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ONTARIO
LABOUR RELATIONS BOARD

ANNUAL REPORT
1985-86

Ontario

ONTARIO LABOUR RELATIONS BOARD

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Alternate Chairman I.C.A. SPRINGATE

Vice-Chairmen
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L. DUCHESNEAU-McLACHLAN
D.E. FRANKS
H. FREEDMAN
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J.P. WILSON
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R. WILSON

Registrar and Chief Administrative Officer D.K. AYNSLEY

Board Solicitors N.V. DISSANAYAKE, F.W. McINTOSH-JANIS AND K.M. PETRYSHEN

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Labour Relations
Board

Commission
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de travail de l'Ontario

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Toronto, Ontario
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The Honourable William Wrye,
Minister of Labour,
400 University Avenue,
Toronto, Ontario.
M7A 1T7

Dear Minister:

It is my pleasure to provide to you the sixth Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1985 to March 31, 1986.

Sincerely,

Judge Rosalie S. Abella,
Chairman.

CHAIRMAN'S MESSAGE

This year has seen unprecedented activity and change at the Board. To meet the continued increase in the Board's caseload, a number of significant administrative changes have been undertaken. A dramatic change in scheduling, an increase in Board personnel, and a revision of the internal procedures have all been implemented to make the Board more accessible and effective. More extensive use of pre-hearing conferences, the scheduling of cases on consecutive days, and an increased reliance on the settlement efforts of Labour Relations Officers have combined to speed up the delivery of the adjudicative process. We are confident that these changes will enure to the benefit of the labour relations community and look forward to its continued cooperation in the ongoing efforts to enable the Board to maintain a high level of service and decision-making. As usual, we owe an enormous debt to the Registrar, Don Aynsley, the Manager of Administration, Virginia Robeson, the Manager of Field Services, Jack MacDonald, the Vice-Chairmen and Board members, the Labour Relations Officers, the Senior Solicitor, Nimal Dissanayake, the Chief Librarian, Clare Lyons, and to the tireless efforts of our support staff.

I INTRODUCTION

This is the sixth issue of the Ontario Labour Relations Board's Annual Report, which commenced publication in the fiscal year 1980-81. This issue covers the fiscal year April 1, 1985 to March 31, 1986.

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.

This report contains a section highlighting some of the significant decisions of the Board issued during the year. 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 helpful to the practising bar. The report continues to provide a legislative history of the *Labour Relations Act* and notes any amendments to the Act that were passed during the fiscal year.

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 a 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 disputes arise 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 war time 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 amended 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 of 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. In June of 1983, the *Labour Relations Amendment Act, 1983*, S.O. 1983, c. 42, became law. It introduced into the Act section 71a, which prohibits strike related misconduct and the engaging of or acting as, a professional strike-breaker. To date the Board has not been called upon to interpret or apply section 71a.

In June of 1984, the *Labour Relations Amendment Act, 1984*, S.O. 1984, c. 34 was enacted. This Act deals with several areas. It gives the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited procedures in sections 92 and 135, rather than the more cumbersome process under section 89. The Act also permits the Board to respond in an expedited fashion to illegal agreements or arrangements which affect the industrial, commercial and institutional sector of the construction industry. It further establishes an appropriate voting constituency for strike, lockout and ratification votes in that sector and provides a procedure for complaints relating to voter eligibility to be filed with the Minister of Labour. The new amendment also eliminates the 14 day waiting period before an arbitration award which is not complied with may be filed in court for purposes of enforcement.

There were no amendments to the *Labour Relations Act* during the fiscal year 1985-86.

THE FULL BOARD AND SENIOR STAFF

Front Row (left to right):
N. Dissanayake, R. Herman, R. Abella, C. Ballentine, L. Lenkinski, L.R. Betcherman, S. Tacon, J. Wilson, A. Grant, H. Kobryn, F. McIntosh-Janis.

2nd Row:
K. Rogers, M. Mitchnick, B. Armstrong, N. Satterfield, J. Kennedy, O. Gray, P. Grasso, D. Blair, R. Gallivan, F. Burnet, W. Murray, D. K. Aynsley, M. Stockton.

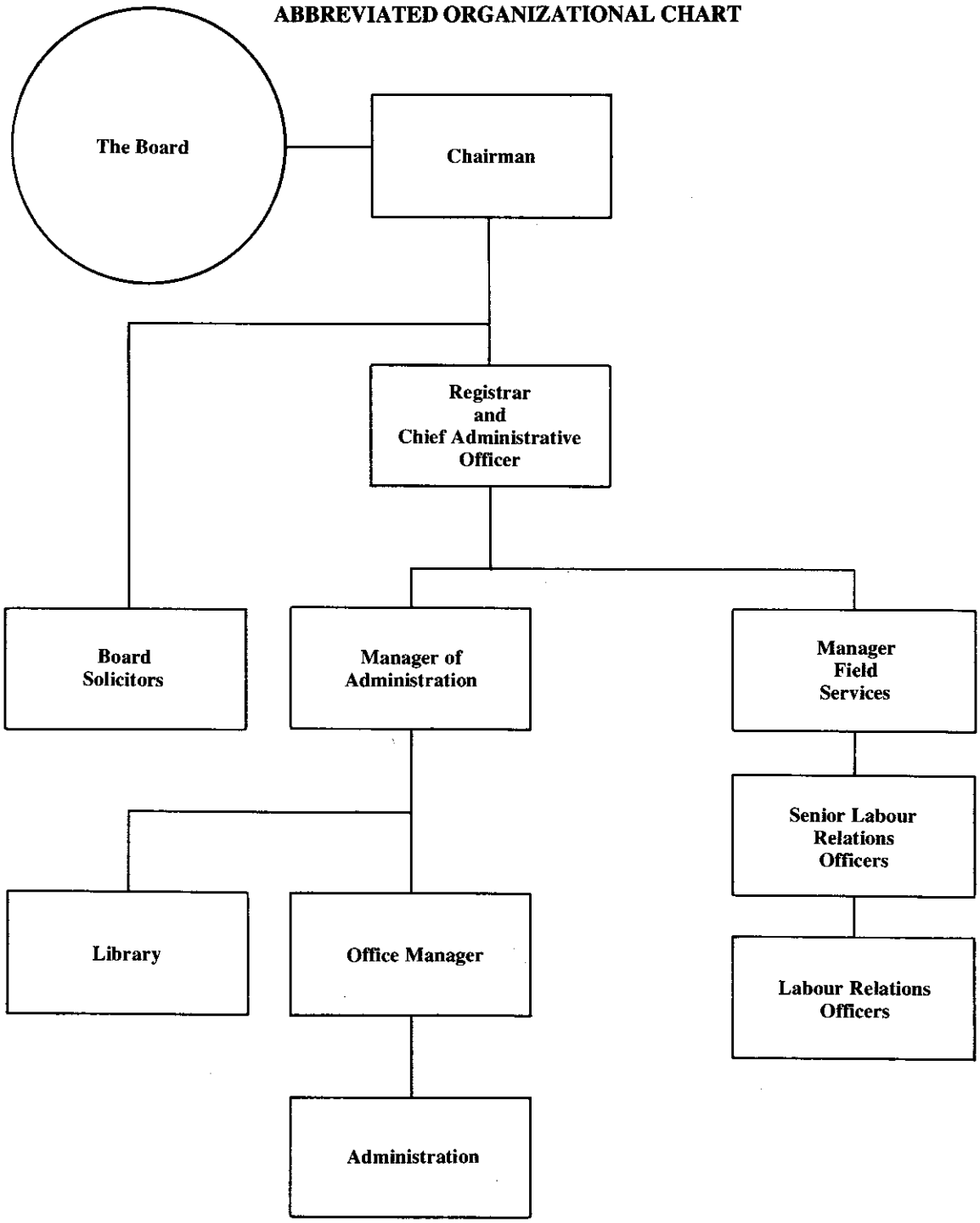
3rd Row:
W. Wightman, R. MacDowell, R. Pirrie, J. Murray, L. Collins, R. Swenor, S. O'Flynn, R. Howe, D. Franks, W. Rutherford, N. Wilson, I. Stamp, H. Freedman, I. Springate, J. Ronson.

