counter-petition was also filed containing many of the names that were on the petition.

The applicant and the company argued that the counter-petition was irrelevant to the issue before the Board under section 57(3) of the Act and submitted that once there was a petition of opposition to the union containing the names of not less than 45% of the employees in the bargaining unit, the conditions of section 57(3) were satisfied and the Board must order a vote. The Board rejected this argument, pointing out that its duty was to determine the wishes of the employees as of the terminal date. Therefore a counter-petition filed after a petition but before the terminal date was relevant to this issue. In dealing with the problem of conflicting statements of desire in a termination application the Board reiterated its policy of accepting the last voluntary statement filed before the terminal date as the most reliable indicator of employee wishes. (*Browning-Ferris Industries*, [1982] OLRB Rep. June 816).

### **Successor Employer Not Bound by Remedial Orders Issued Against Predecessor**

The union applied for a declaration that a sale of a business had occurred, or that the employer and its predecessor were related. The predecessor employer had earlier been found guilty of various unfair labour practices and had been ordered by the Board to compensate several employees. The union sought an order requiring the successor employer to comply with the order issued against its predecessor.

The Board dismissed the related employer application on the grounds that section 1(4) was intended only for purposes of preserving bargaining rights and not for enforcement of remedies. A sale of a business was found to have taken place but the Board concluded that the Act does not make a bona fide purchaser of a business responsible for the unfair labour practices of the vendor. (*Chandelle Fashions*, [1982] OLRB Rep. June 828).

### **Successor Employer Bound by Collective Agreement Entered Into by Predecessor Employer Three Weeks Before Sale of Business**

A union applied under section 63 of the Act for a declaration that there had been a sale of a business and that the respondent employer was therefore bound by the collective agreement between it and the predecessor employer.

The respondent employer had acquired a drug store franchise from the predecessor employer whose franchise agreement had been unilaterally terminated by the franchise chain owner. The franchise chain's policy was to terminate the employment of all employees at a franchise store when that store changed hands. Consequently the employees of the store were anxious about their job security and decided to seek union representation.

Three weeks before the transfer of the franchise, the predecessor employer entered into a three year collective agreement with the union, which agreement was very favourable to the employees represented by it. The predecessor employer, although advising the franchise chain owner, did not notify the respondent of the negotiations or the collective agreement which resulted. Shortly thereafter, the predecessor employer opened his own drug store in direct

competition with the respondent. The respondent argued that there had been no "sale" of a "business" within the meaning of section 63 and that in any event the agreement by the predecessor employer was void because of employer support in violation of sections 13 and 48 of the Act.

The Board found that there had been a sale of a business from the predecessor employer to the respondent. It also rejected the respondent's argument that the agreement was void for violation of section 48. The union had merely been the innocent beneficiary of the predecessor employer's hostility towards the franchise chain owner and had not received any illegal support from the predecessor employer. It was not the Board's function to review the reasonableness of the terms of collective agreements. The predecessor employer owed no duty under the Act to act honestly or in good faith towards the respondent and therefore the respondent could not seek relief before the Board. The Board also noted that it has no general discretion to declare collective agreements inoperative. (*John Lester Drugs Ltd.*, [1982] OLRB Rep. June 886).

#### **Extent of Employer's Duty Under Statutory Dues Checkoff Provision**

Further to the statutory compulsory dues checkoff provision, the employer submitted a lump sum of money deducted from employees without any breakdown or identification of those employees. The union alleged that this was a breach of the Act and requested a breakdown while the employer contended that such action were not required but rather were matters to be negotiated.

The Board found that there was no legitimate business purpose for the employer's position and that it was merely trying to hinder the union. The statutory checkoff amendment was passed to remove that item from the bargaining table and to avoid strikes over the issue of union security. In view of the background and purpose of section 43, the Board held that to deduct dues from each employee carries with it the obligation to disclose the identity of those employees paying and those in arrears. (*K-Mart Canada Limited*, [1982] OLRB Rep. June 903).

#### **Board Using Discretion Not to Make Declaration of Related Employer**

The production employees of Ethyl Canada were represented in collective bargaining by the applicant. Ethyl Canada had a longstanding practice of sub-contracting work to FIRM, a mechanical contractor. A number of reasons for using outside subcontractors rather than its own forces were advanced by Ethyl, all relating to economy and efficiency. Ethyl asserted that its relationship with FIRM was not much different from that of various subcontractors with which it dealt from time to time, and that there was no basis for granting a section 1(4) declaration. The union argued that the section 1(4) requirements were met and that a declaration was necessary in order to prevent an erosion of the union's bargaining rights and work jurisdiction.

The Board stated that while the language of section 1(4) is very broad, it was not intended to apply in every case which in a general or linguistic sense meets its statutory criteria; the Board has a discretion concerning the application of section 1(4). While the Board accepted that there may be cases characterized as "subcontracting" which would be susceptible to the application of 1(4), it was not satisfied that this was one of them, or that if it was, that the Board should exercise its discretion to make a declaration. In this case the applicant's members did not have an unequivocal claim to the work in question. In addition there were none of the traditional indicia of common control or discretion.

Finally, the union had delayed in bringing the application. Having regard to the totality of the evidence, the Board was not persuaded that a section 1(4) declaration was warranted. (*Ethyl Canada Inc.*, [1982] OLRB Rep. July 998).

#### **Union Withdrawal of Objection to Employee Inclusions in Unit After Release of Count Permitted**

In an application for certification the union altered its position concerning the employee status of a number of persons in dispute. Originally, the employer asserted that two disputed employees came within the proposed bargaining unit. The union challenged their inclusion. The withdrawal of that challenge was made after the employee count was released at the examiner hearing. Initially, the employer did not object to the union's change of position but subsequently an objection was registered. The employer also purported to agree with the union's original position. Thus, it then became the submission of the employer that the two employees in question should be excluded from the bargaining unit. Counsel for the employer asked the Board to exclude the disputed employees from the bargaining unit on the basis that once the union had asked for them to be excluded, it could not subsequently agree to have them included.

The Board heard extensive argument from the parties on whether the union should be permitted during the examinations, and therefore after the release of the membership count, to alter its position on the status of two persons in dispute and agree with the respondent. Citing the Board's decision in *Santa Maria Foods*, [1981] OLRB Rep. Nov. 1618, the employer expressed the concern that to allow the union's withdrawal would be to condone gerrymandering by the union.

The Board held that the union's withdrawal of its challenge was not an attempt to gerrymander the employee list or the structure of the bargaining unit and did not fall within the mischief described in *Santa Maria Foods*. At the time of the union's withdrawal of its challenge to the inclusion of the two people in the unit, an interim certificate had issued, a statement of desire against the union by the individuals had been dismissed, and the union's representation rights were not in any way affected by the inclusion or exclusion of the employees. The Board therefore confirmed the position originally taken by its officer to allow the union to withdraw its challenge to the inclusion of the two employees in the unit and to agree with the position of the employer as it stood at that point so that the individuals in dispute came within the bargaining unit. On the basis of all these considerations the Board concluded that the individuals in question were employees within the bargaining unit and a final certificate was issued. (*Rheem Canada Inc.*, [1982] OLRB Rep. July 1060).

#### **Board Rejects Viva Voce Evidence from Employees Concerning Effect of Employer Misconduct**

In a certification application by Teamsters Local 938 involving two employees, section 8 was invoked. The Board found that there had been a flagrant breach of the Act by the employer. However, the employer took the position that its misconduct would not prevent the true wishes of the two employees in the unit from being disclosed by a vote in the particular circumstances. The evidence established that one of the employees had always been a strong union supporter while the other was strongly opposed to the union. Thus, the employer argued that nothing it did could affect the way each of them would vote.

It is established policy, the Board concluded, that it will not hear viva voce evidence from individual employees as to the impact on them of the employer's unlawful conduct. There is no certainty that at the time of voting the employer's conduct would not affect the union supporter.

The Board held that the employer's unlawful conduct took away any chance the union may have had in persuading the union opponent to its side. Therefore, the requirement for a certificate without a vote was satisfied. (*Brinks Canada Limited*, [1982] OLRB Rep. Aug. 1140).

### **Employer Paying the Legal Costs of an Employee Petitioner Improper**

The applicant seeking termination of bargaining rights had previously sponsored a petition against a different union in a certification proceeding. The Board found on the evidence that the employer had paid the legal fees incurred by the applicant in respect of the petition in the certification case. However, the Board found that there was no pre-arrangement with the employer to pay those legal fees but that it had been done *ex post facto*. Evidence also disclosed that a number of employees knew that the employer had paid the legal fees of the petitioner in that earlier proceeding.

The issue before the Board was whether the petition sponsored and filed by the applicant in support of a termination application disclosed the voluntary wishes of the employees. The Board reviewed the various provisions of the Act which prohibit interference in or support for, trade unions by employers. The Board stated that the employer's act can only be seen as a reward for the anti-union efforts of the applicant employee. The fact that the payment was not pre-arranged does not change the quality of the employer's conduct. First, it has an obvious impact on the on going relationship between the applicant employee and the employer. Second, it will have an impact on other employees when that knowledge reaches them, since they would have reason to believe that as a general matter anti-union efforts will be rewarded by the employer. In the circumstances, the Board did not accept the petition in question as voluntary and the application was dismissed. (*Empco-Fab Ltd.*, [1982] OLRB Rep. Aug. 1162).

### **Persons Employed as Participants in a Government Funded Rehabilitation Program "Employees"**

An application for certification was opposed by the employer on the ground that the persons affected were not its employees, but participants in a rehabilitation program funded by government to stimulate employment. While the wages of these persons came out of government funds, C.P.P., U.I.C., and income tax deductions were made in the same way as the respondent's other employees. The respondent argued that the usual machinery and sanctions of collective bargaining were very difficult to reconcile with the nature of the program, and that the Board should find these persons not to be "employees" for purposes of the Act.

The Board held that it attaches little significance to the fact that the program was a publicly funded "make work" project. The adversarial model of collective bargaining was not easily applicable to the relationship here which was not that of typical employer/employee. Even though the persons were on the periphery of the Act's coverage, the Board held that it must find the persons to be employees since the cumulative evidence indicated an employment relationship and the contrary indications were insufficient to alter that conclusion. (*Regional Municipality of Hamilton-Wentworth*, [1982] OLRB Rep. Aug. 1179).

### **Gross Negligence Breach of Section 68**

An employee filed a complaint under section 68 of the Act alleging that the union had acted in an arbitrary manner while handling a grievance. The employee had been discharged and evidence showed that the shop steward had led him to believe that there would be no problem if

the grievance was filed at a later time. The employee complained that as a result of being misled in this manner his grievance was denied for procedural defects and was not considered on its merits. The union argued that the late filing of the grievance had no adverse impact on the employee because after reviewing the merits of the grievance, the union decided not to proceed to arbitration in any event.

The Board, discussing the union's duty under section 68, stated that the union is not required to be correct in every step it takes on behalf of an employee. Moreover, mere negligence on the part of a union official does not ordinarily constitute a breach of the Act. There comes a point, however, when mere negligence becomes gross negligence and when gross negligence reflects a complete disregard for the critical consequences to an employee then that action may be viewed as arbitrary for the purposes of section 68. In the Board's opinion the union's communication to the employee on the matter of the timing of his grievance constituted such disregard for its natural adverse consequences that it had to be viewed as gross negligence constituting arbitrary conduct within the meaning of section 68. In addition, the union's later consideration of the grievance as being unworthy did not rectify the initial breach of the Act. The parties were ordered to bring the matter to arbitration. (*North York General Hospital*, [1982] OLRB Rep. Aug. 1190).

#### **Board Not Allowing Further Hearing After Allegations Withdrawn**

Counsel for the complainant informed the Board at the commencement of the hearing that the initial complaint against his union alleging a breach of section 80 was to be disregarded and that the complaint was to be treated only as alleging a breach of sections 3 and 70. The case was heard on that basis. Following this, the Board received a letter from the complainant's counsel requesting the Board to find a violation of section 80, either based on a new hearing or on written submissions. The Board found that there was nothing to justify the granting of such a request. If the matter were re-opened, new issues would be raised, witnesses would have to be re-examined, and new witnesses questioned. Since no new facts had come light and counsel had stated earlier that no violation of section 80 was being alleged, only the complaint under sections 3 and 70 would be considered.

The facts of the sections 3 and 70 complaint were that the complainant had been fined by his union for supporting a rival union's certification application. The Board held that section 3 was only declaratory. Section 70 related to intimidation and coercion but there was no evidence of any attempt by anyone connected with the union to prevent the complainant from being a member of the displacing union. The fine was not imposed on the complainant for having exercised his rights under the Act. In short, the evidence did not disclose intimidation or coercion, and the imposition of a penalty itself was not intimidation or coercion. (*Tim Reay*, [1982] OLRB Rep. Aug. 1206).

#### **Telephone Calls Prior to Representation Vote Not a Breach of the Silent Period**

The employer challenged a representative vote on the ground that the Registrar's direction to refrain and desist from propaganda and electioneering prior to the vote had been violated. Two union representatives had called union members during the silent period, one seeking information about a meeting with management and the other asking whether the employee had voted. Three other anonymous telephone calls were received by employees, two telling them to vote for the union and a third to get out and vote.

The Board found that the first call was neither propaganda nor electioneering. The second call standing alone was not cause enough to negate the election. The anonymous calls were a form



of electioneering, made for the purpose of attempting to influence the outcome of the vote. However, these were not sufficient to cause the Board to disregard the vote. The Board was satisfied that the union had taken reasonable precautions to avoid breaches of the Registrar's direction by persons beyond its direct control. Two of the anonymous calls were only isolated infractions. The Board was not satisfied that the calls were likely to have influenced the outcome of the vote. A certificate was issued. (*Tops Food Market*, [1982] OLRB Rep. Aug. 1216.)

#### **Air Freight Forwarding Within Board's Jurisdiction**

The employer objected to the Board entertaining the union's application for certification on the grounds that its business, air freight forwarding, was outside of the constitutional jurisdiction of the Board. The exclusive business of the employer was forwarding air freight to destinations in other provinces and the United States. The employer submitted that it was so involved in interprovincial and international air transport as to be an integral part of the airline industry and therefore under federal jurisdiction.

The Board found that the employer was engaged by its own customers and not the airlines. It did not provide a service that the airlines themselves provided and as such could not be said to be an essential or integral part of interprovincial or international air transportation. After reviewing a number of constitutional law decisions, the Board determined that air freight forwarding is a purely local undertaking within the meaning of section 92(10)(a) of the *British North America Act* and thus found that it had jurisdiction to deal with the application. (*Airgo Agency Limited*, [1982] OLRB Rep. Sept. 1233).

#### **Employer Not an "Ally"—Picketing Unlawful**

A lawful strike had commenced against four carton manufacturers. The customers affected by the strike increased their purchases from the applicant company. In normal times these large volume purchasers were customers of all five companies. The unions engaged in the strike against the four companies took the position that "struck work" was being performed by the applicant company and established picket lines at four of the applicant company's plants. The picket lines were honoured by the applicant's employees. The applicant sought a cease and desist order with the respect to the picketing.

It was submitted that the picketing was protected under the Act as being "in connection with" a lawful strike; that the applicant was "allied" with the struck employers since it was doing their work, would benefit from a lower settlement, and was allegedly, part of a common employer front. The unions also submitted the employer was obligated to seek relief in the courts.

The Board carefully reviewed the relevant sections of the *Labour Relations Act*, section 20 of the *Judicature Act* and the related jurisprudence, noting the restraints on court jurisdiction over picketing and the expansion of Ontario Labour Relations Board remedial powers. The Board specifically addressed itself to sections 74 and 76(2) to determine whether the picketing in question was "in connection with" a lawful strike and whether the applicant had allied itself with the struck employers or was, instead, wholly neutral. On the particular facts, the Board concluded that the applicant was not an ally of the struck employers; and the picketing was not in connection with a lawful strike within the meaning of section 76(2). The picketing was therefore held to be unlawful. An order was issued directing a union official and other persons having notice of the order to cease and desist from maintaining a picket line or picketing at the premises of the applicant. (*Consolidated-Bathurst Packaging Limited*, [1982] OLRB Rep. Sept. 1274).

### **Board Refuses to Award Punitive Damages**

The United Steelworkers alleged that the respondents bargained in bad faith, bargained directly with employees, interfered with the administration of the union, and otherwise violated the Act.

The Board found that the respondents contravened section 15 of the Act by refusing to disclose to the union the actual wage rates of their respective bargaining unit employees. The Board indicated that one of the principal functions of the duty described in section 15 is to foster rational, informed discussion. In this case the union would not have been able to appraise accurately the actual value of the respondents' offers without knowing the employees' existing rates. In addition to the contravention of section 15, the respondents contravened section 67(1) by bargaining directly with some of the employees whom the union was entitled to represent. Their conduct went far beyond the ambit of the employer's right of freedom of expression guaranteed by section 64.

To remedy these contraventions, the Board ordered the respondents to cease and desist from contravening the Act but declined to grant damages in the circumstances of the case. Neither the union or the employees suffered any actual monetary losses as a result of the contraventions. Also, there was no evidence that the employer's actions permanently weakened the employees' determination to obtain improved conditions of employment. Furthermore, it appeared to the Board that what the union was actually seeking was punitive damages, rather than compensatory damages of the type usually awarded by the Board. The imposition of penal sanctions is not for the Board, but rather must be sought through prosecution in the criminal courts. (*Globe Spring & Cushion Co. Ltd.*, [1982] OLRB Rep. Sept. 1303).