Missing:
R. Furness, P. Knopf, W. Correll, M. Eayrs, R. McMurdo, P. O'Keeffe, M. Ross, E. Theobald, R. Wilson, T. Kuttner, T. Meagher, D. O. Gray.

III BOARD ORGANIZATION

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

ABBREVIATED ORGANIZATIONAL CHART



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*, R.S.O. 1980, c. 228, 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. At the end of the fiscal year the Board consisted of the Chairman, Alternate Chairman, 9 full time Vice-Chairmen, 5 part-time Vice-Chairmen and 35 Board Members, 10 full-time and 25 part-time. These appointments were 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 the formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the Act, 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. During the year under review Practice Note 5, dealing with "Service of Documents and Notification of Proceedings by Board" was amended.

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. A distinct piece of legislation, the *Hospital Labour Disputes Arbitration Act*, stipulates special laws that govern labour relations of hospital employees, particularly with respect to the resolution of collective bargaining

disputes and the *Successor Rights (Crown Transfers) Act*, R.S.O. 1980, c. 489 provides for application to the Board where there is a transfer of an undertaking from the crown to an employer and vice versa. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. A similar jurisdiction is conferred on the Board by section 134b of the *Environmental Protection Act*, R.S.O. 1980, c. 141, proclaimed in November 1983 by S.O. 1983, c. 52, s. 22. From time to time the Board is called upon to determine the impact of the *Canadian Charter of Rights and Freedoms* on the rights of parties under the *Labour Relations 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) Legal Services.

(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, 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 resources allocated to it underpins much of its contribution to labour relations harmony in this province.

The Manager of Administration and the Manager of 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, Manager of Administration, Manager of Field Services and a Solicitor 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, headed by an Office Manager who reports to the Manager of Administration and a Senior Clerical Supervisor, process all applications received by the Board.

2. Case Monitoring

The Board continues to rely on its computerized case monitoring system. Data on each case are coded on a day-to-day basis as the status changes. Reports are then issued on a weekly and monthly basis on the progress of each proceeding from the filing of applications or complaints to their final disposition.

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 staff of 3, including a fulltime professional librarian. The Library staff provides research services for the Board and assists other library users.

The Board Library maintains a collection of approximately 1200 texts, 25 journals and 30 case reports in the areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The library has approximately 4500 volumes. The collection includes decisions from other jurisdictions, such as the Canada Labour Relations Board, the U.S. National Labor Relations Board and provincial labour boards from across Canada.

The Library staff maintains 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 a number of labour relations boards and may be used as a model in the development of other computerized retrieval systems.

(b) FIELD SERVICES

In view of the Board's continuing belief that the interests of parties appearing before it, and labour relations in the province generally, are best served by settlement of disputes by the parties without the need for a formal hearing and adjudication, the Board attempts to make maximum use of its labour relations officers' efforts in this area. Responsibility for the division lies with the Manager of Field Services. In promoting overall efficiency, the manager puts emphasis upon the setting and monitoring of performance standards, case assignments, staff development and maintaining liaison with the Board. He is assisted by three Senior Labour Relations Officers, each of whom is assigned a team of officers. In addition to undertaking their share of the caseload in the field, these Senior Labour Relations Officers are responsible for providing guidance and advice in the handling of particular cases, managing the settlement process on certification days on a rotating basis, and assisting with the performance appraisals of the officers. In addition to the Labour Relations Officers, the Board employs two Returning/Waiver Officers. They conduct representation votes directed by the Board, as well as last offer votes directed by the Minister of Labour. (See Sec. 40 of the Act) They also carry out the Board's programme for waiver of hearings in certification applications.

The Board's field staff continued its excellent record of performance throughout the fiscal year under review. In relation to complaints under the *Labour Relations Act* and the *Occupational Health and Safety Act*, the officers handled a total caseload of 1049 assignments, of which 86.1 percent were settled by the efforts of the officers. The officers handled a total of 856 grievances in the construction industry of which 92.4 percent were settled. Of 309 certification applications dealt with under the waiver of hearings programme, the officers were successful in 215 or 70 percent.

The Alternate Chairman of the Board supervises the activities of the field officers, and along with the Manager of Field Services and a Board Solicitor, meets with the officers on a monthly

basis to deal with administrative matters and review Board jurisprudence affecting officers' activity and other policy and legal developments relevant to the officers' work.

(c) LEGAL SERVICES

Legal services to the Board are provided by the Solicitors' Office. The office consists of three Board solicitors, who report directly to the Chairman. The Board also employed two articling students to assist the solicitors in carrying out the functions of the Solicitors' Office.

The Solicitors' Office 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 Solicitors' Office 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 solicitors. When preparation or revision of practice notes, Board Rules or forms become necessary, the solicitors are responsible for undertaking those tasks.

The solicitors are active in the staff development programme of the Board and a solicitor regularly meets 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, a solicitor prepares 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 solicitors also advise the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Solicitors' Office is the representation of the Board's interests 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, a 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 Solicitors' Office 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.

The Solicitors' Office is responsible for all of the Board's publications. One of the Board's solicitors is the Editor of the Ontario Labour Relations Board Reports, a monthly series of selected Board decisions which commenced publication in 1944. This series is one of the oldest labour board reports in North America. In addition to reporting Board decisions, each issue of the Reports contains a section listing all of the matters disposed of by the Board in the month in question, including the bargaining unit descriptions, results of representation votes and manner of disposition.

The Solicitors' Office also issues a publication entitled "Monthly Highlights." This publication, which commenced in 1982, contains scope notes of significant decisions of the Board issued during the month and other notices and administrative developments of interest to the labour relations community. This publication is sent free of charge to all subscribers to the Ontario Labour Relations Board Reports. The Solicitors' Office is also responsible 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 latest revision took place in March, 1986, to reflect the amendments to the Act.

MEMBERS OF THE BOARD

At the end of the fiscal year 1985-86, the Board consisted of the following members:

JUDGE ROSALIE S. ABELLA *Chairman*

Judge Abella assumed office as chairman of the Board on September 19, 1984. After graduating from University of Toronto Law School in 1970, she practised law until her appointment in 1976 as a judge of the Ontario Provincial Court (Family Division). In addition to carrying out her judicial functions, Judge Abella's professional background includes: Member, Ontario Public Service Labour Relations Tribunal, 1975-76; Commissioner, Ontario Human Rights Commission, 1975-80; Member, Premier's Advisory Committee on Confederation, Ontario, 1977-82; Co-Chairman, University of Toronto Academic Discipline Tribunal, 1977-1984; Director, International Commission of Jurists (Canadian Section), 1982; Director, Canadian Institute for the Administration of Justice, 1983; and Chairman, Report on Access to Legal Services by the Disabled, 1983.

In 1983 Judge Abella was appointed as Sole Commissioner, Royal Commission on Equality in Employment. The report of this Commission was submitted to the federal Government in November of 1984.

IAN C.A. SPRINGATE *Alternate Chairman*

Mr. Springate had been a Vice-Chairman of the Board since May of 1976 before being appointed as the Board's Alternate Chairman in October of 1984. 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 and in the year under review taught a course in Labour Law and Labour Standards at Woodsworth College, University of Toronto. From February 1984 to January 1985, he served as Acting Chairman of the Crown Employees Grievance Settlement Board.

LITA-ROSE BETCHERMAN *Vice-Chairman*

Dr. Betcherman was appointed as a part-time Vice-Chairman in January 1985. She holds degrees of B.A. (1948, University of Toronto); M.A. (1961, Carlton University); and Ph.D. (1969, University of Toronto). For many years she has served the labour relations community as arbitrator, both interest and grievance, and has also acted as referee under the Ontario *Employment Standards Act*. From 1966 to 1972 she was Director of the Women's Bureau, Ontario Ministry of Labour. In 1972 she was appointed chairman of an inter-ministerial committee which prepared the Green Paper on Equal Opportunity Programs for Women in the Public Service. She has been a member of the Ontario Human Rights Commission, Ontario Press Council, Education Relations Commission, and the Judicial Council of Ontario. She is the author of two books which deal respectively with the history of fascism and communism in Canada in the interwar period.

LOUISETTE DUCHESNEAU-McLACHLAN *Vice-Chairman*

Ms. Duchesneau-McLachlan was appointed a part-time Vice-Chairman in January, 1986. Ms. Duchesneau-McLachlan, who holds degrees of B.A. and LL.B. from the University of Ottawa, has practised law in North Bay, Ontario, since 1973. She has served as fact-finder for the Ontario Education Relations Commission and as an adjudicator under federal labour legislation. She is also an experienced labour arbitrator.

D.E. (DON) 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. He resigned from the Board in March 1986. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

HARRY FREEDMAN *Vice-Chairman*

Mr. Freedman was appointed a Vice-Chairman of the Board in September, 1984. Having acquired the degrees of B.A. (University of Toronto, 1971) and LL.B. (Osgoode Hall Law School, 1975), Mr. Freedman was called to the Ontario bar in 1977. He practised labour law with a Toronto law firm until April, 1979, when he became the Ontario Labour Relations Board's Senior Solicitor. He held this position until his appointment as Vice-Chairman. Mr. Freedman has been associated with Ryerson Polytechnical Institute for several years as a lecturer in industrial relations, and taught a seminar course in grievance arbitration at Osgoode Hall Law School. He has authored several papers on labour relations practice in Ontario, and actively participated in the labour law continuing education programme of the Law Society of Upper Canada and is an instructor in the Administrative Law and Charter of Rights section of the Law Society's Bar Admission Course. Mr. Freedman also acts as a grievance arbitrator.

R.A. (RON) 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.

OWEN V. GRAY *Vice-Chairman*

Mr. Gray joined the Board as a Vice-Chairman in October, 1983. He is a graduate of Queen's University, Kingston, (B.Sc. Hons, 1971) and the University of Toronto, (LL.B. 1974). After his call to the Ontario Bar in 1976, Mr. Gray practised law with a Toronto law firm until his appointment to the Board.

ROBERT J. HERMAN *Vice-Chairman*

Mr. Herman was appointed a Vice-Chairman of the Board in November, 1985, and was at that time a Solicitor for the Board. He is a graduate of the University of Toronto (B.Sc. 1972, LL.B. 1976) and received his LL.M. from Harvard University in 1984. Mr. Herman has taught courses in various areas of the law, both at Ryerson Polytechnical Institute and the Faculty of Law, University of Toronto.

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-medal-list) 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. During May-August, 1984, Mr. Howe served as Chairman of the Board in an acting capacity.

PAULA KNOPF *Vice-Chairman*

Mrs. Knopf joined the Board as a part-time Vice-Chairman in August, 1984. She graduated with a B.A. from the University of Toronto, 1972, and LL.B. from Osgoode Hall Law School, 1975. Upon her call to the Ontario bar in 1977, she practised law with a Toronto law firm briefly before commencing her own private practice with emphasis in the area of labour relations. A former member of the faculty of Osgoode Hall Law School, Mrs. Knopf is an experienced fact-finder, mediator and arbitrator.

THOMAS KUTTNER *Vice-Chairman*

Mr. Kuttner was appointed a part-time Vice-Chairman of the Board in October, 1985. He is an experienced arbitrator and mediator, and has several publications related to labour law to his credit. Mr. Kuttner has been on the Faculty of Law, University of New Brunswick, since 1979. He has held several positions in administrative tribunals in New Brunswick, including Vice-Chairman, Industrial Relations Board and Vice-Chairman, Fishing Industry Relations Board.

RICHARD (RICK) 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. During May-August, 1984, Mr. MacDowell served as the Board's Alternate Chairman in an acting capacity.

MORT. G. MITCHNICK *Vice-Chairman*

Mr. Mitchnick was appointed as a full time 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. Mr. Mitchnick reverted to part-time status with the Board as of November 1985, and shares his time with a private arbitration and mediation practice together with various forms of legal scholarship.

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 Industrial Relations Committee of the Canadian Manufacturers' Association.

SUSAN A. TACON *Vice-Chairman*

Ms. Tacon joined the Labour Relations Board as a Vice-Chairman in July, 1984. She holds a B.A. degree (1970) from York University and LL.B. (1976) and LL.M. (1978) degrees from Osgoode Hall Law School. At the time of her appointment to the Board she was employed as employee relations officer at York University and was also a part-time faculty member at Osgoode Hall Law School. She is also an experienced arbitrator. Ms. Tacon has several publications, including a text and several articles in law journals.

Members Representative of Labour and Management

BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in February 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. Mr. Armstrong was honoured by the Government of Jamaica when he was appointed a Member of the Order of Distinction in the rank of officer, in the 1983 Independence Day Civil Honours List.

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.

DONALD H. BLAIR

Mr Blair was appointed as a part-time member of the Board representing management in March, 1983. Mr. Blair retired from Dominion stores after 31 years of service, the last 15 years as Director of Labour Relations. In May of 1983, Mr. Blair established a firm specializing in providing industrial relations consulting services. He has been a member of the Personnel Association of Toronto since 1960 and was a Director of the same during 1965-67. He was also Vice-Chairman of the Board of Directors of the Central Ontario Industrial Relations Institute from 1979 to 1983.

FRANK C. BURNET

On December, 1983, Mr. Burnet was appointed a part-time Board Member representing management. After graduating from the University of Saskatchewan (B.A. Economics, 1940) Mr. Burnet was engaged in personnel capacities in several corporations in Ontario and Quebec. In 1970 he joined Inco Ltd., as its Director of Industrial Relations responsible for all Canadian Operations. From 1972 until his retirement in 1982, Mr. Burnet held the position of Vice-President Employee Relations, responsible for employee relations activities in Canada, U.S., U.K., and other foreign operations. The many offices Mr. Burnet has held include: Chairman, National Industrial Relations Committee of the Canadian Manufacturers' Association, 1978-81; Governor and Member of the Executive Committee of the Canadian Centre for Occupational Health and Safety, 1982-83; Member of OECD Joint Labour-Management team studying technological change in the U.S. (1963) and incomes policy in the U.K. and Sweden, (1965).