### **Arbitrary Union Conduct Contravening Duty of Fair Referral**

In a complaint of unfair referral under section 69, the evidence showed that an employer had written to the union stating that the complainant was not suitable for the type of work involved in the industry. The letter was very general and lacked any specific allegation of incompetence. The union thereupon refused to refer the complainant to other work. In defence of its position, the union raised other complaints from other companies but no evidence was led to prove these. On the other hand, there was evidence that the complainant had worked for another employer with no complaints.

The Board held that the refusal by the union to assign the complainant to future work through the hiring hall was arbitrary and contravened the duty of fair referral. The collective agreement provided for testing of probationary employees but this was not done in this case. The union's acceptance of the employer's vague evaluation without investigation was held to be arbitrary. (*Michael Shaw*, [1982] OLRB Rep. Sept. 1339).

### **Board Procedure in the Face of a Voluntary Petition and a Voluntary Counter-Petition**

In a previous decision the Board had issued a certificate to the applicant trade union without a representation vote. The Board had refused to inquire into the origination and circulation of a petition, because of the presence of a subsequent relevant voluntary counter-petition. On judicial review, the Divisional Court found that the Board had committed a jurisdictional error by refusing to hear evidence relating to the petition in exercising its discretion as to whether a vote should be

directed. The Board's decision was quashed and the matter was remitted to the Board for a de novo hearing before a differently constituted panel. An appeal to the Court of Appeal was dismissed and leave to appeal to the Supreme Court of Canada was refused.

When the matter was considered again by the Board, it found that the counter-petition was voluntary. With respect to the petition, however, the Board found that it could not be relied upon as a voluntary expression of employee wishes because of communication by a collector to a number of employees that his lawyer had been suggested by the employer.

The Board went on to state that even if it had been satisfied the petition was a voluntary expression of employee wishes, it was difficult to make any meaningful comparison between the petition and counter-petition and it would be arbitrary to direct a vote because of the mere existence of two apparently conflicting documents. The Board held that, while the Divisional court's comments must be given careful consideration, it was more consistent with the scheme of the Act to principally have regard to the employees' last voluntary statement prior to the terminal date. The Board held that, while there may be exceptional situations, generally its experience shows that in the face of a voluntary counter-petition, a voluntary petition will not be sufficiently probative to the exercise of the Board's discretion to merit an inquiry into the petition's origination and circulation. (*Baltimore Aircoil Interamerican Corporation*, [1982] OLRB Rep. Oct. 1387).

#### **Grievor Being Denied Own Counsel at Arbitration Not a Breach of the Duty of Fair Representation**

The complainant alleged that he had been dealt with by the respondent union contrary to section 68 of the Act. By the time the complaint was filed there had been numerous arbitrations and court proceedings concerning the complainant's dismissal from employment. It was alleged that the grievor had not been permitted to be present at settlement discussions and had been denied the right to have his own legal counsel. In addition, he complained that the union refused to initiate judicial review proceedings subsequent to an arbitration hearing.

On the basis of the totality of testimony the Board did not find the complainant's evidence to be credible. In addition, it found no malice on the part of the union; the union officials did their best to deal with a difficult situation. The Board found no breach of the Act in the way in which the complainant was represented. The failure to provide independent counsel was not a breach of section 68 anymore than the union's failure to join in the application for judicial review. It is not arbitrary if a union decides to follow its established practice and handle grievances with its own officials. The complaint was dismissed. (*Chrysler Canada Limited*, [1982] OLRB Rep. Oct. 1417).

#### **Whether One Year Bar Runs from Date of Interim or Final Certificate**

The respondent union had received interim certification on May 25, 1981, with the final certificate issued on June 30, 1981. A termination application was filed on June 9, 1982. The issue raised was whether the period of one year after certification referred to in section 57(1)—the time bar for a termination application—is to be calculated from the date of interim certification or from the date on which the certificate issues.

The Board agreed with the submission of the respondent union that the year-long bar in section 57(1) runs from the date of final certification rather than interim certification and therefore the termination application was untimely.

In reaching this conclusion, the Board considered the various policy considerations underlying the issue before it. It emphasized that a union's bargaining rights are not fully effective until the final certificate is issued and that a union should have a full year to reach a collective agreement or for bargaining rights to become fully established. The Board also considered various other sections of the Act which deal with time limits from the date of certification in order to support its interpretation of section 57. (*Comstock Funeral Home Ltd.*, [1982] OLRB Rep. Oct. 1436).

### **Duty to Bargain With Incumbent Union While Displacement Application Pending**

This was a displacement certification application whereby the applicant sought certification without a vote on the basis of membership support in excess of 55%, or in the alternative, under section 8. For the latter, reliance was placed on employer unlawful conduct including lay-off of union supporters and the carrying on of negotiations and the entering into of a collective agreement with the incumbent union, in the face of the applicant's application for certification. The applicant argued that the statutory freeze imposed by section 79(2) precluded the negotiation and signing of a collective agreement after its application for certification had been made, and also that these negotiations were carried out with the purpose of making it appear that a significant improvement in terms and conditions had been effected by the incumbent. It was argued that in doing so, the employer was unlawfully interfering with the applicant union's activities.

The Board noted an apparent conflict between the duty to bargain in section 15 and the statutory freeze of wages and terms and conditions of work in section 79(2). Unless the latter is said to qualify the bargaining duty, an employer refusing to bargain with an incumbent union may face a complaint of bad faith bargaining. In the absence of express statutory provision dealing with the issue, the Board carefully reviewed the practical labour relations considerations inherent in the position submitted by the applicant.

The Board noted that despite the freeze imposed by section 79(2), the Act restricts displacement applications to the last two months of the operation of the incumbent's collective agreement and that under section 56(1), the incumbent continues to represent the employees, and its collective agreement continues to operate, until the applicant union is certified. The Board held that in these circumstances, it is doubtful that section 79(2) operates to modify the duty to bargain.

The Board pointed out that even if it could be argued that section 79(2) somehow modified the bargaining duty, it is inconceivable that the legislature intended to place the applicant in the preferred position of regulating changes in wages and other terms and conditions of work, and by implication, to have modified the bargaining duty between the employer and the incumbent. The Board pointed to section 63(9) of the Act, which exempts the application of the duty to bargain upon the occurrence of a sale of a business. In the absence of a similar provision exempting employers facing displacement applications, the Board refused to read such an intention into the Act.

The Board pointed out a further shortcoming in the applicant's argument. Even if section 79(2) is said to suspend the bargaining duty, the incumbent's right to seek conciliation and reach a strike position continues. The Board stated that it is not conceivable that the Act would allow a legal strike at a time when the duty to bargain was not in effect. The Board concluded that in the circumstances of a displacement application where the incumbent has given notice to bargain and

in the face of the language of section 79(2), which freezes not only terms and conditions of employment but also any "duty" of the employer, it is the duty to bargain which is preserved.

Taking into account these practical labour relations considerations the Board concluded that the duty to bargain is not in anyway modified by the filing of a displacement certification application. The Board cautioned, however, that the duty on the employer is to bargain as he would have in the absence of a displacement application and stated that the employer could not use the duty to bargain to effect an unlawful purpose (i.e. interference with the right of employees to select a bargaining agent). While it was found that the lay-offs in question were unlawful, the Board affirmed its long-standing policy of recognizing a presumption of continuing majority support for an incumbent union and directing a vote in displacement applications. The Board stated that it would only certify without a vote and thereby penalize an incumbent, where there has been collusion between the incumbent union and the employer. In the absence of evidence of any collusion, the Board directed the taking of a representation vote. The Board stated that, where the employer's unlawful conduct works to the benefit of the incumbent, the Board is able to exercise its remedial authority in favour of restoring the applicant to the position it would have been in, had there been no violation of the Act.

In exercising its remedial authority in this case the Board gave the applicant an option of relying on the vote already held or requesting a new vote. In the event the applicant opts for a new vote the Board stated that it would direct the respondent to post and to mail notices to each bargaining unit employee and provide the applicant with the last known home address of each employee. Finally in the exercise of its remedial authority the Board advised, having regard to the lay-offs, that if the applicant opts for a new vote it will be a mailed ballot vote. (*Crowle Electrical Limited*, [1982] OLRB Rep. Oct. 1458).

#### **Trusteeship Contravenes Section 80**

A complaint was filed by several Ontario Locals of the respondent international union and the business representatives of the complainant locals, alleging that the respondent had imposed a trusteeship on the Ontario District Council of the union in order to penalize the complainants because they filed, or were about to participate in an earlier unfair labour practice complaint (the "EPSCA complaint") filed against respondents which included the international. The respondent argued that the trusteeship had been imposed in response to financial mismanagement and other deficiencies in the internal operations of the district council and had nothing to do with the earlier complaint.

On the evidence before it, the Board found that the trusteeship was partially motivated by a desire to penalize the complainant business representatives for filing or pursuing the EPSCA complaint. However, the Board also found that the trusteeship was partially motivated by legitimate concerns about the internal operations of the district council. Applying the "taint theory" to these findings, the Board held that the respondent international had contravened section 80(2) of the Act. However, the Board declined to direct the international to rescind the trusteeship. Being of the view that the co-existence of legitimate reasons for the respondent's impugned conduct was relevant to the issue of the appropriate remedy, the Board allowed the trusteeship to stand but restored the status quo ante with respect to the EPSCA complaint by ordering the international to put the district council back on the record as one of the complainants in those proceedings and by ordering it to allow the complainant business representatives to continue to instruct counsel concerning the EPSCA complaint on behalf of the district council, notwithstanding the trusteeship. The Board also ordered the respondent to make

the district council funds available for payment of legal and other legitimate expenses pertaining to that complaint, incurred by district council, or by the complainant business representatives on behalf of the district council. Finally the Board ordered the respondent to expeditiously correct the irregularities in the operation of the district council and to remove the trusteeship as quickly as practicable. (*The International Association of Bridge, Structural and Ornamental Ironworkers, Norman Wilson, and James Phair*, [1982] OLRB Rep. Oct. 1487).

### **Section 80 Protection Extending to Arbitration Hearings**

In a section 89 proceeding, the complainant submitted that a managerial employee had been terminated because she had testified at an arbitration hearing in connection with a grievance filed on behalf of an employee. The complainant contended that the termination violated several sections of the Act, including section 80(1). The employer contended that the phrase "proceeding under this Act" as used in section 80 should not be interpreted to include a hearing before a sole arbitrator or board of arbitration, and that, accordingly, the section could not apply to the dismissal.

After discussing the compulsory nature of arbitration provisions contained in the Act, the Board found that an arbitration board is a tribunal established under the *Labour Relations Act*. If a board of arbitration, and by analogy a sole arbitrator is a statutory tribunal constituted under the Act, then a hearing before a board or arbitration or sole arbitrator must be a "proceeding under the Act". This being the case, the Board was satisfied that persons who testify at an arbitration hearing are protected against reprisals for having done so by section 80 of the Act. (*Ontario Nurses' Association*, [1982] OLRB Rep. Oct. 1546).

### **By-Law Enforcement Officers Not Members of Police Force**

The union applied to be certified as the bargaining agent on behalf of by-law enforcement officers in the City of Thunder Bay. The officers, employed by a security firm, spent most of their time enforcing parking by-laws by issuing parking tickets when warranted. The respondent company claimed that the by-law enforcement officers were members of a police force and thus excluded from the operation of the *Labour Relations Act*.

The Board held that the officers in dispute were not members of a police force within the meaning of the *Police Act* and thus constituted a unit of employees appropriate for collective bargaining under the *Labour Relations Act*. Section 15 of the *Police Act* requires that members of the police force be appointed by a board of commissioners of police. However, the enforcement officers before the Board were not appointed by a board of commissioners of police but were hired by the respondent company. The Board went on in its decision to cite numerous sections of the *Police Act* which supported the conclusion that the by-law enforcement officers were not members of the police force. A certificate was issued to the applicant union. (*Phillips Security Agency Inc.*, [1982] OLRB Rep. Oct. 1549).

### **Right of a Displacing Union to Grieve Under Predecessor Union's Last Collective Agreement**

An employee association had held bargaining rights for the employees of the respondent for several years, and had concluded several successive collective agreements. On March 1, 1982, the complainant union applied for certification seeking to displace the incumbent and was successful, a certificate issuing in its favour on April 13, 1982. In the meantime, on April 1, 1982, the outgoing union's last collective agreement expired. The complainant gave notice to bargain on May 27, 1982.

On May 21 and May 22, 1982 (i.e. subsequent to the filing of the application for certification but prior to giving of notice to bargain) the complainant filed two grievances, relating to attendance bonus and overtime respectively. The employer refused to appoint a nominee to a board of arbitration, taking the position that the grievances were not arbitrable. On June 15, 1982 (i.e. subsequent to its notice to bargain) the complainant filed a third grievance relating to wages for lost time to members of the negotiating committee. This grievance was not accepted by the employer. The complainant alleged a breach of the freeze provisions of the employer's nominee and requested that the Board sit as arbitrator. It was further requested that the Board hear the allegation of breach of the freeze provision.

The Board noted that upon notice to bargain being given, section 79 (1) freezes the collective bargaining relationship in the widest possible terms including the right to grieve and proceeding to arbitration. The freeze imposed upon the filing of a certification application, on the other hand, is narrower and merely freezes the terms of the individual contracts of employment, for no collective bargaining relationship existed at the time. Thus in the usual case only the third grievance would have been grievable, since the other two arose prior to the notice to bargain and therefore fell only within section 79(2), and not section 79(1). Since arbitration provisions are not matters of individual employment, the right to arbitration is not frozen by section 79(2) with respect to the first two grievances.

The Board went on to find, however, that even the third grievance is not arbitrable in the particular circumstances of this case since there was no collective agreement, and no arbitration procedure between the employer and the complainant which could have been "frozen" by the operation of section 79(1). In view of the Board's finding that none of the grievances were arbitrable, it decided that it will take jurisdiction to deal with the alleged s. 79 violations and that it will not defer to arbitration. (*Montebello Metal Inc.* [1982] OLRB Rep. Nov. 1678)

### **Cultural Characteristics of Employees not Basis for Inferring Membership Irregularities**

The Form 9 filed in this application for certification disclosed several irregularities in the collection of membership evidence. However, the Board found that the irregularities did not go to the heart of the membership evidence required by the law. In the circumstances the Board held that the disclosures reinforced the declaration set out in Form 9, and that the Board had nothing before it which would cause it to conduct any further inquiry.

The Board found some incidents of intimidation of employees to have occurred. These were few and isolated, and were unrelated to the solicitation of any cards. Only 3 out of 342 employees in the unit testified that they were intimidated. While conceding that the instances of intimidation were isolated, the respondent suggested that in the particular circumstances of this case, it cast sufficient doubt on the membership evidence as would cause the Board to direct a representation vote. It was pointed out that a large number of the unit employees were recent immigrants from Vietnam. It was contended that, given their background, the Board should infer what other irregularities "might" have occurred. The Board rejected this proposition and stated that to draw such inference solely on the basis of general characteristics attributed to a particular society would necessarily lead the Board to draw similar inferences with respect to all societies argued to be outside the "norm" of this province. It was tantamount to amending the Act so that there could be no certification without a vote where Vietnamese employees are involved. The respondent's objections being rejected, the applicant was certified without a vote. (*Walbar of Canada* [1982] OLRB Rep. Nov. 1734).

### **Political Campaigning on Company Premises. Not Protected as Lawful Union Activity**

The complainant engaged in a campaign in support of the CLC and its political affiliate, the NDP of Canada, in connection with a federal by-election. The campaign included the posting of pamphlets on union bulletin boards by officers of the complainant. The pamphlets were approved by the NDP and its trade union affiliates. The respondent employer, in a notice addressed to all employees, stated that any and all forms of canvassing, campaigning or posting of materials of any type on company property was prohibited unless authorized by the respondent. Union officials were told by management that no political campaigning was to take place on mine property, and that disciplinary action will be taken if such campaigning continued. The complaint alleged that the employer conduct constituted contraventions of sections 3, 64, 66(a) and 66(c) of the Act.

The substance of the complainant's argument was that a trade union is defined by the Act only to "include" the objective of regulating employer-employee relations, and that therefore, all other lawful activities of a trade union fall within the meaning of section 3 and constitute "other rights under this Act" as that phrase is used in section 66. The respondent took the position that the complainant's political canvassing, in substance, put forward the interests of the NDP as opposed to collective bargaining interests and that therefore the protections of the Act did not apply.

The Board stated that the Act attempts to accommodate the employer's property rights and the union's right to organize with as little destruction of one as is consistent with the maintenance of the other. The Board reviewed principles relating to employee activity during non-working hours that have evolved through arbitral jurisprudence, but pointed out that the rights protected through the arbitration process and through the Act are not necessarily the same. The dominant purpose of the Act as stated in its preamble centers on the furtherance of harmonious relations between employers and employees by encouraging collective bargaining. The Act protects activity directly related or necessarily incidental to this purpose, the Board pointed out.

While recognizing that by their nature trade unions' goals extended beyond collective bargaining, the Board stated that it is far from self-evident that the political and social goals of a trade union, no matter how important and worthwhile, constitute rights under the Act, even where those goals if achieved, could improve the lot of employees. After examining the context and the content of the literature in question, the Board concluded that the activity in this case was too remotely connected to the dominant purpose of the Act to attract the right asserted by the complainant. In the Board's view the communications in issue were not as connected to the concerns of the bargaining unit employees *as employees*, as they were to their concerns as voters. The union was not then acting in its capacity as exclusive bargaining agent but as an affiliate or supporter of a political party seeking the electoral support of certain employees.