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. In 1960 he was appointed International Field Representative for the United Rubber Workers and later served as acting Director of District 6.

WILLIAM A. CORRELL

A graduate of McMaster University (B.A. 1949), Mr. Correll was appointed in January, 1985, as a part-time Board Member representing management. He joined the Board with an impressive background in the personnel field. Having held responsible personnel positions at Stelco, Atomic Energy of Canada Limited and DeHavilland Aircraft of Canada Limited for a number of years, Mr. Correll joined Inco Limited in 1971. After serving as that company's Assistant Vice-President and Director of Industrial Relations, in 1977 Mr. Correll became Vice-President of Inco Metals Company. He has lectured on personnel and management subjects at community college and university level and has conducted seminars for various management groups. He is active as management representative on boards of arbitration and on various management organizations.

W. GORDON DONNELLY

Mr. Donnelly was first 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. Mr. Donnelly left the Board in 1984 but was re-appointed as a part-time Board Member in January, 1986.

MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. 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 has held include: Director of Labour Relations of the Ontario Federation of Construction Associations; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel; Director of Industrial Relations, Kaiser Canada; Manager of Industrial Relations of the SNC Group; and Executive Director of the Construction Employers Co-ordinating Council of Ontario. Mr. Eayrs is a past Chairman of the

National Labour Relations Committee of the Canadian Construction Association, and is presently a vice-chairman of the Joint Labour-Management Construction Industry Advisory Board. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

ANDRE ROLAND FOUCAULT

Mr. Foucault was appointed a part-time Board Member representing labour in January, 1986. A member of the Canadian Paper Workers Union since 1967, he has held several elected positions within that union, including that of first Vice-President. In February 1982, Mr. Foucault joined the staff of the Canadian Paperworkers Union as a National Representative. In 1976 he was appointed to the position of Programmes Co-ordinator of the Ontario Federation of Labour.

ROBERT J. GALLIVAN

In January, 1985, Mr. Gallivan was appointed a part-time Board Member representing management. After holding several senior personnel positions with C.I.L. Inc., Mr. Gallivan became that company's national Employee Relations Manager in 1970 and held this position for 13 years. For many years, he has been an active member of various management organizations, including the Canadian Chamber of Commerce and the Canadian Manufacturers' Association. Mr. Gallivan continues to serve as management representative on various government boards and commissions on a part-time basis.

ANDREW GRANT

Mr. Grant was appointed a part-time Board Member representing management in April, 1983. After a period of employment at Gulf Canada, Mr. Grant joined B.P. Canada in 1960. Mr. Grant has held offices in various committees including the National Board of Directors of the Packaging Association of Canada; Chairman, Industry Committee on Metric Conversion and Corporate Representative and Chairman of the Joint Canadian/U.S. Technical Committee of the Packaging Institute, U.S.A. He retired from his position at the Board in March, 1986.

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.

DEAN O. GRAY

Mr. Gray was appointed a part-time Board Member representing management in October, 1985. After holding several responsible personnel and industrial relations positions in corporations in the steel industry in the U.S. and Canada, Mr. Gray became Vice-President Industrial Relations of Reed Paper Company in 1973, and Vice-President Industrial Relations of Abitibi-Price Inc. in 1979. From 1981 he has been employed as a consultant on industrial relations matters.

JOSEPH KENNEDY

In May, 1983, Mr. Kennedy was appointed a part-time Board Member representing labour. He has been a member of Local 793 of the International Union of Operating Engineers for over 30 years and has held various offices in that Local. At present he holds the position of Business Manager of Local 793.

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.

LOUIS LENKINSKI

In August of 1984, Mr. Lenkinski was appointed a part-time Board Member representing labour. A member of the Upholsterers' International Union for many years, he served as business representative of that union from 1958 to 1969. Since 1969, he has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975 he became Executive Assistant to the Ontario Federation of Labour. Mr. Lenkinski has frequently served as labour representative on arbitration and conciliation boards and has also represented parties in proceedings before the Labour Relations Board.

ROBERT D. McMURDO

Since April of 1984, Mr. McMurdo has served as a part-time Board Member representing management. An honours graduate in business administration (1953) from University of Western Ontario, Mr. McMurdo has held many industry related offices including: President of the London & District Construction Association, President of the Construction Safety Association of Ontario and President of the Ontario General Contractors Association. He is the President of McKay-Cocker Construction Limited and McKay-Cocker Structures Limited of London and is currently a member of the Ministry of Labour Construction Industry Advisory Board.

TERRY MEAGHER

Mr. Meagher was appointed a part-time Board Member representing labour in October, 1985. From 1970 to 1984, Mr. Meagher served as Secretary Treasurer of the Ontario Federation of Labour. Prior to that he has held the positions of Business Agent, Local 280 of the Beverage Dispensers and Bartenders Union and Executive Secretary of the Labour Council of Metropolitan Toronto. He has also served as Vice-Chairman of the Canadian Labour Congress, Human Rights Committee and member of the Canadian Labour Congress International Affairs Committee.

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.

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 as well as an M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World 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 in several parts of the country. He was a vice-president of Labatt Brewing Company for several years before his retirement in January 1982.

SEAN O'FLYNN

Upon emigrating to Canada in 1967, Mr. O'Flynn became the co-ordinator of Niagara College in Welland and helped to formulate a credit programme in labour studies, one of Ontario's first such programmes. Since 1974 Mr. O'Flynn has held several key positions with the Ontario Public Service Employees Union. He was president of that union until November 1984, when he chose not to seek re-election. Mr. O'Flynn has been very active on behalf of the trade union movement in Ontario and since 1984 has been a Vice-President of the Ontario Federation of Labour. His academic qualifications include: Dip. Econ. Pol. Science (Oxford University, England), B.Sc. (Econ.) (University of Wales) and M.Ed. (New York University, Buffalo, N.Y.). He was appointed a full-time Board Member representing labour in January, 1985.

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 Britain 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 C.U.P.E. and presently holds the office of Ontario Regional Director of C.U.P.E., and is also a Vice-President of the Ontario Federation of Labour.

ROSS W. PIRRIE

Mr. Pirrie was appointed a part-time Board Member representing management in January, 1985. Having been employed by Canadian National Railways for ten years, in 1960 he joined Shell Canada Limited. At Shell Canada, Mr. Pirrie held a wide range of managerial positions in general management, occupational health, human resources and industrial relations before retiring in 1984. Mr. Pirrie holds the degree of B.A. (Psychology) from the University of Toronto.

KENNETH V. ROGERS

Mr. Rogers was appointed in August, 1984, as a part-time Board Member representing labour. From 1967-1976, he was a representative with the International Chemical Workers Union and served as Secretary-Treasurer of the Canadian Chemical Workers Union during 1976-1980. Since the Energy and Chemical Workers Union was founded in 1980, Mr. Rogers has been its Ontario Co-Ordinator. He is a former Vice-President of the Ontario Federation of Labour.

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

After serving as a full-time Member of the Board representing labour for seven years, Mr. Rutherford became a part-time Board Member in 1986. 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.

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.

MALCOLM STOCKTON

Mr. Stockton was appointed a part-time Board Member representing management in October, 1985. He earned a law degree from Osgoode Hall Law School in 1973 and was called to the Ontario Bar in 1975. Since then he has engaged in the practice of law in Niagara Falls, Ontario. He has served as a fact-finder, mediator, and arbitrator for the Education Relations Commission since 1976.

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 Dofasco Inc., Hamilton since 1970 and is presently its Vice-President, Personnel. He is a member of CMA's National and

Provincial Industrial Relations Committees and the Ontario Chamber of Commerce Employer/ Employee Relations Committee.

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. A long time political and union activist, 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 grievance procedure and arbitration.

W.H. (BILL) WIGHTMAN

Mr. Wightman was first appointed to the Board in 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 serves 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. Prior to joining the Board he served as the Labour Relations Consultant to the Electrical Contractors Association of Ontario for 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.

ROGER WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in August, 1984. Mr. Wilson has had a long association with the United Steelworkers of America, becoming the first Vice-President of Local 14863 in 1974 and its President in 1978. Since 1982, he has held the position of Chief Steward of Local 8562 of the Steelworkers. He is presently Reeve of the Township of Hope and a member of Northumberland County Council.

V HIGHLIGHTS OF BOARD DECISIONS

No collective agreement where memorandum not ratified according to its terms. Continuation of lockout held not unlawful.

For many years the major Ontario breweries had engaged in industry bargaining with the various unions which represented their employees. In the sets of negotiations which took place in 1978, 1980, and 1982, the parties agreed upon a ratification clause under which the memorandum of settlement was required to be ratified by each bargaining unit. In other words, employees in any one unit could veto the settlement by not ratifying. In the 1984-1985 negotiations, all of the employers' offers included that ratification clause. After approximately three months of bargaining, the parties remained in disagreement in a number of areas, including technological change. On February 26, 1985, the employers lawfully locked out all of the employees in the twelve bargaining units covered by the negotiations. However, with the assistance of a mediator, a memorandum of settlement, including the impugned ratification clause, was signed on March 15, 1985. It was ratified by all but two of the bargaining units. The employers refused to permit any employees to return to work and took the position that the lockout would continue with respect to all employees until a settlement was ratified by all twelve bargaining units.

The applicant unions sought a declaration of unlawful lockout under s. 93. The applicants urged the Board to declare the ratification clause to be null and void and to direct the employers to end the lockout and sign collective agreements (minus the ratification clause) with respect to each of the units that had ratified the settlement. It was contended that the failure to do so constituted bad faith bargaining and further that, as a matter of law, collective agreements had come into force with respect to the units that had ratified the settlements.

The Board stated that, while employers can lawfully seek to bargain on an industry-wide basis, as a general rule each union which holds bargaining rights can insist that collective bargaining take place in respect of each individual bargaining unit for which it holds bargaining rights. However, unions may agree to broader-based bargaining at the outset of negotiations, or may begin negotiations on a separate basis but later transform those negotiations into something more akin to industry negotiations by, for example, agreeing to a ratification clause of the type described above. Such a clause serves a legitimate labour relations purpose, but also carries the risk that the industry-wide settlement may be vetoed by one or more of the units. Assuming, without deciding, that a union that agrees to such a ratification clause is legally entitled to insist upon returning to bargaining on an individual bargaining unit basis when such a veto has occurred, the Board held that it did not follow that in such circumstances s. 15 required the employers to offer to each individual unit exactly the same terms as here contained in the vetoed settlement.

The Board noted that employers may well be willing to make concessions in bargaining in order to obtain a ratification clause of that type. If an employer is not to have the benefit of such a clause, he may be lawfully entitled to revise his offer and to refuse to offer (or ratify) the terms he was willing to offer and ratify in the context of industry bargaining. Under the circumstances, the Board was not prepared to strike down the ratification clause and impose the collective agreement upon the employers, for to do so would be to assist the applicants in reneging on an agreement which they entered into with full knowledge of its possible consequences. Since the memorandum had not been ratified in accordance with its terms, the Board concluded that no collective agree-

ments had come into force. In the result the Board concluded that the continuation of the lockout with respect to all of the employees was not unlawful. *Molson Ontario Breweries Limited*, [1985] OLRB Rep. April 558.

Breach of union by-laws not necessarily a breach of referral duty

This was a complaint under s. 89 of the Act, alleging that the respondent union had violated its by-laws and s. 69 of the Act by effectively preventing the complainant from being "name hired" on a pipeline construction project. The evidence was clear and uncontradicted that in the spring of 1983, the union adopted a set of by-laws to deal with its responsibilities in running its hiring hall and that the by-laws permitted name-hiring. The complainant was anxious to obtain a job in the particular project. However, his chances of getting a job by a straight union referral were not good, since he was 300th on the out of work list. Therefore he wished to approach the company directly and convince the company to "name hire" him.

At the pre-job conference between the company and union, the union agreed to six name hires requested by the company. This did not include the complainant. The union then requested and the company agreed, that there would be no further name hires on the project. When the company informed the complainant that he could not be name hired because of the agreement, the complainant took his complaint to the union's Executive Board. The union gave him an "employee request form" which the company could have used to make a name hire request and informed him that it would be seeking a legal opinion on whether the company could still make a request despite the agreement. The union subsequently received an opinion from its lawyers to the effect that the by-laws were applicable to the project and that if the company made further requests for name hires, the union would be obliged to honour them. Through what the Board found to be a misunderstanding, the gist of the legal opinion was not conveyed to the complainant and he was left with the impression that no further name hires would be accepted in the future. As a result, the complainant abandoned his efforts at being name hired. In this complaint, the complainant submitted that the by-laws were binding on the union and that the by-laws did not permit the union to limit the number of name hires and prevent an individual from being hired. He claimed that such conduct by the union amounted to discrimination.

The Board stated that, even if it assumed, without deciding, that the union's actions were contrary to the by-laws, it still had to determine whether such actions were arbitrary, discriminatory, or in bad faith with regard to the complainant. The union's policy and decision to limit the number of name hires is a conscious policy adopted to protect its members on the out-of-work list. This is an established practice of the union used on pipeline projects as well as other projects. The Board found no evidence to establish that the union acted arbitrary, discriminatorily or in bad faith. While noting that the union's failure to accurately convey to the complainant the opinion of its lawyers was unwise and unprofessional, the Board did not consider such conduct to be within the ambit of s. 69. *Donald Vasseur, re Labourers Union, Local 1059*, [1985] OLRB Rep. April 615.

"Reasonable employee expectations" used as test to determine extent of employee privileges frozen

This was an unfair labour practice complaint, which arose out of the termination of a substantial number of employees of the employer as part of the employer's programme of restructuring its overall operations. The announcement of the lay-offs affected 116 employees represented by the complainant union at the location in question. It was not disputed that at the time of the terminations the statutory freeze was in operation with respect to that location. The union alleged that the employer action constituted a breach of ss. 66 and 79 of the Act. Dealing with the alleged contravention of s. 66, the Board was satisfied on the evidence that the real reason and only reason

for the terminations was the explanation offered, i.e. the economic justification. The evidence did not disclose that the employer either knew of, or took into account, the employees' union affiliation or activity in making the decision to terminate or in selecting individuals for termination. On the contrary, the evidence was that the selection of employees for termination proceeded on the basis of established company practice, namely, to utilize seniority and permit "bumping" by more senior employees capable of performing duties in other classifications.