The Board noted that its decision to dismiss the complaint did not bear on the rights that complainant may have before an arbitrator under a collective agreement should discipline be imposed on employees for engaging in the activity contrary to the respondent's directions. Finally, the Board cautioned the labour relations community not to interpret the Board's decision as licensing the primary censoring of trade union communication with bargaining unit members in the workplace. The Board's decision simply was that the particular pamphlet in question, in context and content, did not trigger the right asserted. The Board made it clear that it was not signalling an era of refined regulation of workplace communication by either the Board or employers. (*Adams Mines, Cliffs of Canada Ltd.*, [1982] OLRB Rep. December 1767).



### **Normal "Open Periods" Suspended Due to Bill 179 Extending Collective Agreements**

These were two pre-hearing displacement applications, which would normally have been timely. However, the incumbent union argued that the *Inflation Restraint Act*, (Bill 179) suspended the "open period" by extending collective agreements coming within its ambit, thereby rendering the applications untimely.

The critical language of *Bill 179*, section 13, extends "terms and conditions of every collective agreement". The Board was required to determine if these words extended the collective agreement, or, as was argued by the applicant, only the terms and conditions of the collective agreement while allowing the agreement to expire and thereby preserving the open periods under the *Labour Relations Act*. The Board observed that a finding that section 13 extended the collective agreement and thereby closed off the open period provided under the *Labour Relations Act* would have far reaching consequences with respect to timeliness of displacement applications and applications to terminate bargaining rights, notice to bargain, appointment of conciliation officers and the right to strike or lockout or to request the appointment of an arbitrator under the *Hospital Labour Disputes Arbitration Act*.

The Board although stating that it should attempt to interpret *Bill 179* in such a way as not to interfere with the operation of the *Labour Relations Act*, concluded, on a reading of section 13, 14 and 15 of *Bill 179* that the intent of the legislature in using the language which it did was to extend collective agreements falling within the ambit of the Bill and to thereby close off the open periods provided under the *Labour Relations Act*. The Board described the implications of its finding vis-a-vis the operation of the *Labour Relation Act* but pointed out that the legislature by the use of the words "Notwithstanding any other Act" in section 13 of *Bill 179* recognized the conflict between the two statutes and intended *Bill 179* to prevail.

The applicant's argument that *Bill 197* was null and void insofar as it abrogated the freedom of association guaranteed by the *Canadian Charter of Rights and Freedoms* also failed. The Board, assuming without finding, that the freedom to be represented by a bargaining agent of one's choice in collective bargaining is encompassed by the freedom of association guaranteed in the charter, found that the restriction upon the right to displace a bargaining agent imposed by *Bill 179* did not breach the charter. It was specifically pointed out that the suspension of the right to decertify or replace a trade union under the Bill does not go beyond the maximum 35 month period during which employees may be locked into a bargaining agent under the *Labour Relations Act*. The Board noted that its analysis and conclusion applied to existing collective agreements and not to first agreement situations. (*Broadway Manor Nursing Home* [1983] OLRB Rep. January 26.)

### **Application of the Inflation Restraint Act to First Contract Negotiations**

This decision dealt with the timeliness of a termination application. Under section 12 of the *Hospital Labour Disputes Arbitration Act*, once a conciliation officer is appointed following initial certification of a trade union, no application to terminate bargaining rights of such union may be filed until the last two months of the parties' first collective agreement. In this instance there was no question that a conciliation officer had been appointed, so that under normal circumstances the application would clearly have been untimely.

The hospital, however, argued that the passage of the *Inflation Restraint Act* (*Bill 179*) altered the situation. It was pointed out that under section 15 of *Bill 179*, amendments to terms

and conditions of a collective agreement may only take place by "agreement". Since it is disagreement which gives rise to the need for conciliation, the conciliation services no longer have a role to play under *Bill 179* and are rendered void. It was argued that this abrogates the normal right to strike and lockout or interest arbitration, together with conciliation services themselves.

The Board noted that sections 13 and 15 of *Bill 179* speak of "parties to a collective agreement" and "terms and conditions of a collective agreement". The Board noted that in a recent decision (*Broadway Manor*) it had been decided that in a renewal negotiation situation, the terms and conditions of the collective agreement were extended by *Bill 179*, thereby closing off the usual open period for purposes of a displacement application. However, the Board distinguished the matter before it from *Broadway Manor*. In the present case the Board was dealing with negotiations for a first agreement and therefore no "parties to a collective agreement" or "terms and conditions of a collective agreement" existed. That being so the Board concluded that neither section 13 nor section 15 of *Bill 179* had any application to first contract negotiations. Since there was no conflict between the provisions of the Bill and the normal rights available to parties in a first-contract negotiation situation, the Board saw no reason to conclude that normal collective bargaining is ousted in these circumstances.

Therefore the Board concluded that, in relation to first contract negotiations, the normal rights and obligations remain unaffected except to the extent of restrictions placed by *Bill 179* on the level of compensation increases. This means that conciliation services are available, together with the usual right to strike or lockout (interest arbitration in the case of "hospitals"). In the result the appointment of the conciliation officer was held to have remained in force, rendering the application for termination untimely. (*Doctors' Hospital*, [1983] OLRB Rep. Feb. 227).

#### **Board Ruling on Jurisdictional Challenge Based on Charter of Rights**

The complainant union filed an unfair labour practice complaint alleging that the grievor was dismissed by the respondent because of his union sympathy. Counsel for the respondent submitted that his client was prejudiced in that the reverse onus provision of section 89(5) of the Act is contrary to the guarantee of the presumption of innocence until duly proven guilty, contained in section 11(d) of the *Canadian Charter of Rights and Freedoms*.

This objection raised two issues: firstly, whether section 89(5) is contrary to the Charter and secondly, whether the Board should rule upon constitutional challenges of a provision of its own statute or defer such an issue to the courts.

The Board, dealing with the latter issue noted that it had, with judicial approval, ruled on the constitutional issue of whether a particular application fell within federal or provincial jurisdiction under the B.N.A. Act on many occasions. Quoting from a decision of the Supreme Court of Canada and emphasizing the imperative nature of the *Canada Act*, the Board concluded that it is required to interpret and apply provisions of the Charter, subject of course, to review by the courts.

Turning to the merits of the constitutional challenge, the Board stated that the reverse onus provision of the Act was both purposive and historically rooted. The Board canvassed reasons why a reverse onus provision is consistent with the more efficient advancement of the policies of the Act. It reviewed arbitral jurisprudence and court decisions in wrongful dismissal actions, where the rule had consistently been followed that where an employee proves hiring and dismissal, the employer has the burden for proving that the dismissal was for just cause. The Board concluded

that the reverse onus provision in section 89(5) is in keeping with the extensive experience of the civil courts in wrongful dismissal actions and boards of arbitration in discipline cases and that it is not inconsistent with the general precepts of due process or natural justice in civil cases.

The Board also concluded that section 11(d) of the Charter had no application to the reverse onus applied in unfair labour practice complaints before the Board. Citing its own decisions and those of the courts, the Board stated that section 89 provides for civil remedies as an alternative to criminal prosecution in courts provided for elsewhere in the Act. The Board and the courts have consistently viewed section 89 as remedial and not punitive legislation. On the other hand section 11(d) of the Charter is expressly stated to apply to the prosecution of "offences" and is therefore intended to operate in the realm of criminal proceedings. In view of all of the above reasons, the Board concluded that section 89(5) is not contrary to the *Charter of Rights and Freedoms*. (*Third Dimension Manufacturing Ltd.* [1983] OLRB Rep. February 261.)

### **Conviction and Fine Imposed by Union on Member in Contravention of Act**

The complainant, a union member, was charged by fellow members on two separate counts and convicted by a union trial board constituted under the union's constitution. A penalty by way of a fine of \$500 was assessed against him on the first count. On the second, he was fined \$1000 and barred from having any voice in the union's affairs for a period of 5 years. The complainant alleged that section 80(2)(b) of the Act had been violated in that the charges were laid against him in response to a financial statement complaint he had filed against the union and that the trial board was improperly influenced by his complaint when it decided those charges.

The Board found that the financial statement complaint was not a consideration at the trial of the first charge and the complaint on that aspect was dismissed. However, the Board found on the evidence that the filing of the financial statement complaint was clearly a consideration in the conviction of the complainant on the second charge. Therefore, applying the "taint theory" approach, the Board held that the union had contravened the Act. The board ordered the conviction and penalty imposed on the second charge be rescinded and removed from the union's record.

On a preliminary issue, in rejecting the union's contention, the Board held that the trial board of the union, when fulfilling its mandate under the union constitution, was acting on behalf of the union and therefore was properly named as respondent in the complaint. (*William Egan* [1983] OLRB Rep. February 298.)

### **Board Directing Extensive Remedies for Flagrant Violations**

The respondent employer operated a rest home which provided food, shelter and personal care for elderly persons. Immediately upon learning of organizational activity among its employees, the respondents initiated a series of flagrant violations of the Act. This unlawful conduct, which continued after the union obtained a certificate, included the discharge, lay-off and reduction of hours of employees, withdrawal of existing privileges, issuance of written warnings and the use of members of the individual respondent's family to do bargaining unit work.

Having found that the impugned conduct contravened section 66, 70, 79 and 80 of the Act, the Board issued an extensive remedial order. Besides the usual cease and desist order and compensation for lost wages with interest, the order included a direction that certain disciplinary records be removed; a direction to restore privileges previously enjoyed for the duration of the

freeze period and to compensate for privileges that were denied; a direction to refrain, during the freeze period, from using family members to do bargaining unit work to an extent beyond that which was performed before; a direction not to meet with any employee for purposes of disciplining the employee unless a union official or other employee selected by the employee is present; and a direction to provide the union with a copy of each work schedule prepared until a collective agreement is concluded. In light of the agreement of the union and the employer that the posting of the Board's usual employee notice at the rest home could be unduly disturbing to its residents, the Board directed instead that a copy of such notice be mailed to each employee at the respondent's expense. (*Heritage Manor Rest Home*, [1983] OLRB Rep. March 385.)

## **CONSTRUCTION INDUSTRY DECISIONS**

### **Board's Jurisdiction to Hear Complaint Already Considered by I.J.D.B.**

In a jurisdictional dispute proceeding under section 91, the complainants requested that the Board issue a direction with respect to certain work. It was the position of the respondent that the Board had no jurisdiction to hear the complaint because section 91(14) of the Act precluded the Board from inquiring into a work assignment dispute where the collective agreement contains a provision requiring referral of such disputes to a mutually selected tribunal.

The Board held that for section 91(14) to be applicable the collective agreements binding on the employer and the unions that are parties to the proceedings under section 91 must contain such a provision. The employer elected to refer the matter to the I.J.D.B., the tribunal specified in the relevant collective agreements. The Board found that simply because the complainant union was dissatisfied with the tribunal's decisions did not mean that the Board could hear the complaint. In addition, there was no evidence that the tribunal had gone out of existence. The complaint was therefore dismissed. (*Comstock International Limited*, [1982] Rep. June 854).

### **Board Regulating Picket Activity**

The employer made an application for a declaration of an unlawful strike and sought a cease and desist order. The Plumber's union was on a lawful province-wide strike and had established a picket line at the employers' construction projects. Tradesmen not on strike refused to cross the picket line.

The Board held that employees working at a common construction site but otherwise unrelated to a labour dispute involving another trade are protected by sections 74 and 76(1). Therefore, the Board found that the Act deals with picketing and must be interpreted with due sensitivity to the reality of the province-wide single trade bargaining created by the statute. The Board accepted that section 74 must be read in light of and subject to section 76 and the saving provision in subsection 2. The establishment of picket lines which cause unlawful strikes contrary to section 74 and 76 may be remedied by the Board as the procuring or encouraging of unlawful strikes by officers, officials and agents of a trade union. On the other hand, subsection 2 of 76 is aimed at permitting, among other things, picketing arising out of and related to a lawful strike. Therefore, the Board held that some integrating and melding of purpose was required in applying these various sections. Section 76 was designed to remove the problem of employee directed secondary picketing and, even with the advent of province-wide bargaining, the Board concluded that section 76(2) did not permit unrestricted picketing directed at employees of employers unconnected with the labour relations dispute other than by geography provided that separate

entrances were established for such employees and provided further that the work of the striking trade was not being performed.

Therefore, the picketing was found to be unlawful unless it was restricted to entrances established solely for use by employees represented by the striking union. (*Sarnia Construction Association*, [1982] OLRB Rep. June 922).

### **Union Under Continuing Duty to Oversee the Conduct of Province-Wide Strike**

The applicant, a designated employer bargaining agent, claimed that the respondents breached sections 146(2) and 148(1) of the Act by continuing to supply employees during a lawful province-wide strike. The Board found that in supplying men the union had breached section 146(2), by being party to an "other arrangement". Both the union and the employer involved were ordered to cease and desist pursuant to section 89. In addition, the duty under section 148(1) was found to be an ongoing one requiring positive and reasonable steps to ensure that a strike continues to be called in accordance with the desires of the employee bargaining agency. (*Sikora Mechanical Ltd.*, [1982] OLRB Rep. June 941).

### **Whether Strike Occurring Where Sub-Contractor Not Scheduling Work Because of Picket Line**

The plumbers' union, on a lawful strike, set up a picket line which other tradesmen employed by sub-contractors honoured. The applicant requested relief under section 135 of the Act. The Board was satisfied that the requirement of a common understanding had been established since the sub-contractors' employees had acted in response to union solidarity. However, the Board found that there was no cessation of work, or refusal to work or to continue to work because, in anticipation of the picket line, the sub-contractors did not schedule work on the project. Accordingly, the respondents had not engaged in a strike within the meaning of section 1(1) (o) of the Act. In these circumstances, it was not necessary for the Board to arrive at any conclusion with respect to the issue of whether the Board should exercise its discretion and grant the remedy requested by the applicant. (*Wharton Industrial Development Ltd.*, [1982] OLRB Rep. July 1105).

### **For Purposes of Termination Applications in the ICI Sector Bargaining Unit Means Unit of Employees of Individual Employer**

In an application under section 57 of the Act for a declaration terminating bargaining rights in the ICI sector, the respondent union took the position that the bargaining unit was comprised of all employees of all employers covered by the provincial agreement and therefore the applicant had not met the requirement of section 57(3) that an application have the voluntary support of not less than 45% of the employees in the bargaining unit defined in the collective agreement. The application was supported by the 5 employees of the employer, whereas the relevant provincial agreement covered thousands of employees. The respondent's position was that the bargaining unit for the purposes of section 57(3) was the province-wide bargaining unit described in the provincial agreement.

The Board discussed a number of sections in the Act but in none of these was there a reference to a provincial bargaining unit of employees. The union was certified for a bargaining unit made up of employees of a particular employer and the Board found that there is not a single provincial bargaining unit, but rather a conglomeration of individual bargaining units to which the

terms of the provincial collective agreement apply. The Board accordingly found that the correct bargaining unit for the purposes of termination application was described as the employees bound by the provincial agreement in the employ of the employer. (*Clarence H. Graham Construction Limited*, [1982] OLRB Rep. Aug. 1147).

#### **Union Members on Province-Wide Strike Not Permitted to Perform Struck Work**

In a previous decision the Board had found that the respondent union and All-Pro Contractors had contravened section 146(2) of the Act by entering into a "maintenance agreement" whereby the union agreed to supply members to perform the struck work during a legal province-wide strike. The union was found in breach of section 148(1) in assigning its members to perform such work and a cease and desist order was issued. Subsequent to that order the former job superintendent of All-Pro formed his own non-union company, Regional Mechanical Services, which continued to perform struck work at the particular project using the same employees who were members of the union. The complaint sought a non-compliance declaration, alleging that Regional was a "related employer" and as such was bound by the Board's previous order. In addition, relief was sought for independent violations of sections 146(2) and 148(1) of the Act.

The Board found that All-Pro was not a related employer within the meaning of the Act. On the question of whether the respondent union and Regional had contravened section 146(2) the Board concluded that the legislature could not have intended to permit one side to a dispute to avoid the impact of the legislation and Board orders by creating a new "non-union" entity, as was done in this instance or by offering to provide its striking members directly to the customer-owner to perform the struck work. The Board concluded that section 146(2) must be interpreted as prohibiting an arrangement with *any* person, for union members to perform work, which but for the strike, would have been performed by the employer who has been struck. If a union and its members opt for strike action, thereafter, the members cannot continue to perform the struck work even for a non-union employer. (*All-Pro Contractors et al*, [1982] OLRB Rep. Aug. 1109).

#### **Persons Not Employed in Unit On Application Date Not Entitled To Apply for Termination of Bargaining Rights**

An application for termination by two employees was opposed by the Carpenters, Local 1669 on the ground that on the application date they were not employees in the carpenter's bargaining unit. The evidence was that on the application date and on the days preceding, the applicants were employed as labourers, and not as carpenters.

The Board held that in construction certification cases, it is an established policy that only the application date is looked at when determining the list of employees in the bargaining unit. The same applies in relation to termination applications. The applicants were not in the unit on the application date and hence were not eligible to apply for termination of the Carpenters' Union bargaining rights. (*T.E. Leroux Contracting Ltd.*, [1982] OLRB Rep. Aug. 1204).

#### **Employer Bargaining Agency's Authority Limited**

The International Union of Elevator Contractors, Local 50, referred a grievance to arbitration before the Board under section 124 of the Act alleging that Beckett Elevator Co., which was not a member of the employer bargaining agency, but was represented by it by reason

of a Ministerial designation, had breached the collective agreement provisions relating to a form of industry-wide bumping rights. A "Joint Industry Committee", established under the collective agreement to decide disputes, had found Beckett in breach of the agreement and issued a remedial order. Beckett refused to comply. The grievance requested a direction that Beckett comply with the JIC decision or, alternatively, that the Board hear the grievance on its merits. Beckett, while admitting that the JIC decision was binding, took the position that the Board had no authority to enforce it in a section 124 application. Beckett also argued that the existence of a decision by the JIC precluded the Board from hearing the grievance on its merits.