Turning to the statutory freeze violation aspect of the complaint, the Board reviewed the "business as before" approach the Board has usually taken. Noting the specific language in s. 79(2) which was the provision applicable in this case, the Board concluded that, since the freeze includes the employees' privileges, it is the scope given to employees' privileges which circumscribes the otherwise virtually unlimited reach of the rights of an employer in the transition to a collective bargaining regime. The Board noted that while the "business as before" formula is readily applicable to situations where an established pattern or employer practice exists, that approach is not very helpful in dealing with "first time events", whether or not announced prior to the freeze.

The Board considered that it was appropriate, rather than concentrating on "business as before", to assess the privileges of the employees which are frozen, thereby restricting employer rights, by focussing on the "reasonable expectations" of employees. The "reasonable expectations" approach responds to situations where a pattern exists, as well as to first time events.

Noting that this approach is a common thread running through prior Board decisions, the Board stated that it was expressly articulating the test in the instant case. Prior Board decisions, which affirm the right of an employer to implement programmes during the freeze, where such programmes were adopted and communicated to the employees before the onset of the freeze, and those dealing with "lay-offs", are compatible with the "reasonable expectations", approach.

Applying this approach to the facts before it, the Board noted that a programme to modernize and centralize the operations had commenced back in 1980. New technology was being introduced to increase efficiency. These measures had resulted in some lay-offs in the past. In the circumstances, the employees could reasonably have expected lay-offs. Therefore, the terminations which resulted from the "lay-off" of employees in the processing area were held not to be a violation of s. 79.

Turning to the termination of employees in the drapery room, the Board stated that, if the employer had scaled-down or even shut down that part of the operation, it would not have been a violation since such a response was reasonably to be expected, in that the drapery room was losing money. However, the introduction of new means of responding to the economic difficulties as the employer has done, i.e. to close the section and contract out that work, was outside such reasonable expectations. Unless there is a practice of contracting out, the employer's "right" to contract out is limited by the employees' "privilege" of performing work if the work is being done for the employer's benefit. An employee would not reasonably expect that the work would continue to be performed for the benefit of the employer's operation but through contracting out. Therefore, the Board concluded that the termination of the drapery room employees was in contravention of the freeze provision of the Act. *Simpsons Limited*, [1985] OLRB Rep. April 594.

Oral evidence not permitted to establish union membership

The Board dealt with an application for certification in which an employee association also sought certification by way of intervention. The intervener's evidence of membership consisted of signed receipts indicating that a dollar was paid. The receipts did not indicate the purpose of the payment nor were they accompanied by any applications for membership. In these circumstances,

the intervener sought to adduce oral evidence in order to establish that applications for membership were in fact received at the time the dollar amounts were paid.

The Board stated that when the definition of the term "member" in s. 1(1)(i) of the Act is read together with ss. (1) and (2) of s. 73 of the Rules of Procedure, the Board must have written evidence of two acts by persons who are claimed to be members of a union. First, the Board must have written evidence that the persons have applied to become members of the union. Second, it must have written evidence that each person has paid at least one dollar on his own behalf in respect of initiation fees or monthly dues of the union. In the case at hand, all that was before the Board was written evidence that the persons had paid a dollar each for something. Therefore, even if the receipts stated that the payment was made as union dues, the Board still would be left without written evidence that the persons who paid the amounts also applied for membership. The Board noted that while oral evidence may be permitted to substantiate or identify ambiguous documentary evidence, such evidence is not permissible for the purpose of establishing the fact of membership. *Colautti Construction Ltd.*, [1985] OLRB Rep. May 643.

Employer relying on provincial inflation restraint guidelines must provide information on existing benefit expenses

The complainant union submitted a proposal for renewing its collective agreement with the employer and requested basic costing information from the employer. The employer refused the information sought and indicated its preference to follow the settlement of the "host hospital", or to settle at a total compensation package of 5% in accordance with the "provincial guidelines" under the *Public Sector Prices and Compensation Review Act, 1983*. After several further attempts failed, the union made a formal written request for information including (a) a list of bargaining unit employees setting out rate of pay, classification, employment status and total service credit for each employee and (b) the employer's benefit expenses for each benefit provided to employees, including OHIP, insurance, drug plan, dental plan, etc. This request was also repeatedly refused by the employer. The union complained that the employer's position constituted a contravention of the duty to bargain in good faith.

The Board reviewed its own jurisprudence and noted that it is well established that the employer's duty under s. 15 includes an obligation to comply with the union's request for information concerning matters such as existing wage rates and classification, and that such duty is not restricted to first agreement negotiations. This flows from one of the principal functions of the duty in s. 15, namely, to foster rational, informed discussion. In the circumstances of this case, the Board noted that the union would not be in a position to meaningfully appraise the respondent's proposal without the information requested in its letter. This was so because the 5% increase envisioned by the provincial guidelines is calculated on the basis of "total compensation including salaries, wages, benefits and perquisites". Therefore, in the circumstances, the Board concluded that the employer's refusal was in contravention of s. 15. However, in directing the employer to provide information, the Board restricted its order to that information sought from the employer prior to the filing of the complaint. The additional information sought at the hearing, which had not been previously requested from the employer, was not included. *Ontario Cancer Treatment and Research Foundation (Thunder Bay Clinic) and CUPE and its local 3020*, [1985] OLRB Rep. May 705.

Occasional teachers' certification application

The Ontario Secondary School Teachers Federation applied for certification by way of a pre-hearing vote with respect to a bargaining unit of occasional teachers employed by the Board of Education for the City of York. Two issues arose. Firstly, did the OSSTF, which had school princi-

pals, vice-principals and department heads as its members, have status as a trade union within the meaning of the *Labour Relations Act*? Secondly, given the unusual circumstances of employment of occasional teachers, was the Board's usual 30/30 rule appropriate to determine the composition of the bargaining unit?

On the former issue, the Board concluded that school principals, vice-principals and department heads exercise managerial functions within the meaning of section 1(3)(b) of the Act and were therefore not "employees" for the purposes of the Act. Nevertheless, the Board noted that the Act does not expressly require that a trade union be composed exclusively of employees, and that the fact that OSSTF had non-employees in its membership did not deprive it of status under the Act as a trade union. The Board cautioned however, that this was not a retreat from the Board's often-stated concern about company dominated unions. Should members of OSSTF acting on behalf of the employer seek to influence the employee wishes as to union representation, sections 13, 48, 64 and 68 provide ample protection.

On the second issue, the Board and both parties were agreed that the usual 30/30 test was not appropriate for this particular situation in that every employee in the bargaining unit was a "casual" employee. The Board rejected the different alternate tests proposed by the parties and devised a test to suit the particular circumstances of occasional teachers. In addition to those at work on the application date, the unit was to include all occasional teachers who were on the actively interested list who have worked any time during the period of 12 months preceding the application. Further, in order to facilitate an exchange of views and a meaningful vote within the employees who were dispersed all over, the Board directed that the names and addresses of eligible voters should be made available to all parties to the application. *Board of Education for the City of York*, [1985] OLRB Rep. May 767.