The Board reviewed the history and the purpose of the relevant provisions of the Act and in particular section 143, which vests an individual employer's rights in the designated bargaining agency only for the purpose of collective bargaining and concluding a provincial collective agreement. While the Board acknowledged the employer bargaining agent's interest in the uniform administration of the agreement, the Board held that it would be inconsistent with the scheme of the Act to permit a designated employer bargaining agency to attempt to impose a binding resolution of a grievance on an individual employer that is not a member. The Board also held that availability of the internal mechanism did not in itself preclude the Board's jurisdiction under section 124 to hear the grievance. Beckett's request that the grievance be consolidated with its unfair representation complaint was refused, since the latter was not sufficiently particularized to enable the Board to ascertain whether a common factual foundation existed. (*Beckett Elevator Company Limited*, [1982] OLRB Rep. Sept. 1244).

#### **Union Representing Employees Working in Ontario on Irregular Basis Certifiable**

This was a construction industry certification in which the employer's reply contended that it operated in Ontario only on an irregular basis and that it was located in Quebec. It argued that its labourers, who were mostly resident in Quebec, were subject to the Quebec construction decree, and hence were outside the jurisdiction of the Ontario Labour Relations Board.

The Board held that the Quebec decree applied only when the employees are working in that province. The fact of location in Quebec or that work in Ontario was only on an irregular and limited basis was no reason to deny certification to a union that otherwise met the requirements. A certificate was issued. (*Common Construction Company*, [1982] OLRB Rep. Sept. 1271).

#### **Minister's Authority to Appoint Nominee to Arbitration Board Challenged**

The employer was a sandblasting and painting contractor, most of whose work has been outside the construction industry. The employer did not dispute that it was bound by the terms of a provincial agreement for work performed in the ICI sector of the construction industry, but it refuted the contention of the union and the employer bargaining agency that the terms of the provincial agreement were also binding on it in the other sectors of the construction industry as well as on non-construction work. The employer declined to appoint a nominee to an arbitration board, claiming that the work in issue was all non-construction work and hence outside the scope of the agreement that the union was purporting to grieve under. The union requested the Minister to appoint a nominee to the board. The employer then objected to the Minister of Labour making such an appointment and the Minister referred the matter to the Board pursuant to section 107 of the Act.

Having regard to the scheme of provincial bargaining as set out in the Act and section 143(a), the Board stated that an employer, for whose employees the union holds bargaining rights but is

not a member of the employer bargaining agency, is bound by the terms of the provincial agreement with respect to only work done in the ICI sector of the construction industry. With respect to other sectors of the construction industry, and non-construction work, it would be up to the union and such an employer to negotiate one or more separate agreements.

The employer before the Board, however, was not in that position because he was a member of the employer bargaining agency which did have the authority to negotiate on the employer's behalf with respect to all other sectors of the construction industry as well as for non-construction work. The union and the employer bargaining agency had negotiated a single agreement which related to all types of work. Therefore, being a member of the agency, the employer was bound by the one collective agreement covering all sectors of the construction industry and non-construction work. Accordingly, the board found that the Minister did have the authority to appoint a nominee to the arbitration board. (*London Sandblasting & Painting Limited*, [1982] OLRB Rep. Sept. 1322).

#### **Referral of Grievance After Expiry of Collective Agreement**

Misco was bound by a provincial collective agreement which expired on April 30, 1982. It filed a grievance in timely fashion based on what occurred in January, 1982. The grievance was referred to the Board on July 9, 1982, that is, after the agreement had expired. The respondent union took the position that Misco was not entitled to resort to section 124 since at the time of referral it was no longer a "party to a collective agreement" within the meaning of that section. The union relied on a earlier arbitration decision (*Milltronics Ltd.*, 30 LAC (2d) 393) interpreting section 45 of the Act in that fashion.

The Board stated that the purpose of section 124 was to provide an expeditious, final and binding resolution to grievances in the construction industry. It examined previous Board decisions and an arbitration award interpreting the words "a party to a collective agreement" in other sections of the Act as including an applicant who was a party to a collective agreement at the time of the events giving rise to the grievance. The Board preferred such an interpretation to the narrower interpretation in *Milltronics* and held that it would entertain the referral. (*Misco Insulation Company Limited*, [1982] OLRB Rep. Sept. 1343).

#### **Scope Clause Expanded by Voluntary Recognition—No Bar to Certification Application for "Added On" Employees**

The Labourers' Local 1081, applied to be certified for construction labourers in the employ of the respondent in the Kitchener area. The Operating Engineers, Local 793, intervened and claimed that it held bargaining rights for the employees in question. The evidence was that Local 793 was certified for the respondent's equipment operators, but by a negotiated scope clause the unit was expanded to cover "all employees". The Board found that the labourers were not asked at the time whether they wished to be represented by Local 793. Local 1081 relying on section 60 of the Act, took the position that at the relevant time Local 793 was not entitled to represent labourers and therefore the application was timely.

The board held that the relevant time for ascertaining whether Local 793 was entitled to represent labourers was the time of recognition, i.e. the time the collective agreement was entered into. The Board rejected Local 793's argument that it was a certified union and that therefore section 60 did not apply. The Board found that it was not a certified union in relation to the



labourers. Thus the union had to show that it was "entitled to represent" the labourers at the relevant time and since it failed to do so, the certification application was held to be timely. (*Warren Bitulithic Limited*, [1982] OLRB Rep. Sept. 1375).

**Complaint Filed on Behalf of U.A. Local 46 Seeking Assignment of Work Being Performed by Members of CLAC Dismissed.**

The Toronto and Central Ontario Building Trades Council and U.A., Local 46 filed a jurisdictional dispute complaint seeking to have certain plumbing and pipefitting work assigned to its members. The employer Simcoe Mechanical Contracting Limited was party to a collective agreement with CLAC and assigned the work to its employees who were members of CLAC.

Simcoe had been the lowest bidder on tender called by the general contractor, but had not been awarded the sub-contract because the general contractor was bound by a collective agreement requiring the use of sub-contractors whose employees were members of a Council. The owner subsequently deleted the mechanical portion of the work from its contract with the general contractor and contracted directly with Simcoe to perform that work. The Council and Local 46 sought to have the owner have the work assigned to its members, but were unsuccessful.

The Board reviewed the various criteria applicable in resolving jurisdictional dispute complaints and found that although the criterion of area practice massively favoured the claim of Local 46, that factor alone was not sufficient to cause the Board to direct the transfer of work from CLAC to it.

The Board viewed the complaint as essentially an issue over representation rather than jurisdiction. The evidence was that two attempts to displace CLAC were unsuccessful. The Board noted that the Act contemplates the existence of CLAC and observed that a decision which found area practice to be predominant factor could result in CLAC being deprived of its bargaining rights throughout the province. (*Simcoe Mechanical Contracting Limited*, [1982] OLRB Rep. Sept. 1352).

**Status of Employees When Employer Becomes Bound by Province-Wide Agreement Containing Union-Shop Clause**

In this referral of a construction industry grievance the Board declared in an interim decision that, by the coming into effect of the deemed recognition provision in s.137(2) of the Act, the employer had become bound by the applicable province-wide collective agreement. At the hearing on remedies, the union requested *inter alia*, a direction that the employer discharge employees who were not members in good standing with the union and damages resulting from the employer's breach of the province-wide agreement.

The Board noted that the deemed recognition provision makes no reference to employee wishes and examining the purpose of the section, the Board concluded that it operated irrespective of employee wishes. The Board stated that once an employer becomes bound by the province-wide agreement through the operation of s.137(2), the union has a right, as well as a duty, to enforce it. In enforcing the union shop provision, the union is entitled to seek the discharge of employees who were not its members, provided that the employees in question had notice of their obligation to become members, and of the fact that they may be discharged if they do not fulfill their obligation. Since this issue had not previously been determined, and since there was

confusion as to the obligations of the parties, the Board held that the particular employees in question had such notice only upon the issuance of the Board's present decision. Therefore the Board directed the employer to discharge the employees, only if they fail to make application to become members of the union within five working days from the date of decision. The Board noted that s.46(2) would prevent the union from seeking the discharge of the employees, if, upon application being made, they are denied union membership for any of the reasons set out in clauses (c) through (g). It further noted that denial of membership for reasons not protected by s.46(2) may nevertheless be seen as a breach of the duty of fair representation.

On the facts of the case the Board held that damages would flow from the date the employer was put on alert by the union's grievance letter. (*Culliton Brothers Ltd.*, [1982] OLRB Rep. Nov. 1602).

### **Extent of Employer's Discretion to Reject Tradesman Referred Through Hiring Hall**

The grievor was a member of IBEW, Local 1788 and had been employed as an electrician at Hydro's job sites through a hiring hall, without complaint or incident. Then in 1975, the grievor was convicted under the *Criminal Code*, for unlawfully conspiring with several others to export controlled goods (namely, 15 semi-automatic military rifles) from Canada. The transcript of the trial revealed that the rifles were intended to be sent to Ireland by way of the U.S. The grievor was convicted and served 16 months of a 2 year jail sentence.

Upon his release in 1976 the union referred the grievor to Hydro's job sites once again. After initially refusing to hire, Hydro engaged in some discussion with the union and agreed to hire him. However in June 1982, when the grievor was referred to the Pickering nuclear generating station site, management refused to hire him, taking the position that he was "not suitable for employment". Several subsequent referrals of the grievor to nuclear and non-nuclear sites were also rejected on the same grounds. The union grieved, claiming that the refusal to hire was a breach of the collective agreement.

The company gave testimony to the effect that in February and March of 1982, it had received information through its Security Dept. and through newspaper reports, that the grievor was one of five Irish nationals arrested while crossing the Canada-U.S. border and that the grievor was facing charges in the U.S. including the charge of aiding and abetting illegal entry into the U.S. The newspaper reports alleged, *inter alia*, that during the arrests, immigration officials seized a shopping list of guns and ammunition to be purchased in the U.S. to be sent to North Ireland, and linked two of the Irish nationals arrested with the grievor to the IRA and the 1979 assassination of Lord Mountbatten. Hydro took the position that its refusal to hire the grievor was based on this information.

The IBEW submitted that the refusal to hire the grievor was tantamount to a discharge or discipline within the meaning of the collective agreement and that therefore the burden was on Hydro to justify its actions. It was further submitted that the charges against the grievor were not job related and that the collective agreement did not reserve a right to reject referrals. On behalf of Hydro, it was submitted that the agreement did not fetter the management's discretion to hire except for the responsibility to base its hiring decisions on reliability and competency. It was argued that as long as it hired only IBEW members, the agreement did not oblige Hydro to hire any particular member referred to it. Finally it was submitted that the "risk" presented by the grievor through his association with the IRA, justified its refusal to hire him.

The Board rejected Hydro's argument that in the absence of a specific and unequivocal encroachment on management's right to hire, it must be deemed to have an unfettered discretion. The Board reviewed the importance of hiring halls in the construction industry and pointed out that persons referred from a hiring hall are certified tradesmen possessing a minimum level of proficiency. Therefore, the Board held that in the absence of language reserving an unfettered hiring discretion, it was not unreasonable to infer that in agreeing to the particular hiring hall arrangement Hydro had also agreed to fetter its hiring discretion.

However, the Board went on to hold that this conclusion did not mean Hydro must hire all tradesmen referred, regardless of their reliability or competency. In interpreting the particular agreement the Board held that, while not specifically giving an unbridled discretion, the agreement also did not impose a standard of "just cause" or "correctness" on Hydro. The Board drew an analogy between the act of hiring through a hiring hall and the act of promotion in a non-construction context. The Board concluded that, as in promotion, the employer subject to a hiring hall arrangement must act reasonably, in good faith and without discrimination in assessing the reliability and competency of a tradesman referred through the hiring hall.

The legal onus was also placed on the trade union to establish that Hydro acted improperly in this respect. Applying this standard of "reasonableness" to the refusal to hire the grievor at the *nuclear sites*, the Board went on to hold that the employer was reasonably justified in its concerns about hiring the grievor at those sites. Consequently, the grievance was dismissed insofar as it related to the two nuclear sites. Having outlined the proper standard to be used in interpreting the hiring hall provision, the matter was remitted back to the parties to consider the implications of the award for the contested refusals to hire at various non-nuclear sites. (*Ontario Hydro*, [1983] OLRB Rep. Jan. 99).

### **Appropriate Bargaining Units in ICI Sector for Affiliated Bargaining Agents**

The United Brotherhood of Carpenters recently chartered Local 1030 to represent "helpers, including labourers and other construction workers, (excluding carpenters and carpenters apprentices who are employed in the ICI sector)." In five applications filed under s.144(5) of the Act, Local 1030 sought to be certified to represent labourers, cement finishers and waterproof applicators in the ICI sector in the province of Ontario and in all other sectors in several other Board areas.

Local 1030 took the position that it was not an affiliated bargaining agent (A.B.A.) and not represented by a designated bargaining agency, and that therefore it was eligible to apply under s.144(5) for a unit which would be appropriate under s.6(1). The intervener took the contrary position, that Local 1030 was an A.B.A. and therefore, labourers, when represented by Local 1030 would not constitute an appropriate bargaining unit under s. 144(1).

The Board found that Local 1030 satisfied the dual criteria of the definition of A.B.A. in s.137(1)(a) but was not an A.B.A. represented by the carpenters' employee bargaining agency (E.B.A.) because its charter excluded it from representing carpenters employed in the ICI sector. The Board however, found that there was no similar restriction with respect to the Millwright trade of the Carpenters Union. Therefore, the Millwrights' E.B.A., which was designated to represent in collective bargaining in the ICI sector, inter alia, any locals of the Carpenters Union chartered subsequent to its designation to represent Millwrights, was designated to represent Local 1030. That made Local 1030 an A.B.A. represented by the Millwrights E.B.A.

The Board went on to find that since the applications related to the ICI sector, they must be brought under s.144(1). By reading the definitions in the Act of "A.B.A." and "Provincial Agreement" together, the Board concluded that labourers, cement finishers and waterproof applicators, when represented by Local 1030, would be trades not covered by a provincial agreement of the Carpenters Union. Therefore, a unit comprised of those trades, when represented by an A.B.A. which was represented by an E.B.A., would not satisfy the definition of an appropriate unit prescribed by s.144(1).

The Board held that even were Local 1030 was not represented by the Carpenters' or Millwrights' E.B.A.'s and, therefore, eligible and certified under s. 144(5), it would be precluded by s.146(2) from binding the trades in question to any collective agreement other than the provincial agreement. (*Manacon Construction*, [1983] OLRB Rep. Mar. 407).

## VI COURT ACTIVITY

*A. J. Fish & Sons Limited,*  
**Supreme Court of Ontario, Toronto Motions Court,**  
**February 23, 1983; Unreported**

Upon receipt of an application for certification (Construction Industry) the Board served notice of the application together with the usual package of material on the employer. The employer did not file a reply, a list of employees, or specimen signatures, but returned the material to the Board and requested an explanation. The Registrar of the Board did not reply. Acting upon the information available, the Board issued a decision certifying the union.

Subsequently, the employer made certain allegations and requested the Board to reconsider its decision to certify and hold a hearing. The Board held that the allegations could have been filed with reasonable diligence prior to the Board's initial decision and refused to exercise its discretion to reconsider in the circumstances.

The employer and some of its employees applied for judicial review and for a stay of grievance arbitration proceedings before the Board. The Court adjourned the motion for a stay pending the disposition by the Board of the grievance arbitration. Subsequently, both the employer and employees discontinued their judicial review applications.

*Bellai Brothers Ltd.,*  
**Supreme Court of Ontario, Divisional Court,**  
**October 12, 1982; Unreported**

The union referred two grievances to the Board under section 124 of the Act. The first was a grievance over a work assignment and the other was a grievance alleging that the grievor, a union steward was discharged contrary to the collective agreement. At the hearing, the union, with the Board's consent, withdrew the work assignment grievance. The Board proceeded to hear the discharge grievance, allowed it and directed that the grievor be reinstated with compensation.

The employer sought judicial review of the Board's decision, submitting that the two grievances were related and that by permitting the withdrawal of one and proceeding with the other the Board had breached the rules of natural justice. The Court held that the only issue remaining before the Board was whether the grievor had interfered with the general progress of work at the project in carrying out his duties as a union steward and that the employer's case in this regard had not been prejudiced. The Court found no error in the Board's decision to permit the withdrawal of one grievance and to proceed with the other. The application was dismissed.

*Baltimore Aircoil Interamerican Corp.,*  
**Supreme Court of Canada,**  
**April 20, 1983; Unreported**

An application for leave to appeal to the Supreme Court of Canada from the decision of the Ontario Court of Appeal was dismissed. (See Ontario Labour Relations Board Annual Report, 1981-82.)

***Biltmore Stetson (Canada) Inc., et al,***  
**Supreme Court of Ontario, Toronto Motions Court,**  
**March 25, 1983, 41 O.R. (2d) 287; 83 CLLC ¶14,037**

The employer had advised the incumbent union that it was entering into an agreement of purchase and sale, whereupon the union served notice to bargain under section 63 of the *Labour Relations Act* upon the purchaser. After the notice had been given and the sale had taken place, an application for certification was filed by a union seeking to displace the incumbent union.

At the hearing, the incumbent union challenged the timeliness of the certification application. The Board concluded on the evidence that notice to bargain had been given to the purchaser employer one day before the sale of the business occurred. The issue was whether the notice to bargain barred the later certification application for one year pursuant to section 63(10).

The Board concluded that the notice was effective notwithstanding that it had been given prior to the sale. The Board held that the "earliness" was cured by the passage of time because the notice was still "speaking" on the day the sale took place. Having found that there was effective notice, the Board held that by operation of section 63(10), no application for certification may be made for one year from the effective date of the notice to bargain and therefore the application for certification was untimely.

The applicant union sought and was granted leave to bring a judicial review application before a single judge of the High Court on the grounds of urgency. The Court, in dealing with the application for judicial review, held that the proper question for the Board was whether notice had been given after the sale and that the Board incorrectly concerned itself with the question of whether a notice given before the sale could be treated as "effective". The court concluded that the Board's error in asking the wrong question was so fundamentally erroneous as to justify court intervention. The court quashed the decision of the Board and remitted the matter back to the Board to be dealt with in light of the court's decision.

An application for leave to appeal the decision to the Court of Appeal is pending.

***Cadbury Schweppes Powell Inc.,***  
**Supreme Court of Ontario, Divisional Court,**  
**July 15, 1982, 15 A.C.W.S. (2d) 194**

The Mechanical Contractors Association of Ontario, a designated Employer Bargaining Agency and the Plumbers and Pipefitters Employee Bargaining Agency did not reach an agreement renewing their provincial agreement in the ICI sector and a province-wide strike ensued. Local 463 of the Plumbers' Union was an affiliated bargaining agent and was bound by the terms of the designation issued to the Employee Bargaining Agency. Local 463 entered into a "maintenance agreement" with a contractor, who was bound by the terms of the designation order issued to the Mechanical Contractors Association of Ontario. Under this agreement, after the commencement of the strike, Local 463 supplied the contractor with workers to perform ICI work at a construction project owned by Cadbury Schweppes Powell Inc.

Upon a complaint by the M.C.A.O., the Board held that the "maintenance agreement" was in violation of section 146(2) and further that assigning its members to work during a province-wide strike, Local 463 had violated section 148(1) of the Act. A cease and desist order was issued

against the union and its officials, thereby resulting in the shutdown of the construction work which had been performed for Cadbury.

Cadbury applied for judicial review and sought a stay of the Board's order. The application for a stay of the Board's order was dismissed by the Divisional Court. A notice of motion seeking leave to appeal that decision was filed and later abandoned. The application for judicial review is not proceeding further.

***Can-Am Acoustics Limited***  
**Supreme Court of Ontario, Divisional Court,**  
**October 27, 1982; London Motions Court,**  
**November 23, 1982; Unreported**

An application for certification was filed with the Board in which certain employees had filed a timely petition in opposition to the union. The union also relied on section 1(4) of the Act. The Board scheduled a hearing of the certification application since both the union and the company had made allegations against each other. The Board had inadvertently failed to give notice of the hearing to the objecting employees.

At the hearing, the Board was advised that the allegations of the union and the company were withdrawn and the only issue remaining was the degree of membership support enjoyed by the Union. The Board determined at the hearing that none of the persons who signed the petition had previously joined the union and that therefore the petition could not affect the union's level of membership support. However, since the objectors had not received notice of the hearing, the Board held the certification in abeyance, sent copies of its decision to the objectors and permitted the objectors to make any representations they wished to make. The objectors, through their counsel wrote to the Board claiming that there had been a denial of natural justice by the failure of the Board to give notice.

The Board then scheduled a second hearing and permitted the objectors to present any evidence or make any representations with respect to the matters in issue. However, beyond reiterating that there had been a breach of natural justice by failing to give notice of the first hearing, counsel for the applicant failed to present any evidence or submissions to the Board. The Board dismissed the objections of the applicants and certified the union.

The applicants filed an application for judicial review in the Divisional Court and sought a stay of the Board's decision pending the hearing of their application for judicial review. The application for a stay was denied. A further application for judicial review before a single judge of the High Court was filed. The Court refused to grant leave to bring the matter before a single judge and the application was therefore dismissed. The first application for judicial review was also subsequently dismissed on consent of the parties.

***Emrick Plastics Inc.,***  
**Supreme Court of Ontario, Divisional Court,**  
**October 18, 1982; Unreported**

Pending an application for judicial review, the employer sought a stay of the Board's decision wherein it held that as a result of a sale of a business taking place, the employer had become bound to a collective agreement. The court dismissed the application for a stay. The application for judicial review was abandoned subsequently.

***Inducon Development Corporation et al,***  
**Supreme Court of Ontario, Toronto Motions Court,**  
**May 14, 1982, Unreported;**  
**Divisional Court, November 29, 1982, Unreported;**  
**Divisional Court, December 16, 1982, 40 O.R. (2d) 539; Court of Appeal, February 21, 1982,**  
**Unreported**

In a grievance referred to the Board pursuant to section 124 of the Act, the Board declared that several employers constituted "a single employer" under section 1(4) and that by virtue of section 137(2), the employers were deemed to have recognized the trade union as bargaining agent for the employers' carpenters working in the ICI sector of the construction industry.

The employer and employees applied for judicial review before a single judge of the High Court. Although leave to bring the application was denied, the Court, on its motion granted a stay of the Board's decision. (See Ontario Labour Relation Board Annual Report, 1981-1982.) Although leave to appeal the decision granting the stay was obtained, the appeal was not pursued further. The applicants also sought to adjourn the hearing of the judicial review application, and were refused.

Before the Divisional Court on the hearing of the judicial review application, three submissions were made by the applicants. Firstly, it was submitted that in applying sections 1(4) and 137(2) the Board failed to take into account the fundamental principle of the Act that employees and employers are free to choose whether and by whom they will be represented in collective bargaining. Secondly, it was argued that in the absence of evidence, the Board found that the employers were represented by a designated or accredited employer bargaining agency. Thirdly, it was argued that section 137(2) is of no force and effect as being contrary to the *Canadian Charter of Rights and Freedoms*.

Dealing with the third submission first the Court held that the Charter had no application in an application for judicial review of a Board decision which was made before the date of proclamation of the Charter. As to the first issue, the Court concluded that section 1(4) does not make it essential for the Board to consider the wishes and desires of employees. The Court held that section 137(2) provides that if an employer is bound by a provincial collective agreement anywhere in the province that employer becomes bound by that agreement throughout the province in respect of construction work performed in the ICI sector. The Court stated that "this is an essential part of a scheme of legislation to provide effective province-wide bargaining..." and that the legislature had seen fit to limit the employees' rights in the interest of attempting to make collective bargaining responsive to the needs of the construction industry. As to the second issue, the Court found that the Board had before it evidence as to the ministerial designation, which was the only evidence necessary in order for the Board to make the finding that the employers were represented by the employer bargaining agency. Thus, the Divisional Court dismissed the application for judicial review.

The applicants applied for and received leave to appeal the decision of the Divisional Court. The appeal is presently pending before the Court of Appeal.



***Karvon Construction Limited,***  
**Supreme Court of Ontario, Toronto Motions Court,**  
**October 1, 1982; Unreported**

The Board had certified the Labourer's Union, Local 183 with respect to certain employees of the employer. The employer sought to re-open the matter on the basis that it had not filed a reply or in any other manner opposed the application, relying on certain representations made to it by a member of the Board's staff. This request for re-opening was denied by the Board. In the interim, notice to bargain had been given, conciliation under the Act had been exhausted and lawful picketing of the employer's projects had commenced.

The employer applied for judicial review of the Board decision before a single judge of the High Court and also sought an injunction to restrain the picketing. The Court, taking into account the lack of action by the employer with respect to the original hearing before the Board and the fact that pursuant to a second request the Board had scheduled a hearing in the matter, the injunction was refused. The application was dismissed without prejudice to the right of the employer to bring a new application after the Board's disposition of the request for reconsideration.

***Maple Leaf Taxi Company Ltd.,***  
**Supreme Court of Ontario, Divisional Court,**  
**December 16, 1982; Unreported**

The trade union applied for certification with respect to certain owner-operators and taxi-drivers of the employer. The employer disputed the number of individuals subject to the application and also took the position that some or all of those individuals were not employees for purposes of the Act. In addition, the employer alleged that the union had miscondacted itself in obtaining its membership evidence. After the appointment of a labour relations officer the parties had several meetings and were able to resolve all of the matters in dispute between them. The parties also agreed to dispose of the certification application without a hearing. In accordance with the agreement of the parties, the Board certified the trade union.

More than ten months after the date of certification, the employer requested that the Board reconsider and set aside the certificate. The employer contended that it was not initially represented by legal counsel in this matter and that if it had the benefit of legal advice, it would not have agreed to the Board's disposition of the matter. The Board stated that to accede to the employer's request for reconsideration would make nonsense of the settlement process and held that this was not an appropriate case for reconsideration.

Subsequently, the Board received an unfair labour practice complaint, whereby the union alleged that the employer was repudiating a collective agreement that had been entered into between the union and the employer. The employer contended that it was not bound by the agreement in question since the person who purported to sign on behalf of the employer had no authority to do so and that in any event the Board should defer this matter to arbitration. The Board reiterated its policy of not deferring to arbitration where there is an allegation of total repudiation of a first collective agreement and went on to find that the employer was bound by the collective agreement. The employer was directed to apply the agreement retroactively to its effective date.

The employer sought judicial review and a stay of the Board's decisions in both the certification and unfair labour practice matters. When the stay application came on for a hearing, it was dismissed on the ground that there was no *prima facie* case for a judicial review. The application for judicial review was subsequently withdrawn.

***Mechanical Contractors Association of Ontario,***  
**Supreme Court of Ontario, Divisional Court,**  
**May 2, 1982; Unreported**

The Mechanical Contractors Association of Ontario had applied to the Board for a cease and desist order alleging that the Plumbers' Local 463 had engaged in an unlawful strike contrary to section 148 of the Act. The Board found that the Union had violated that provision of the Act by continuing to engage in a strike for almost two weeks when they were aware that some affiliated bargaining agents had either not called or authorized a strike or had called or authorized a strike for a much shorter period and therefore issued a cease and desist order.

The Court, in dismissing an application for judicial review filed by the union seeking to set aside and quash this decision, commented that in the light of the province-wide bargaining provisions of the Act, the Board's interpretation of section 148 was reasonable.

***Medi-Park Lodges Inc.,***  
**Supreme Court of Ontario, Divisional Court,**  
**December 6, 1982; 83 CLC ¶14,016; 17 A.C.W.S. (2d) 241**

In a previous decision in 1977, the Board had dismissed an application for certification filed by the Service Employees' Union, Local 204, holding that the employer's registered nurses exercised managerial functions within the meaning of s. 1(3)(b) of the *Labour Relations Act*. In 1980, when the Ontario Nurses Association applied for certification with respect to the same persons, the respondent's contention that the matter was *res judicata* as a result of the Board's prior decision, was rejected by the Board. In November, 1981 the Divisional Court dismissed the employer's application for judicial review to set aside this ruling of the Board. (See the Ontario Labour Relations board Annual Report, 1981-82).

The Board, in accordance with its usual practice had appointed a labour relations officer to inquire into the duties and responsibilities of the registered nurses in question. At the hearing, the Board received submissions from the parties on the officer's report and concluded that the registered nurses did not exercise managerial functions and were therefore employees under the Act. The employer sought to quash this finding by way of judicial review, on the ground that the Board exceeded its jurisdiction by considering extraneous matters in determining whether the persons in issue exercised managerial functions within the meaning of section 1(3)(b) of the Act.

The court stated that the determination that persons do not exercise managerial functions is a finding of fact within the Board's exclusive jurisdiction. The Court concluded that "the Board's reference to unionization in other facilities of the applicant, as well as the consideration of developing themes in relation to the role of professionals in collective bargaining are matters within the expertise of the Board which it can consider in evaluating the case before it." The court further stated that "The fact that the Board considered decisions made in earlier and other cases involving similar applications does not, in our view, constitute an examination of extraneous matters, but rather, a consideration of matters which the Board is perfectly entitled to consider when bringing its specialized knowledge and expertise in labour relations to bear on the

application for certification". In the result the Court concluded that the Board did not exceed its jurisdiction and the application was dismissed.

***Joseph Neblett and U.A., Local 46,***  
**Supreme Court of Ontario, Divisional Court,**  
**June 2, 1982; Unreported**

An application for judicial review of the Board's decision dismissing a complaint that the union had breached its duty of fair representation by maintaining two divisions within the Union, a commercial division and a residential division and by recommending members in its commercial division in priority over members in its residential division to commercial jobs, was filed by the unsuccessful complainant. In support of the application, the complainant tendered affidavit evidence relating to the merits of the complaint against the Union.

The Court rejected the affidavit evidence filed by the applicant and in dismissing the application held that there was no merit in the application for judicial review.

***Operative Plasterers' and Cement Masons' International Association, Local 214,***  
**Supreme Court of Ontario, Divisional Court,**  
**May 10, 1982; Unreported**

This was an application for judicial review brought by the Operative Plasterers' Local 124, seeking to set aside and quash a series of Board decisions, whereby the Labourers' Union, Local 527 was certified for units of labourers and cement masons with respect to employees of a number of employers. The applicant alleged that the Board had made fundamental errors of law and had exceeded its jurisdiction in a number of ways. The Court, in dismissing the application, held that there was no error in the Board's decision or in its interpretation of the Act.

***Sigal Shirt Company Limited***  
**Supreme Court of Ontario, Divisional Court,**  
**June 3, 1982; Unreported**

The Board held that notwithstanding a settlement reached between the parties of a previous unfair labour practice complaint, it would entertain evidence relating to the alleged employer conduct which was the subject of the settlement in a subsequent application for certification under s. 8. The Board held that this evidence would be permitted, not for the purpose of establishing a breach of the Act, but rather for the purpose of determining whether the true wishes of the employees are, in the circumstances, not likely to be ascertained.

The employer filed an application for judicial review of that decision and also sought an order staying the decision. The application for a stay was dismissed and employer subsequently discontinued the application for judicial review.

***Stage 212 Hotel, 010213 Ontario Limited,***  
**Supreme Court of Ontario, Divisional Court,**  
**March 22, 1983; Unreported**

The employer filed an application for judicial review of a Board decision certifying the trade union. The evidence before the Board was that certain employees had signed a petition opposing the union's certification application and at their request, the employer transmitted the petition to

the Board. In the process, the employer became aware of the contents of the document and thereafter at the Board hearing, the employer called the employee who represented the group of objecting employees, as its own witness.

The Board drew a distinction between a petition that is placed before the Board by the objecting employees and one which is submitted by an employer. The Board concluded that it would inquire into a petition only where it is filed by employees and therefore declined to do so in the circumstances of this case.

On judicial review the Court stated that it saw no error in the Board seeing fit to draw such a distinction and the application was dismissed.

## VII CASELOAD

In fiscal year 1982-83, the Board received a total of 2,762 applications and complaints, an increase of only 16 cases over the intake of 2,749 cases in 1981-82. Applications for certification of trade unions as bargaining agents, one of the three major categories of the Board caseload, decreased by 30 percent from last year's filings. However, the other two major categories—complaints of contravention of the Act and referrals of grievances under construction industry collective agreements—increased by 13 percent and 51 percent, respectively. (Tables 1 and 2).

In addition to the cases received, 427 were carried over from the previous year, making a total caseload of 3,189 in 1982-83. Of the total, 2,445, or 77 percent, were disposed of during the year; proceedings in 332 were adjourned sine die\* (without a fixed date for further action) at the request of the parties, and 412 were pending in various stages of processing at March 31, 1983.

The total number of cases processed during the year produced an average workload of 266 cases for the Board's full-time chairman and vice-chairmen, and the total disposition represented an average output of 204 cases.

### Labour Relations Officer Activity

In 1982-83, the Board's labour relations officers were assigned a total of 1,680 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 53 percent of the Board's total caseload, and included 276 certification applications, 39 cases concerning the status of individuals as employees under the Act, 695 complaints of alleged contraventions of the Act, 645 grievances under construction industry collective agreements, and 25 complaints under the Occupational Health and Safety Act. (Table 3).

The labour relations officers completed activity in 1,384 of the assignments, obtaining settlements in 1,213 or 88 percent. They referred 173 cases to the Board for decisions, proceedings were adjourned sine die in 93 cases, and settlement efforts were continuing in the remaining 203 cases at March 31, 1983.

Labour relations officers were also successful in having hearings waived by the parites in 155, or 70 percent, of 214 certification applications assigned for this purpose.

### Representation Votes

In 1982-83, the Board's returning officers conducted and counted the results of 200 representation votes held among employees in one or more bargaining units in cases that were either disposed of during the year or in which a final decision closing the case had not been issued by the Board by March 31, 1983. Of the total votes, 149 involved certification applications, and 51 were held in applications for termination of existing bargaining rights. (Table 5).

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\*The Board regards sine die cases as disposed of, although they are kept on docket for one year.

applications were processed in a median of 25 days, a drop of 4 days from 1981-82; complaints of contraventions of the Act took 29 days, compared to 31 days in 1981-82; referrals of construction industry grievances required 17 days, compared to 18 days in 1981-82; and the median time for the total of all other cases dropped to 60 days from 62 days in 1981-82.

More than 80 percent of all dispositions were accomplished in 84 days (3 months) or less, compared to 88 percent for certification applications, 79 percent for complaints of contraventions of the Act, 85 percent for referrals of construction industry grievances, and 62 percent for the total of all other types of cases. The number of cases requiring more than 169 days (6 months) to complete dropped to 199 from 228 in 1981-82.