Extent of a union's right to organize on private property

The Board received a complaint alleging that the employer, T. Eaton Co. Limited, and the owners of the Eaton Centre shopping mall had violated the *Labour Relations Act* by denying union organizers access to the shopping mall for purposes of union activity. Cadillac Fairview Corporation, the owner of this mall, was named as a respondent, and it was submitted that it acted on behalf of the employer, Eaton's. It was claimed that employees who supported the union were prevented from distributing union literature in the sales areas before store opening, that canvassing or campaigning in Eaton's restaurants was prohibited, and that employees were prevented from engaging in union activity in mall areas prior to store opening when the public was not in the vicinity. Cadillac Fairview relied on the *Trespass to Property Act* for the legality of its conduct.

In its decision, the Board concluded that what it was required to do was to strike a balance between the competing interests, namely the union's right to organize and private property rights of the respondents. Dealing with the respondent Cadillac Fairview, the Board recognized the broad no-solicitation policy followed by Cadillac but stated that the non-discriminatory enforcement of such a policy cannot be a defence by itself to a charge that the employee's statutory rights have been interfered with. The existence of a defence must rest on the risk of actual interference with its commercial interests in the mall.

On the facts, the Board found that Cadillac did not have a business justification of its own for prohibiting union organizers, prior to store opening, from standing outside the Eaton's doors at the "two below" level (an area otherwise open to the public) for purposes of handing out union literature to the employees. At this time there could not be any interference with members of the public, as no members of the public were present. The prohibition was not imposed by Cadillac to protect any business interest of its own, but on behalf of its prime tenant at the mall, Eaton's. In

the absence of such business justification, the Board found Cadillac to have interfered with the union's rights contrary to Section 64.

Turning to the allegations against Eaton's relating to the right to solicit in the Eaton's restaurants and to drop off literature at sales desks within the store prior to store opening, the Board noted the other avenues of communication with employees available to the union, including access to the mall areas provided by this decision. In the circumstances, the Board concluded that solicitation in these areas should be permitted only on a limited basis, in order to accommodate the legitimate business concerns of Eaton's. The Board stated that occasional literature drop-offs before store opening should be permitted provided that the employer has a right to require that all such material be removed from the sales floor prior to store opening. The Board found that the imposition by Eaton's of a blanket no-distribution rule with respect to its premises, even when the store is not open and employees are not working, constituted a contravention of Sections 64 and 66. Directions were issued against Cadillac and Eaton's in accordance with the Board's finding above and Eaton's was directed to circulate to all its employees at the Eaton Centre store an employee notice, which appeared as an appendix to the decision. *T. Eaton Company Limited, Cadillac Fairview Corp. Limited and T.E.C. Leaseholds Limited, re Retail, Wholesale and Department Store Union*, [1985] OLRB Rep. June 941.

Restrictions on picketing in Act not contrary to Charter

The applicant under Sections 92 and 135, was a sub-contractor, whose employees were members of the Boilermakers' Union, Local 128. It contracted to perform certain work at a Domtar Mill using its own employees. The Ironworkers' Union, Local 759, claimed that some of this work should be done by its own members, even though it had no collective bargaining relationship or collective agreement with the applicant. When its demand was not complied with, what was referred to as an "informational" picket line was set up. Although the members of the Boilermakers' Union crossed the picket line, a crane operator, who was a member of the Operating Engineers' Union, who had been engaged by the applicant, honoured the line and had to be replaced by another employee.

The evidence was that the union official who was responsible for the setting up of a picket line questioned the efficacy of the procedure under the Act for resolving jurisdictional disputes and preferred to use his own methods. The respondents claimed that the picket line was only "informational" and that any restriction on such picketing in Sections 74 or 76 was inconsistent with the freedom of expression protected by Section 2(d) of the Charter.

The Board rejected the Charter argument. The Board noted that the mere presence of a picket line at a construction site achieves much more than communication of information. It will likely induce sympathetic action, quite irrespective of the nature of the dispute or the information disseminated. The fact that no strike had yet occurred in this case does not diminish the fact that causing a work stoppage is the purpose of the picketing. If the Charter is applicable between private parties, the Board was called upon to balance the freedom of expression of the union and freedom from forms of economic pressure or coercion contrary to the *Labour Relations Act*, which is enjoyed by the applicant and the other contractors on the site. Assuming that picketing involves an element of freedom of expression the Board did not think that the Charter protected expressions which, as here, amounted to a call or encouragement to engage in an unlawful strike. The Board concluded that to the extent that Sections 74 and 76 impose restrictions on such picketing, these were quite justifiable in accordance with the terms of the Charter. Declarations of contravention of the Act and directions to cease and desist were accordingly issued against the union and the respondent union official. *Horton CBI Limited*, [1985] OLRB Rep. June 880.

Employer's refusal to sign a collective agreement embodying the terms of an earlier extinguished offer not unlawful

The parties were in negotiations for renewal of their collective agreement. The bargaining unit employees rejected the employer's "settlement offer" on May 5, 1984 and commenced a lawful strike on May 7, 1984. On October 25, 1984, the union altered its position and presented the employer with a letter by which it purported to accept the offer which had been rejected five and a half months earlier. That letter further advised the employer that all of the strikers were prepared to return to work pursuant to Section 73 of the Act. It was the union's position that there was a collective agreement in place from the moment of delivery of that letter to the employer. However, the employer took the position that no collective agreement had been reached. When the employer's representatives asked the union representatives if there was any point in trying to negotiate the term of the collective agreement and return to work matters, they replied in the negative. The employer then advised the union of certain operational changes that had been made during the strike, and of five discharges and two suspensions that had been imposed earlier that day for strike related misconduct.

In a decision dealing (at the request of the union) with only the bargaining aspect of the union's complaint under Section 89 of the Act, the Board held that the employer's "settlement offer" had been extinguished by the passage of time and by the intervening event of the strike, long before its purported acceptance by the union on October 25, 1984. The Board also held that the employer's refusal to enter into a collective agreement on the basis of that extinguished offer was not unlawful in the circumstances of the case, in that new issues and considerations had become relevant since the time of that offer. With respect to the timing of the discharges and suspensions, the Board was satisfied on the totality of the evidence that they were effectuated on October 25, 1984 in a lawful attempt to make them inarbitrable under the collective agreement which the employer anticipated would be entered into that day or shortly thereafter, and not in an unlawful attempt to avoid entering into a collective agreement.

The complaint as it pertained to the bargaining aspect was dismissed. The Registrar was directed to schedule further hearings to deal with the other aspects of the complaint. *Radio Shack*, [1985] OLRB Rep. June 901.

Interviews about union with individual employees held unlawful even though no threats made

The union in this case applied for certification and relied on employer unlawful conduct to request that it be certified without a vote pursuant to s. 8 of the Act. The alleged unlawful employer conduct stemmed from a series of one-on-one meetings members of management had with employees. Although there were discrepancies in the evidence as to the content of the conversations at these meetings, the Board concluded that management had not made any threats or used unlawful coercion as would constitute contraventions of ss. 60 or 70 of the Act.