### Adjournments

The following table illustrates the number of cases in each month where hearings were adjourned on the consent of all parties to the case, and the total delay they caused.

Adjourned on Consent		
Month	Total Cases Involved	Total Delay (in Weeks)
1982		
April	25	86
May	7	57½
June	24	120
July	26	86½
August	24	60½
September	17	146½
October	27	107½
November	19	53
December	21	59
1983		
January	29	74½
February	19	42½
March	8	23½
Total	276	917

### Certification of Bargaining Agents

In 1982-83, the Board received 758 applications for certification of trade unions as bargaining agents of employees, a drop of 331 or 30 percent from 1981-82. (Tables 1 and 2).

The applications were filed by 87 trade unions, including 22 employee associations. Ten of the unions, each with more than 20 applications, accounted for 65 percent of the total filings: Carpenters (100 cases), labourers (73 cases), Public Employees (CUPE) (62 cases), Service Employees International (60 cases), Teamsters (38 cases), International Operating Engineers (35 cases), Hotel Employees (34 cases), Retail Wholesale Employees (33 cases), Food and Commercial Workers (32 cases), and Ontario Public Service Employees (26 cases). In contrast, 68 percent of

the unions filed fewer than 5 applications, with the majority making just one application. These unions together accounted for 11 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 80 percent of the applications received, concentrated in construction (229 cases), health and welfare services (122 cases), accommodation and food services (54 cases), miscellaneous services (33 cases), and retail trade (30 cases). These five groups comprised 62 percent of the total non-manufacturing applications. Of the 154 applications involving establishments in manufacturing industries, 48 percent were in five groups: food and beverage (27 cases), metal fabricating (18 cases), clothing (15 cases), non-metallic mineral products (14 cases), and miscellaneous manufacturing (12 cases).

In addition to the applications received, 131 cases were carried over from last year, making a total certification caseload of 886 in 1982-83. Of the total, 767 were disposed of, proceedings were adjourned in 14 cases, and 108 cases were pending at March 31, 1983. Of the 767 dispositions, certification was granted in 514 cases including 37 in which interim certificates were issued under section 6(2) of the Act, and 4 that were certified under section 8; 142 cases were dismissed; proceedings were terminated in 4 cases; and 107 cases were withdrawn. The certified cases represented 67 percent of the total dispositions, compared to 65 percent in 1981-82.

Of the 656 applications that were either certified or dismissed, final decisions in 159 cases were based on the results of representation votes. Of the 156 votes conducted, 76 involved a single union on the ballot, and 80 were held between two unions, of which 79 affected incumbent bargaining agents and one involved two applicants with a choice of no representation. Applicants won in 78 of the votes and lost in the other 79.

A total of 10,789 employees were eligible to vote in the 156 votes, of whom 8,533 or 79 percent cast ballots. In the 78 votes that were won and resulted in certification, 3,785 or 81 percent of the 4,699 employees eligible to vote cast ballots, and of these voters 2,750 or 73 percent favoured union representation. In the 79 elections that were lost and resulted in dismissal, 4,748 or 78 percent of the 6,090 eligible employees participated, and of these only 33 percent voted for union representation. (Table 6).

Small bargaining units continued to be the predominant pattern of union organizing efforts through the certification process in 1982-83. The average size of the 514 applications that were certified was 27 employees, compared to 28 in 1981-82. Units in construction certifications averaged 6 employees compared to 7 in 1981-82, and in non-construction certifications they averaged 36 employees as in 1981-82. Eighty-two percent of the total certifications, including all except one in construction, involved units of fewer than 40 employees and about 50 percent applied to units of fewer than 10 employees. The total number of employees covered by the 514 certified cases dropped to 14,272 from 20,031 in 1981-82.

Improvements were made for the second consecutive year in the time taken by the Board to process applications in which certification was granted. A median time of 23 calendar days was required to complete the 514 certified cases from receipt to disposition, compared to 25 days in 1981-82. For non-construction certifications the median time was 24 days compared to 26 days in 1981-82, and for construction certifications the median time was 17 days, compared to 20 days in 1981-82.

Ninety-two percent of the 514 certified cases were disposed of in 84 days (3 months) or less, 85 percent took 56 days (2 months) or less, 64 percent required 28 days (one month) or less, and 49 percent were processed in 21 days (3 weeks) or less. Only 14 cases required longer than 168 days (6 months) to process, compared to 43 cases in 1981-82.

### **Termination of Bargaining Rights**

In 1982-83, the Board received 115 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions, 17 more than in 1981-82. In addition, 32 cases were carried over from 1981-82.

Of the total cases processed bargaining rights were terminated in 62 cases, 35 cases were dismissed, 21 were withdrawn, proceedings were terminated or adjourned sine die in 3 cases, and 26 cases were pending at March 31, 1983.

Unions lost the right to represent 1,399 employees in the 62 cases in which termination was granted, but retained bargaining rights for 1,829 employees in the 56 cases that were either dismissed or withdrawn.

Of the 97 cases that were either granted or dismissed, dispositions in 46 were based on the results of representation votes. A total of 1,309 employees were eligible to vote in the 48 elections that were held, of whom 1,203 or 92 percent cast ballots. Of those who cast ballots, 315 voted for continued representation by unions and 666 voted against.

### **Declaration of Successor Trade Union**

In 1982-83, the Board dealt with 10 applications for declarations under section 62 of the Act on the bargaining rights of successor trade unions resulting from a union merger or transfer of jurisdiction.

Affirmative declarations were issued by the Board in 7 cases, 7 cases were dismissed, and one was withdrawn.

### **Declaration of Successor or Related Employer**

In 1982-83, the Board dealt with 107 applications for declarations under section 63 of the Act on the bargaining rights of trade unions at successor employers resulting from a business role, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 15 cases, 49 cases were either settled or withdrawn by the parties, 14 cases were dismissed, 14 were adjourned sine die, and 23 were pending at March 31, 1983.

### **Accreditation of Employer Organizations**

Three applications were processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction



industry. Accreditation was granted in two cases to represent 60 companies employing 391 construction workers, and one case was dismissed.

### **Declaration and Direction of Unlawful Strike**

In 1982-83, the Board dealt with 21 applications seeking directions under section 92 of the Act against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 3 cases, 13 cases were withdrawn, 3 were adjourned sine die, and 2 were pending at March 31, 1983.

Fifty-four applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. Directions were issued in 14 cases, 4 cases were dismissed, 23 were either withdrawn or settled by the parties, proceedings were terminated in 2 cases, and 11 cases were adjourned sine die.

### **Declaration and Direction of Unlawful Lock-out**

Three applications were processed in 1982-83, seeking declarations under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. One case was dismissed, one was withdrawn, and one was pending at March 31, 1983.

### **Complaints of Contravention of Act**

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. Such cases have increased substantially since 1975. In handling these cases the Board emphasizes voluntary settlements by the parties involved with the assistance of a labour relations officer.

In 1982-83, the Board received 724 section 89 complaints, an increase of 13 percent over the 640 filed in 1981-82. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in good faith under section 15. They were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 101 cases were carried over from 1981-82. Of the 825 total processed, 674 were disposed of, proceedings were adjourned sine die in 38 cases, and 113 cases were pending at March 31, 1983.

In 549 or 82 percent of the 674 dispositions, voluntary settlements and withdrawal of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 41 cases, 74 cases were dismissed, and proceedings were terminated in the remaining 10 cases.

In the settlements secured by labour relations officers compensation amounting to more than \$241,800 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 41 cases in which violations of the Act were found by the board, employers and unions were ordered to pay full compensation to 97 employees for wages and benefits lost in a specified period.

Seventy-nine of the employees were also ordered reinstated, and 10 others for whom no monetary remedy was awarded.

In addition, employers in 22 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 11 other cases.

### **Construction Industry Grievances**

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board emphasizes voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1982-83, the Board received 831 cases under section 124, and increase of 51 percent over the 551 filed in 1981-82. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and alleged violation of the sub-contracting and hiring arrangements.

In addition to the cases received, 75 were carried over from 1981-82. Of the 906 total processed, 577 were disposed of, proceedings were adjourned sine die in 243 cases, and 86 cases were pending at March 31, 1983.

In 510 or 88 percent of the 577 dispositions, voluntary settlements and withdrawal of the grievance were obtained by labour relations officers (Table 4), awards were made by the Board in 34 cases, 24 cases were dismissed and proceedings were terminated in the remaining 9 cases.

Payments totalling more than \$976,500 were recovered for unions and employees in the cases settled by labour relations officers and those in which Board awards were made.

## **MISCELLANEOUS APPLICATIONS AND COMPLAINTS**

### **Rights of Access**

In 1982-83, the Board dealt with two applications in which the union sought access to the employer's property under section 11 of the Act. Access was granted in one case and the other case was pending at March 31, 1983.

### **Religious Exemption**

Twelve applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemption was granted in 4 cases, 6 cases were dismissed, one was withdrawn, and one was pending at March 31, 1983.

### **Early Termination of Collective Agreements**

Fifteen applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 10 cases, and 5 were pending at March 31, 1983.

### **Union Financial Statements**

Twelve complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements on the union's affairs. Proceedings were terminated in 3 cases, 2 cases were settled, and 7 were pending at March 31, 1983.

### **Jurisdictional Disputes**

Forty-four complaints were dealt with under section 91 of the Act, involving union work jurisdiction. An assignment of the work in dispute was made by the Board in 6 cases, 4 cases were dismissed, 9 were settled or withdrawn, proceedings were terminated or adjourned sine die in 10 cases, and 15 cases were pending at March 31, 1983.

### **Determination of Employee Status**

The Board dealt with 66 applications under section 106 (2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-six cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by the Board in 14 cases, in which 9 of the 23 persons in dispute were found to be employees under the Act. Proceedings were terminated or adjourned sine die in 7 cases, and 9 cases were pending at March 31, 1983.

### **Referrals by Minister of Labour**

In 1982-83, the Board dealt with 16 cases referred by the Minister under section 107 of the Act for opinions on questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under section 44 or 45. Determinations were made in 12 cases, in 9 of which the Board declared the Minister's authority to appoint a conciliation officer, one case was settled by the parties, proceedings were terminated in two cases and one case was pending at March 31, 1983.

The Board dealt with two cases referred by the Minister under section 139(4) of the Act, concerning the designations of an employee bargaining agency and an employer bargaining agency in the industrial, commercial and institutional sector of the construction industry. The Board advised the Minister that a change was appropriate to the designation of the employer bargaining agency in one case, and that no change was warranted to the designation of the employee bargaining agency in the other case.

### **Trusteeship Reports**

Five statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

### **Occupational Health and Safety Act**

In 1982-83, the Board received 26 complaints under section 24 of the *Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting compliance with this Act. Five cases were carried over from 1981-82.

Of the total cases processed, 21 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4), 2 were granted and 2 were dismissed by the Board, and the remaining 6 were pending at March 31, 1983.

#### **Colleges Collective Bargaining Act**

In 1982-83, the Board received 26 complaints under section 24 of the *Occupational Health and Safety Act*, alleging wrongful discipline or discharge of employees for acting in compliance with this Act. Five cases were carried over from 1981-82.

Three applications were dealt with under section 82 of the Act for decisions on the status of individuals as employees under the Act. Two cases were settled with the assistance of a labour relations officer, and in the other case the Board determined that the six employees involved were not included in the bargaining unit.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt by the Board are included in Table 1.

## VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The *Ontario Labour Relations Board Monthly Report*, a monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

*A Guide to the Ontario Labour Relations Act*, a booklet explaining in laymen's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is available in French.

*Monthly Highlights*, a publication in leaflet form containing brief summaries of significant Board decisions on a monthly basis. This new publication which commenced during the year under review also contains Board notices of interest to the industrial relations community and information relating to new appointments, retirements and other internal developments.

*Pamphlets*, the two pamphlets published by the Board to date ("Rights of Employees, Employers, and Trade Unions" and "Certification by the Ontario Labour Relations Board") have been well received. These pamphlets have been translated into French, Italian and Portuguese. The Board will shortly be publishing a third pamphlet entitled, "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board."

During the year, the Board published a revised construction industry map depicting the geographic areas in the province used by the Board in certification applications relating to the construction industry.

All of the Board's publications may be obtained by calling, writing, or visiting the Board's offices.

## **IX            STAFF AND BUDGET**

At the end of the fiscal year 1982-83, the Board employed a total of 94 persons on a full time basis. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$4,272,800.00.

Table 1

# Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1982-83

Disposed of Fiscal Year 1982-83												
Type of Case	Caseload		Received Fiscal Year 1982-83	Disposed of Fiscal Year 1982-83							Pending March 31, 83	
	Total	April 1, 82		Pending	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled		Sine Die
Total	3,189	427	2,762	2,445	731	321	49	554	790	332	412	
Certification of Bargaining agents	889	131	758	767	514	142	4	107	—	14	108	
Declaration of Termination of Bargaining Rights	147	32	115	120	62	35	2	21	—	1	26	
Declaration of Successor Trade Union	10	6	4	10	4	5	—	1	—	—	—	
Declaration of Successor Employer or Common Employer Status	107	23	84	72	18	10	2	25	17	9	26	
Accreditation	3	2	1	3	2	1	—	—	—	—	—	
Declaration of Unlawful Strike	—	—	—	—	—	—	—	—	—	—	—	
Declaration of Unlawful Lockout	3	—	3	2	—	—	1	1	—	—	1	
Direction respecting Unlawful Strike	75	1	74	59	17	4	2	31	5	14	2	
Direction respecting Unlawful Lockout	3	1	2	2	—	1	—	1	—	—	1	
Consent to Prosecute	21	3	18	17	—	1	10	6	—	—	4	
Contravention of Act	825	101	724	674	41	74	10	221	328	38	113	
Right to Access	2	—	2	1	1	—	—	—	—	—	1	
Exemption from Union Security Provision in Collective Agreement	12	3	9	11	4	6	—	1	—	—	1	
Early Termination of Collective Agreement	15	1	14	10	10	—	—	—	—	—	5	
Trade Union Financial Statement	12	—	12	5	—	—	3	—	2	—	7	
Jurisdictional Dispute	44	20	24	22	6	4	3	6	3	7	15	
Referral on Employee Status	66	16	50	51	6	8	1	20	16	6	9	

Table 1 (Cont'd.)

## Total Applications and Complaints Received, Disposed of and Pending

Fiscal Year 1982-83

Referral from Minister on Appointment of Conciliation Officer or Arbitrator	16	6	10	15	9	3	2	—	1	—	1
Referral of Construction Industry Grievance	906	75	831	577	34	24	9	104	406	243	86
Referral from Minister on Construction Bargaining Agency	2	1	1	2	1	1	—	—	—	—	—
Complaint under Occupational Health and Safety Act	31	5	26	25	2	2	—	9	12	—	6

\* Includes cases in which a request was granted or a determination made by the Board.



Table 2

Applications and Complaints Received and Disposed of  
Fiscal Years 1978-79 to 1982-83

Type of Case	Number Received, Fiscal Year					Number Disposed of, Fiscal Year				
	Total	1978-79	1979-80	1980-81	1981-82	Total	1978-79	1979-80	1980-81	1982-83
<b>Total</b>	<b>13,008</b>	<b>2,179</b>	<b>2,482</b>	<b>2,836</b>	<b>2,749</b>	<b>12,083</b>	<b>2,071</b>	<b>2,248</b>	<b>2,711</b>	<b>2,608</b>
Certification of bargaining agents	5,154	1,019	1,136	1,152	1,089	758	1,022	1,103	1,178	1,101
Declaration of termination of bargaining rights	502	115	70	104	98	115	110	72	111	78
Declaration of successor trade union of employer	276	74	50	55	50	47	61	55	54	35
Declaration of common employer status	166	22	30	37	36	41	26	28	29	30
Accreditation	7	—	3	2	1	1	1	3	5	—
Declaration of unlawful strike or lockout	37	9	15	6	4	3	12	11	7	3
Directions respecting unlawful strike or lockout	373	84	78	76	59	76	62	51	47	34
Consent to prosecute	162	57	48	22	17	18	52	50	23	10
Contravention of Act	3,130	454	607	705	640	724	402	522	704	622
Referral of construction industry grievance	2,458	238	321	517	551	831	203	227	421	516
Miscellaneous	743	107	124	160	204	148	120	126	132	179
										142

**Table 3**
**Labour Relations Officer Activity in Cases Processed\***  
**Fiscal Year 1982-83**

Type of Case	Cases in Which Activity Completed						
	Total Cases Assigned	Settled			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
<b>Total</b>	<b>1,680</b>	<b>1,384</b>	<b>1,213</b>	<b>87.6</b>	<b>173</b>	<b>93</b>	<b>203</b>
Certification							
Interim certificate	33	20	20	100.0	—	2	11
Pre-hearing application	76	71	65	91.5	6	—	5
Other application	167	153	108	70.6	45	—	14
Contravention of Act	695	566	496	87.6	71	35	93
Construction industry grievance	645	519	476	91.7	43	52	74
Employee status	39	38	27	71.1	7	4	1
Occupational Health and Safety Act	25	20	19	95.0	1	—	5

\* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

**Table 4****Labour Relations Officer Settlements in Cases Disposed of\***  
**Fiscal Year 1982-83**

<b>Type of Case</b>	<b>Total Disposed of</b>	<b>Officer Settlements</b>	
		<b>Number</b>	<b>Percent of Dispositions</b>
<b>Total</b>	<b>1,327</b>	<b>1,116</b>	<b>84.1</b>
Contravention of Act	674	549	81.5
Construction industry grievance	577	510	88.3
Employee status	51	36	70.6
Occupational Health and Safety Act	25	21	84.0

\* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

**Table 5**
**Results of Representation Votes Conducted\***  
**Fiscal Year 1982-83**

	Number of Votes	Eligible Employees	Ballots Cast		
			Total	For Unions	Against Unions
<b>Total</b>	<b>200</b>	<b>11,473</b>	<b>9,153</b>	<b>4,304</b>	<b>4,849</b>
Certification	149	10,133	7,928	3,982	3,946
Pre-hearing cases					
One union	30	3,892	2,793	1,196	1,597
Two unions	70	4,670	3,726	2,045	1,681
Construction cases					
One union	4	52	43	11	32
Two unions	2	33	29	14	15
Regular cases					
One union	36	1,159	1,028	500	528
Two unions	7 <sup>1</sup>	327	309	216	93
Termination of Bargaining Rights	51	1,340	1,225	322	903

\* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

<sup>1</sup> Includes one vote with a "no-union" choice.

Table 6

### Results of Representation Votes in Cases Disposed of\* Fiscal Year 1982-83

Type of Case	Number of Votes			Eligible Voters			All Ballots Cast			Ballots Cast in Favour of Unions		
	In Votes			In Votes			In Votes			In Votes		
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
<b>Total</b>	205	83	122	12,098	4,963	7,135	9,736	4,007	5,729	4,621	2,871	1,750
Certification	157	78	79	10,789	4,699	6,090	8,533	3,785	4,748	4,306	2,750	1,556
Pre-hearing cases												
One union	33	14	19	3,873	1,044	2,829	2,780	595	2,185	1,193	448	745
Two unions	71	44	27	5,008	2,788	2,220	4,045	2,398	1,647	2,251	1,764	487
Construction cases												
One union	4	—	4	52	—	52	43	—	43	11	—	11
Two unions	2	1	1	33	11	22	29	10	19	14	7	7
Regular cases												
One union	40	15	25	1,496	583	913	1,327	526	801	621	336	285
Two unions	71	4	3	327	273	51	309	256	53	216	195	21
Termination of Bargaining Rights	48	5	43	1,309	264	1,045	1,203	222	981	315	121	194

\* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

<sup>1</sup> Includes one vote with a "no-union" choice.

Table 7

Time Required to Process Applications and Complaints Disposed of, by Major type of Case  
Fiscal Year 1982-83

Time Taken (Calendar Days)	All Cases			Certification Cases			Section 89 Cases			Section 124 Cases			All Other Cases		
	Dispo- sitions	Cumulative Percent	Dispo- sitions	Dispo- sitions	Cumulative Percent	Dispo- sitions	Dispo- sitions	Cumulative Percent	Dispo- sitions	Dispo- sitions	Cumulative Percent	Dispo- sitions	Dispo- sitions	Cumulative Percent	Dispo- sitions
Total	2,445	-	767	-	674	-	577	-	427	-	-	-	-	-	-
Under 8 days	76	3.1	17	2.2	15	2.2	21	3.6	23	5.4					
8-14 days	388	19.0	94	14.5	69	12.5	199	38.1	26	11.5					
15-21 days	521	40.3	227	44.1	130	31.8	136	61.7	28	18.0					
22-28 days	284	51.9	100	57.1	123	50.0	35	67.8	26	24.1					
29-35 days	197	60.0	41	62.5	90	63.4	28	72.6	38	33.0					
36-42 days	123	65.0	49	68.8	28	67.5	15	75.2	31	40.3					
43-49 days	89	68.6	41	74.2	14	69.6	15	77.8	19	44.7					
50-56 days	83	72.0	31	78.2	20	72.6	15	80.4	17	48.7					
57-63 days	54	74.2	25	81.5	10	74.0	9	82.0	10	51.1					
64-70 days	57	76.6	16	83.6	16	76.4	9	83.5	16	54.8					
71-77 days	56	78.9	21	86.3	11	78.0	7	84.7	17	58.8					
78-84 days	35	80.3	9	87.5	9	79.4	4	85.4	13	61.8					
85-91 days	32	81.6	8	88.5	5	80.1	7	86.6	12	64.6					
92-98 days	29	82.8	5	89.2	7	81.2	5	87.5	12	67.4					
99-105 days	41	84.5	10	90.5	13	83.1	4	88.2	14	67.9					
106-126 days	75	87.5	12	92.0	21	86.2	14	90.6	28	74.5					
127-147 days	70	90.4	12	93.6	28	90.4	9	92.2	21	82.2					
148-168 days	36	91.9	6	94.4	11	92.0	10	93.9	9	84.3					
Over 168 days	199	100.0	43	100.0	54	100.0	35	100.0	67	100.0					

Table 8

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Unions</b>	<b>758</b>	<b>767</b>	<b>514</b>	<b>146</b>	<b>107</b>
<b>CLC* Affiliates</b>	<b>370</b>	<b>377</b>	<b>247</b>	<b>81</b>	<b>49</b>
Aluminum Brick and Glass Workers	2	1	1	—	—
Auto Workers	13	13	10	1	2
Bakery and Tobacco Workers	2	2	2	—	—
Canadian Brewery Workers	12	10	7	3	—
Canadian Paperworkers	6	9	4	5	—
Canadian Public Employees (CUPE)	62	67	41	11	15
Cement Workers	1	1	1	—	—
Clothing and Textile Workers	2	4	2	2	—
Communications Workers	1	—	—	—	—
Electrical Workers (IUE)	1	—	—	—	—
Electrical Workers (UE)	6	2	1	1	—
Energy and Chemical Workers	15	14	7	6	1
Food and Commercial Workers	32	33	28	3	2
Glass, Pottery and Plastic Workers	1	—	—	—	—
Graphic Arts Union	2	6	4	2	—
Hotel Employees	34	31	15	9	7
Ladies Garment Workers	7	7	2	4	1
Machinists	6	7	4	2	1
Molders	1	2	1	1	—
Newspaper Guild	4	4	4	—	—
Novelty Workers	2	4	—	3	1
Office and Professional Employees	1	2	1	—	1
Ontario Public Service Employees	26	27	24	3	—
Pattern Makers	2	2	1	—	1
Plate Printers	1	1	—	—	1
Printing and Graphic Union	1	1	—	—	1
Public Service Alliance	1	1	1	—	—
Railway Clerks	1	1	1	—	—
Railway, Transport and General Workers	1	3	3	—	—
Retail Wholesale Employees	33	28	20	7	1
Rubber Workers	3	3	2	—	1
Service Employees International	60	58	40	11	7

**Table 8 (Cont'd.)****Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**

Threatrical Stage Employees	2	2	1	1	—
Transit Union	1	1	1	—	—
Typographical Union	3	3	2	1	—
United Steelworkers	19	23	14	4	5
United Textile Workers	2	1	—	—	1
Woodworkers	1	3	2	1	—

\* Canadian Labour Congress



Table 8 (Cont'd.)

**Union Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>Non-CLC Affiliates</b>	<b>388</b>	<b>390</b>	<b>267</b>	<b>65</b>	<b>58</b>
Aerospace Communications Employees	1	—	—	—	—
Asbestos Workers*	1	1	—	1	—
Boilermakers*	4	3	1	1	1
Bricklayers International	5	5	3	—	2
Carpenters*	100	88	56	14	18
Canadian Educational Workers	2	2	—	2	—
Canadian Operating Engineers	8	8	5	3	—
Canadian Restaurant Employees	2	2	1	—	1
Canadian Steelworkers	1	1	1	—	—
Christian Labour Association	16	18	16	1	1
CNTU Directly Chartered	1	1	1	—	—
Electrical Workers (IBEW)*	10	11	9	2	—
Food and Service Workers	3	3	3	—	—
Guards Association	1	1	1	—	—
Headwear Workers	12	12	6	4	2
Independent Local Union	22	20	14	2	4
International Operating Engineers*	35	33	26	2	5
Labourers*	73	95	57	26	12
National Council of Canadian Labour	2	2	2	—	—
Ontario Nurses Association	10	13	13	—	—
Painters*	16	16	13	—	3
Plant Guard Workers	1	1	—	—	1
Plasterers*	1	—	—	—	—
Plumbers*	3	2	2	—	—
Sheet Metal Workers*	8	7	3	1	3
Structural Iron Workers*	6	6	4	1	1
Teamsters	38	35	27	4	4
Textile Processors	6	4	3	1	—

\* These construction unions were reported as CLC (Canadian Labour Congress) affiliates in the 1981-82 report. In April 1982, following suspension by the Congress of its 12 building trades affiliates, the Asbestos Workers, Boilermakers, Bricklayers, Electrical Workers (IBEW), International Operating Engineers, Painters, Plasterers, Plumbers and Sheet Metal Workers joined with the Elevator Constructors to form the Canadian Federation of Labour. The Carpenters, Labourers, and Structural Iron Workers have not joined the Federation.

**Table 8 (Cont'd.)**


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**Union Distribution of Certification Applications Received and Disposed of**  
**Fiscal Year 1982-83**


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Business services	3	5	5	—	—
Personal services	6	6	5	1	—
Accommodation, food services	54	49	28	12	9
Miscellaneous service	33	32	21	3	8
Local government	7	10	7	—	3

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Table 9

**Industry Distribution of Certification Applications Received and Disposed of  
Fiscal Year 1982-83**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed	Withdrawn
<b>All Industries</b>	<b>758</b>	<b>767</b>	<b>514</b>	<b>146</b>	<b>107</b>
<b>Manufacturing</b>	<b>154</b>	<b>159</b>	<b>105</b>	<b>36</b>	<b>18</b>
Food, beverages	27	24	18	6	—
Tobacco products	1	—	—	—	—
Rubber, plastic products	5	4	4	—	—
Leather industries	—	—	—	—	—
Textile mill products	1	—	—	—	—
Knitting mills	3	3	1	1	1
Clothing industries	15	17	5	9	3
Wood products	4	6	5	—	1
Furniture, fixtures	5	6	4	1	1
Paper, allied products	4	7	3	4	—
Printing, publishing	11	13	10	1	2
Primary metal industries	6	6	4	1	1
Metal fabricating industries	18	20	11	4	5
Machinery, except electrical	9	10	7	2	1
Transportation equipment	8	8	8	—	—
Electrical products	6	4	2	2	—
Non-metallic mineral products	14	14	12	1	1
Petroleum, coal products	—	—	—	—	—
Chemical, chemical products	5	5	4	1	—
Miscellaneous manufacturing	12	12	7	3	2
<b>Non-Manufacturing</b>	<b>604</b>	<b>608</b>	<b>409</b>	<b>110</b>	<b>89</b>
Agriculture	—	—	—	—	—
Forestry	2	2	—	2	—
Mining, quarrying	7	5	4	1	—
Construction	229	231	150	43	38
Transportation	27	27	17	8	2
Storage	6	6	6	—	—
Communications	1	—	—	—	—
Electric, gas, water	10	13	10	1	2
Wholesale trade	23	23	16	3	4
Retail trade	30	27	19	5	3
Finance, insurance	2	3	2	—	1
Real Estate	16	17	13	2	2
Education, related services	23	25	14	5	6
Health, welfare services	122	124	91	23	10
Religious organizations	—	—	—	—	—
Recreational services	3	3	1	1	1

**Table 10**
**Size of Bargaining Units in Certification Applications Granted**  
**Fiscal Year 1982-83**

Size of Bargaining Unit (Number of Employees)	Total		Construction		Non-Construction	
	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees
<b>Total, all sizes</b>	<b>514</b>	<b>14,272</b>	<b>134*</b>	<b>740</b>	<b>380</b>	<b>13,532</b>
2-9 employees	256	1,230	119	473	137	757
10-19 employees	94	1,265	11	139	83	1,126
20-39 employees	70	1,969	3	74	67	1,895
40-99 employees	62	3,867	1	54	61	3,813
100-199 employees	21	2,713	—	—	21	2,713
200-499 employees	11	3,228	—	—	11	3,228
500 employees	—	—	—	—	—	—

\* Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 150 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.

**Table 11**
**Time Required to Process Certification Applications Granted\***  
**Fiscal Year 1982-83**

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
<b>Total</b>	<b>514</b>	<b>—</b>	<b>380</b>	<b>—</b>	<b>134</b>	<b>—</b>
Under 8 days	1	0.2	1	0.3	—	—
8-14 days	70	13.8	17	4.7	53	39.6
15-21 days	179	48.6	142	42.1	37	67.2
22-28 days	80	64.2	70	60.5	10	74.6
29-35 days	31	70.2	25	67.1	6	79.1
36-42 days	35	77.0	30	75.0	5	82.8
43-49 days	23	81.5	19	80.0	4	85.8
50-56 days	15	84.4	13	83.4	2	87.3
57-63 days	14	87.2	12	86.6	2	88.8
64-70 days	7	88.5	5	87.9	2	90.3
71-77 days	12	90.9	10	90.5	2	91.8
78-84 days	6	92.0	5	91.8	1	92.5
85-91 days	3	92.6	3	92.6	—	—
92-98 days	—	—	—	—	—	—
99-105 days	7	94.0	6	94.2	1	93.3
106-126 days	7	95.3	4	95.3	3	95.5
127-147 days	6	96.5	5	96.6	1	96.3
148-168 days	4	97.3	3	97.4	1	97.0
169 days and over	14	100.0	10	100.0	4	100.0

\* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

## APPENDIX

### *The Labour Relations System in a Time of Economic Crisis*

Paper Presented by George W. Adams, Q.C.,  
Chairman, Ontario Labour Relations Board  
to the P.A.T. Conference in Toronto, April 6, 1983.

The current economic recession is the most severe post-war downturn that Canada and the United States have faced. In February 1983, for example, total unemployment in Canada was 1,585,000 or 13.5% of the Canadian labour force. Even on a seasonally-adjusted basis the unemployment rate was 12.5 percent; rates for particular Ontario cities are, as we know, even more alarming. The number of people who have registered at Canada Manpower Centres and who are out of work doubled from January, 1982 to the end of that year. During the same period there was a 130% increase in establishments reporting layoffs and an unprecedented number of bankruptcies. Real output has continued to fall as has business investment in plant and equipment. Excess plant capacity and eroding corporate liquidity led to hefty cutbacks in outlays by firms in 1982. Consumer demand has not yet responded to lower interest rates. The O.E.C.D. December, 1982 outlook did not see the likelihood of a significant recovery in activity during the projection period. All of this has provoked remarkably mixed and vociferous reactions.

There are those who emphasize supply side economics; others recommend massive public expenditure; union bashing is generally popular; and we have the New Year statement by the Canadian Catholic Conference of Bishops calling for a new moral economic order which would give first priority to the real victims of the current recession—an order which is seen by the Bishops as placing human dignity above profit maximization. Few institutions in Canadian society are escaping the impact of the recession. Adjustments generally are being made; goals and priorities are having to be reconsidered.

It is in this context that the performance of the collective bargaining system must be appraised. It is only one of several key economic institutions in Canada facing this world-wide recession and related change. Its contribution to a significant economic recovery therefore should not be overestimated. On the other hand, the failure of collective bargaining to adjust would have significant adverse consequences for the Canadian economy and for the collective bargaining system itself. Recently, newspaper reports have contrasted the approach of Canadian trade unions to the recession with their counterparts in the United States. The picture has been painted of widespread concessionary agreements in the United States and of resistance to this approach by more militant Canadian trade unions regardless of economic circumstances. This image has gained credibility by the "no concession" stance taken by the Canadian Labour Congress last May and the public assertion by certain trade union leaders that workers "don't need a union to help them to walk backwards, they can do that themselves". If these images were accurate, the United States would be on the brink of fundamental change in its labour relations based on accommodation and Canada would be on the brink of equally fundamental change by reason of disaster. Moreover, the legal system in Canada regulating labour relations—collective bargaining—would merit a complete review to the extent that it contributed to Canada's plight. The position I wish to take in this presentation is that a closer examination of the facts suggests that these public accounts of collective bargaining trends in Canada and the United States are misleading and that the labour relations process in both countries is responding to the economic realities as best it can.

Generally differences between the two countries appear no more significant than differences between industries and individual bargaining relationships within the respective jurisdictions. Differences that do exist are less related to the different ideologies of the two trade union movements and more to the value of the Canadian dollar, the major economic policies chosen by the respective countries in areas such as oil pricing, and deregulation, etc.; differing pension and health care costs; and the overall health of certain Canadian industries in comparison to their U.S. counterparts, i.e., steel, auto, trucking, and airlines.

In both countries collective bargaining has sorted out the real need for labour relations change and adjustments to pressing circumstances have been made. The high profile concessionary situations have of course occurred in the United States beginning with the Chrysler loans. The Chrysler deal and foreign competition in turn gave rise to the Ford and General Motors pacts. Deregulation, non-union competition and the recession then lead to the Master Freight Agreement. Similar forces resulted in a number of concessionary airline labour agreements such as Pan Am. Subsequently, the steel industry, having closed, scheduled to close or reorganized upwards of 215 plants and at its lowest capacity since the 1930's, followed suit.

What is interesting from a labour relations point of view, however, is that all of these situations involved key conditions in return for the very significant financial concessions granted. To varying degrees these conditions included:

- (a) Financial books had to be opened.
- (b) Equality of sacrifice had to be demonstrated with respect to shareholders, management, and non-union staff.
- (c) A commitment by management had to be made to the industry with respect to the allocation of savings attributed to concessions.
- (d) Job and income security arrangements were agreed to, involving limitations on subcontracting, plant closings, enhanced S.U.B. and other benefits for those laid off.
- (e) In many instances, restorative schemes were agreed to by the end of the contract.
- (f) And finally, new relationships were agreed to involving:
  - (i) the institution of profit sharing schemes;
  - (ii) the institution or expansion of quality of working life projects;
  - (iii) the extension of justice and dignity clauses; and
  - (iv) the launching of experimental lifetime employment projects.

To be sure, these cases demonstrate the changing focus of collective bargaining from improved compensation to enhanced job security. This, however, is not a new phenomenon in the context of an economic downturn, particularly where the survival of the enterprise is at stake and the average worker's job is threatened. But these cases also illustrate that employees do indeed benefit by having trade unions "walk backwards" with them and that much of the militant talk on both sides of the border is just that—talk. Indeed, because of the scale of the industries involved, so-called concession bargaining may be ushering in a new era of more collaborative industrial relations. Labour and management in these relationships are more likely to appreciate the interrelatedness of their interests. In good times, these parties believed they could afford to pursue their adversarial interests. The current economic climate would appear to have brought about changes in attitudes to permit such things as extensive managerial disclosure and union participation in running the enterprise. This might be viewed as an incremental step towards greater labour-management co-operation as exists in Japan, West Germany, Austria and Sweden. Many of these same industries were the first to adopt collective bargaining in the 30's and 40's—so who knows!

Realistically, however, the concession experience in the United States has been checkered. Early opening or reopening of collective agreements has been rejected in many industries and only a small proportion of recent U.S. negotiations has directly involved some form of concessions. In 1981 major U.S. settlements produced the highest average annual wage increase recorded in more than ten years (7.9 per cent). Moreover, if the auto and trucking agreements are excluded, the remaining U.S. settlements for the first quarter of 1982 averaged out to an annual increase of 6.8 per cent. Major concession situations have therefore been crisis situations and have not established a pattern for plants, companies or industries with lesser problems. To some extent this explains the absence of high profile counterparts in Canada although there have been numerous general settlements involving trade offs between freezes, suspended COLA's, and outright cuts and job security.

This in turn, however, reveals another consequence of recession bargaining—the eroding of pattern settlements. Instead, collective agreements are being custom-fitted to the employer, plant or industry involved. A classic illustration of this may be the Canadian auto negotiations where differences in the dollar, productivity and utilization levels, and pension and welfare costs dictated a more moderate concessionary agreement. In turn, however, the Canadian auto workers did not obtain the same kind of job guarantees.

Even where major concessions and job guarantees have not been appropriate, the general effects of the recession have encouraged management in unionized industries to be much more cost sensitive and thus more interested in flexibility or cross-utilization of classifications and in making demands for change of its own. Many restrictive rules originally developed when companies insisted on job segmentation. By developing more and more specialists, it was hoped to cut the costs of training multi-faceted employees. However, the reduced training costs have been more than offset by the high cost of not being able to fully utilize the employees. Today, with appropriate training guarantees, parties are agreeing to broader banded jobs with key productivity and quality of work life spinoffs.

In this respect I note that Professors McKersie and Kochan have observed that during the past twenty years of unprecedented growth in North America, labour relations managers in unionized corporations became more and more isolated, conservative and less influential. Because they were primarily concerned with maintaining stable and peaceful relations, they did not make concerted attempts to change work practices or to change significantly wage and fringe benefit formulas or patterns. Similarly, they did not readily accept the need to introduce direct strategies for involving workers and unions in efforts to improve the quality of working life and productivity in their organizations. They remained focused on traditional and reactive activity at the bargaining table and in the grievance procedure. This has in many instances changed.

The recession has forged a greater link between business policy and industrial relations in many organizations and contributed to this change. Financial pressures articulated by finance and business personnel have had to be translated by labour relations managers into effective short-run and long-run labour relations strategies, be they demands for concessions, a more flexible and productive use of manpower, or a more effective administration of absenteeism, down-time, wastage or training. Thus, the industrial relations function within many companies is undergoing significant change as a search is made for new strategies that link industrial relations performance to larger business strategies of the firm.



Related developments have been the increasing interest in more effective communication with trade unions leaders and employees and quality of working life and job security initiatives to improve employee commitment and productivity. Improved communication schemes with the trade unions have involved "early bird" negotiations; much more candid disclosure of a company's financial condition and its long-term planning; and joint labour/management committees at both the company and industry level. I would point out that the Ontario Ministry of Labour has been very instrumental in encouraging dialogue between the parties at the industry level in a number of key sectors. It would also appear that more direct communication with employees about the condition of a company, industry or the economy is becoming more prevalent. Provided that an employer does not seek to undermine the bargaining agent or bargain directly with employees, there is nothing improper in direct communications of this kind and, under current business conditions, the failure to do so may be irresponsible. Thus, many in management have come to recognize the need to find new ways to communicate effectively with both union leaders and rank and file workers.

The high level visibility of worker participation schemes in Canada and the United States is also significant. For a number of years Ontario has pioneered with an exploratory labour/management committee on this topic. The more co-operative approach to labour relations represented by QWL has continued to gain credibility across North America over the years and has caught the interest of many top executives and trade union leaders as a way in which to collaborate on matters of interest during both good and tough times. I therefore think it important to note, particularly in the auto field, that concessionary bargaining has resulted in a significant spreading of the QWL experimental projects that had been in place.

The trade union community is also facing a number of strategic choices which will influence its future role in the Canadian industrial relations system. Unions are having to consider the viability of quality of working life programs and other approaches to involve workers more fully in the ongoing process of the organization. Union leaders are faced with a choice of playing a role in setting the stage for, designing and administering such programs or in opposing them. However, the fact that some of these initiatives are occurring in bad times has led to a cynicism on the part of some trade unions. Similar skepticism was seen at the CLC convention in May where delegates endorsed a resolution in which each affiliate pledged not to engage in concession bargaining. The statement accompanying the resolution contained several reasons for this position. First, it was noted that unions are seldom asked to share economic decision-making with their corporate employers and governments when times are good. Only when times are really bad are they asked to become equal partners.

Second, if job security does not materialize after concessions are granted, a union may be seen by its members to have been fooled. If the concession is not granted, production may be shifted elsewhere and the union looks like a villain. Third, concessions cannot guarantee job security. Job security depends on the demand in Canadian and export markets for the products employers produce and at present these markets are depressed. Reducing wages will not, it was argued, stimulate demand and collective agreements are usually the product of hard-won previous gains.

Unfortunately, in certain quarters one does see a contradiction in the management community's commitment to collective bargaining. At one level a company may engage in a very aggressive and sophisticated strategy of union avoidance both at the corporate level and in new plants in certain industries while at the same time, in older plants, concessions, the development of labour-management co-operation, and worker participation schemes are proposed. It is difficult to

see how co-operation can be fostered at the plant level in the face of union avoidance strategy at the corporate level. Similarly, we see some labour leaders privately acknowledging the plight of Canadian industry and the need for more accommodation and moderation and yet, publicly, no concession postures and extreme militancy are adopted. And even where union and business leaders come to recognize the need for labour cost moderation and participation in key strategic issues, the level of the conflict and distress at the plant level between workers and plant management has the potential for remaining quite high and impairing co-operation at the corporate level. Nonetheless, there is more open discussion within the labour movement of the advantages and limitations of QWL initiatives and in seeking to participate in job security and financial decisions at the strategic level of the enterprise or industry.

From a more statistical viewpoint, collective bargaining has responded to reduced inflationary forces and will likely continue to do so. U.S. collective bargaining developments showed a much earlier and greater sensitivity to underlying economic conditions but the tendency for wage increases in Canada to generally outpace those in the U.S. is not a new phenomenon if wage developments in both countries are examined over the previous decade. Previously, I also pointed out that average settlement figures in the United States were seriously skewed in 1982 by the auto and trucking settlements and that present differences in inflation between the two countries can be seen, in part, as a function of certain economic approaches each country has taken such as those in response to the rapid escalation of world oil prices in recent years. In effect, the U.S. adjusted earlier than Canada to world oil prices and is now benefitting on the consumer price side because of the recent weakness in these world prices, while Canada is still in the process of adjusting to the earlier escalation in price levels. There are, of course, many other differences between the economic and political make-up of the two countries including the extent of collective bargaining; market concentration; the degree of domestic non-union and foreign competition; and current political philosophy.

In any event, wage settlements in Canada are considerably lower than six months ago as is the rate of inflation. In the first half of 1982 the CIP for the country as a whole rose at an annual rate of 11.5 per cent. Negotiated wage settlements in Ontario were running in excess of 12 per cent for agreements without COLA clauses, the best indicator of underlying settlement trends. This raised concerns that our labour costs were rising faster than those of our trading partners and consequently the competitiveness of Ontario industries was being eroded. Comparisons were drawn to the U.S., where last summer already-noticeable downward trends both in the size of settlements and in the pace of inflation were occurring. In Canada, in the second quarter of 1982, there were no signs of moderation in the wage settlements then being negotiated and few indications of a sustained reduction in the rate of inflation.

Soon thereafter the attention of governments was directed at the pay increases of the public sector. At the end of June, the Federal Minister of Finance introduced a restraint plan affecting public employees under federal jurisdiction. Subsequently, most provincial jurisdictions developed restraint policies covering compensation increases of public employees. In Ontario, legislation was introduced in September and has been in place since December. The rationale for singling out the public employees for restraint measures was that average settlements in that sector seemed to be too high vis-a-vis the private sector and were potentially less responsive to economic forces. In addition it was felt that government action would enable the private sector to follow more easily a pattern of less inflationary settlements.

With the continued economic downturn, this strategy appears to have worked although I do not, for a moment, wish to ignore the drastic and unprecedented rise in unemployment. From the third quarter of 1982 to February, 1983, base wage increases in agreements without COLA clauses dropped from 10.8% to 7.2%. In the private sector the reduction has been from 10.8% to 8.1% and in the public sector from 10.8% to 7.2%. At the same time the year-over-year increase in the C.P.I. has come down from 10.6% to 7.4%. Moreover, where there has been an upsurge in layoffs and plant closures, there has been a clear tendency for recent Canadian negotiations to focus more on job security issues and to put less emphasis on catching up or keeping up with the rate of inflation. An example is the bargaining of the Energy and Chemical Workers Union with the major oil and petrochemical companies covering 6,000 employees. In October the union publicly rejected the federal Government's 6 - 5 wage guidelines and adopted a national bargaining goal of increases exceeding the rate of inflation. In March of this year the union accepted a one-year contract at 6% with the most significant improvement being a contract clause guaranteeing employees three to six months notice in case of lay-off with additional commitments for retraining, relocation, and early retirement if lay-offs are necessary.

One of the contributions of public sector controls to stability in industrial relations has been the rapid rate at which public sector wage settlements have been reduced. As wage settlements in the private sector have declined during the autumn and early winter in response to market conditions, in normal circumstances the reaction of public sector settlements to these same forces would probably have been at best delayed.

In 1983 the collective bargaining calendar will be lighter than 1982 when the number of agreement expirations reached a record high. Economic forecasts suggest that in the immediate months ahead, bargaining will take place in an economic environment marked by a continued severe economic recession and high levels of unemployment. Given this economic climate, more moderation in the magnitude of negotiated compensation increases should be observed but the absence of recovery signs is quite depressing.

In assessing collective bargaining's role in these economic adjustments, it is important to observe that contrary to the speculation of some labour relations experts, 1982 did not see a dramatic upturn in strikes and related industrial conflict. Despite the heavy volume of bargaining which occurred in Ontario, 1982 saw significantly fewer strikes than 1981 and a marginal decline in man-days-lost. The Labour Board itself also experienced a significant decline in applications pertaining to unlawful strikes. However, I must acknowledge that the role of labour law in all of this has been remarkably subtle if not non-existent. I suppose labour laws have deterred a few companies from just picking up plants and moving them outside the ambit of collective agreement recognition clauses. The OLRB has overturned subcontracts and plant relocations where the motive was to evade collective bargaining and a trade union. There is also a considerable legal risk in seeking mid-term contract concessions under the threat of layoffs which cannot be demonstrated to be otherwise clearly unavoidable. It is also a fact that during bargaining the bargaining duty is available to trade unions to require an employer to justify a claim of economic hardship when concessions are asked for, but the OLRB has not entertained any such application to date. The Board may also be forced to amend its bargaining duty disclosure standards with respect to the planning of plant closures, subcontracts, lay-offs and technological change if the recession endures and deepens.

The Board has however refused to take the economic pressure off trade unions by characterizing a subcontract as a business disposition or sale which would carry through the

collective agreement. The same type of issue is now before the Board with respect to the status of receiverships. The Board has also refused to endorse general political activity by trade unions on company premises, although the recession and related government action has clearly increased the political sensitivity of trade unions since the decision was issued.

But probably the most significant effect of collective bargaining laws has simply been their existence and the agent role accorded trade unions. The deals worked out through trade unions in the major U.S. concessionary agreements and the more incremental responses in Canada are in marked contrast to the unilateral freezes, cuts and lay-offs experienced by non-union employees. The cost of legal proceedings and need for individual lawsuits by non-union employees has rendered the law of employment quite ineffective in these circumstances. As with controls during the 70's, non-union employees are therefore likely to have shouldered a larger economic burden than their unionized counterparts when the recession lifts. Or stated another way, unionized employers are likely to have shouldered a larger burden than their non-union counterparts.

In conclusion I suggest several tentative lessons can be drawn from our labour relations experiences to date. First, truly significant and lasting industrial relations change more often is experienced only when an industry is itself undergoing fundamental structural change. This may be the case in the context of certain survival situations where structural change has been induced and may be sustained by foreign and domestic competition or by deregulation. However, similar episodes of concessions and labour-management co-operation have occurred in the past but were abandoned as economic conditions improved and the co-operative spirit eroded. For example, the highly publicized gain sharing, human relations and modernization initiatives at Kaiser Steel Corporation, the West Coast longshoring industry and Armour Company in the United States in the 1960's have long since ceased to exist. As employment expanded in the late 1960's, the sense of crisis that brought those plans into existence evaporated. Reduced monetary demands are usually transitory unless inflation can be contained. Possibly, the employment security and quality of working life initiatives that have accompanied many of the concessions in certain U.S. contracts will be more enduring. Fortunately, experimentation by the parties in a number of these situations had developed in good times, comparatively speaking, and thus the spreading of these initiatives in tough times may result in labour-management relations being conducted on a new plateau when the economy improves. If this is the case, we will have formally entered a new phase in North American labour relations on a number of important sectors.

Second, newspaper accounts of differences between the U.S. and Canada labour relations are, I think, largely exaggerated. In each country collective bargaining is responding to the downturn and reduced inflationary pressures. However, long term contracts and their timing have had an impact in both countries in determining the response of union wages to recession as have the different economic policies each jurisdiction has pursued.

Third, new and more effective communication strategies by both labour and management have been required to facilitate more responsive and collaborative bargaining. There is, however, the question of whether greater disclosure, early negotiations, and mid-contract dialogue signal attitudinal changes sustainable after the crisis has passed. Fortunately, again, a number of industries had established labour-management committees to discuss issues and problems of interest before the onslaught of the recession, which suggests that in at least these sectors change may well be lasting.

Last but not least, the spillover effect of major adjustments has not been great. While this fact has in turn eroded pattern bargaining to some extent and led to more customizing of contracts to particular circumstances, on the whole, collective bargaining has pretty much continued as is despite unprecedented unemployment. This experience tends to confirm the literature on labour economics that unless there are imminent threats of bankruptcy or permanent plant closings—crisis situations that threaten senior workers—it is unlikely that union wage behaviour will be strongly sensitive to recessions. A similar rigidity pertains to many pricing decisions by companies in those sectors of the Canadian economy dominated by giant concerns—sectors which are rather numerous in Canada I might add.

If governments truly wish more price and wage responsiveness without the stop and go brutalizing of employers and employees, new economic techniques must be devised. The Keynesian revolution by which massive unemployment was avoided by activist fiscal and monetary policy has not been able to bring a halt to rises in prices without widespread unemployment or economic controls. It has also led to too much unilateral governmental regulation, because of the difficulty in drawing the line as to where government's intervention in the economy should end. The mistake has been the failure to recognize how crude and blunt a social instrument government intervention is. A crucial reason for the failure of macroeconomic management and the existence of excessive government regulation is the atmosphere and actions of constant confrontation among competing interests. However, experience suggests that regulation can be reduced and aggregate management tools can succeed when groups in society are able to reach minimum consensus on the trade-offs between their conflicting claims. But new mechanisms are required in Canada to promote consensus and this is the political challenge of the eighties. In other words, our problems today are not economic, they are political.

Those nations willing to experiment with consensus-seeking mechanisms—such as West Germany, Austria, and Japan—are the most successful in carrying on macroeconomic management policies. Those societies whose economic policies are forged in confrontation—including Canada, United States, Great Britain and Italy—are the most prone to stagflation and have had the least success in developing industrial policy tools. The effective consensus seeking in these more successful countries bears a central message for the globally interdependent economy of a modern democracy: national economic development requires public-private collaboration.

I therefore close on the note that business and labour in this country must be brought into national and provincial planning. They must be given a chance to look at the governments' large-scale economic models and see the likely consequences of different policy options on prices, profits and wages. Governments in turn must be confronted with the problems and issues confronting labour and management. Consensus should be sought on targets in key areas of mutual interest with government, of course, being the final arbiter. Out of this experience business and labour can project the likely consequences of pressing their ultimate wishes and demands. While complete harmony of interests is neither likely nor desirable greater understanding will inevitably ensue in all quarters. Canada can then begin to perform as the truly blessed country that it is.

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