However, the Board expressed concern about the very fact of the employer engaging in one-on-one discussions with employees about the union, during which the employer is likely to ascertain whether they were union supporters. The Board stated that these one-on-one meetings, during which the employer indicated its opposition to the union, likely had a greater impact on employees than if they had been addressed as part of a larger group or if they had read management's views in a printed letter. Adopting the reasoning in a decision of the U.S. National Labor Relations Board, the Board concluded that the employer conduct went beyond the freedom of expression in s. 64 and constituted an unlawful interference with the employees' right to select a trade union.

The Board then had to decide whether the contravention of s. 64 was likely to result in a situation where the true wishes of the employees were not likely to be ascertained and if so, whether the Board should exercise its discretion to certify the union under s. 8, notwithstanding that only about 33% of the unit employees had become members of the union. Considering the nature of the employer's unlawful conduct and the fact that the union had not attempted to continue its organizing efforts, the Board concluded that this was not an appropriate case to certify pursuant to the extraordinary provision of s. 8. *J. Pascal Inc.*, [1985] OLRB Rep. July 1075.

Danger posed by required physical motion covered by term "workplace" in work refusal provision

In the course of dealing with a complaint under s. 24 of the *Occupational Health and Safety Act*, the Board had to determine the extent of the application of the workers' right to refuse unsafe work. The crux of the complaint was that the complainant refused to throw a heavy tread (used in light truck tires) onto a platform, because he already experienced a sore back and shoulders from doing it and feared that continuing the motion required to perform the job might injure him.

The employer's perception of the situation was that this did not involve a safety matter at all. That is, people are assigned to work on the machines and if they are physically not capable of performing such work, then that is not a safety matter and by applying the rules of the workplace the employer is not discriminating against anyone for exercising a right under the Act.

The Board noted that it had held in *Wheeler Metal Products* that "section 23 was intended to provide a remedy for workers in danger, not for those who are physically unsuited to a job, which upon reasonable evaluation presented no problems to other workers". However, the Board distinguished the facts before it from the worker suffering from asthma in *Wheeler*. Here, the complainant was not saying that he is too short or too weak to throw the tread. The complaint is specifically about the physical motion required. Noting that the Board has given the term "workplace" in s. 23 a broad meaning, the Board concluded that this situation, which involves the relationship of the worker to the machine, is covered by the term workplace.

The Board went on to hold that it was this safety concern that caused the complainant to refuse to work and that therefore he was acting within his rights under section 23. The Board recognized that the employer, by sending the complainant home, did not intend to discipline him for exercising a right under the Act, but was merely applying its regular policy with respect to all employees who are assigned specific tasks. Nevertheless the Board held that once it is found that the employee was acting within his rights under s. 23, it is no defence to a complaint under s. 24 that the employer had no intention to discriminate. The employer was found to have contravened s. 24 and was directed to pay two days compensation to the complainant. *Firestone Canada Inc. re Kevin Lunn*, [1985] OLRB Rep. July 1044.

Exemptions from union dues based on religious beliefs

The Board dealt with two applications from employees seeking exemption from the requirement of paying union dues in their collective agreement. A common ground relied on in both applications was OPSEU's position on the abortion issue. While both applicants recognized the freedom of speech and expression, on the issue, of their fellow union members, they objected to the expenditure of funds for the pro-abortion cause, which was directly in conflict with their religious beliefs. Since the union was able to establish that no funds had in fact been spent to support the pro-abortion stand, the Board, following the *Georgian College, re Tremblay* decision, held that the applications, to the extent that they relied on that ground, were premature.

However, there were alternate grounds relied on for each of the applications. Mrs. Geyer was an active member of the Penticostal Tabernacle Church. She believed that the teachings of the church are in conflict with the practices and principles of OPSEU because she felt she could not honour her employer as required by the bible and also participate in or condone strike action. She also found conflict in that the OPSEU constitution and its initiation oath made no mention of God. Mrs. Hall was an active member of the Calvary Gospel Church. Apart from the union's pro-abortion stand, Mrs. Hall's application was based on the ground that the right to strike, which was defended by the OPSEU constitution, was in conflict with the teachings of her faith.

In its decision, the Board noted that it was satisfied with, and the union had not contested, the sincerity of the applicants' beliefs. As for Mrs. Geyer, she sincerely believed that the OPSEU constitution, by supporting strikes and requiring an oath which made no reference to God, contradicts the bible. The Board stated that it did not sit in judgement on the reasonableness of Mrs. Geyer's beliefs, but was satisfied that these sincere and religious beliefs were the cause of her objection to supporting the union. Therefore, her application for exemption under s. 47 was granted.

Mrs. Hall had become a member of OPSEU and it took her seven months to resign and make the application for exemption. While expressing some concern, the Board was satisfied with her explanation that it took her time to resolve the internal struggle that she suffered while she was trying to reconcile the scriptures with the concept of the union. Being an intelligent woman, she methodically sought out information from OPSEU and the OFL, before finally coming to the conclusion that her view of Christianity was inconsistent with the aims of the union as it related to strike action. The Board stated that applicants under s. 47 are entitled to change their minds or positions, provided the Board could be satisfied of their sincerity, as it was here. Although Mrs. Hall's concerns about the union's administration may also have motivated her to make the application, there was no requirement that religious objection be the sole ground for objection. The Board was convinced that Mrs. Hall's religious objection to OPSEU's defence of the right to strike was a primary reason for application. Her application was granted on this basis. *Mary Geyer and Barbara Hall re OPSEU*, [1985] OLRB Rep. July 1057.

Board's powers in applying Charter

O.P.S.E.U. filed an application for certification in which it sought to represent a group of part-time employees of the respondent community college. The college contended that it was a "crown agency" and as such, was not covered by the *Labour Relations Act*. The applicant argued that even if the college was a crown agency, any impediment to the Board's jurisdiction to proceed with the application was removed by the adoption, in 1981, of the *Canadian Charter of Rights and Freedoms*.

The Board reviewed prior Board decisions which had held that community colleges were crown agencies, and legislative changes that had taken place since those decisions. It concluded that the legislative changes did not dictate a different result today. The Board held that, subject to its determination on the Charter issues, the *Labour Relations Act* did not apply to employees of a community college.

The union's argument based on the Charter was two-fold. First, it pointed out that part-time employees of Community Colleges are excluded from both the *Crown Employees Collective Bargaining Act* and the *Colleges Collective Bargaining Act*. Therefore, the union submitted, to also exclude these employees from the *Labour Relations Act*, by interpreting that Act subject to s. 11 of the *Interpretations Act*, would be to leave them without any legislative protection or mechanism for collective bargaining. In the union's submission such a result seriously interfered with the

employees' freedom of association guaranteed by the Charter. The union urged the Board to apply s. 2(d) of the Charter to "read down" or ignore s. 11 of the *Interpretations Act*, so as to enable the Board to apply the *Labour Relations Act* to these employees.

The Board, without determining the extent or meaning of the freedom of association in the Charter and assuming that the absence of collective bargaining legislation infringes upon that freedom, proceeded to deal with the union's submissions. The Board recognized that it is entitled to consider the Charter as an aid to interpreting the *Labour Relations Act* or even to decide that a provision of that Act is inconsistent with the Charter. On the other hand, while the Board may be required to construe external statutes in carrying out its responsibilities under the *Labour Relations Act*, the Board was of the opinion that it had no jurisdiction to apply the Charter to an external statute, to "read down" any of its provisions and thereby to extend its own jurisdiction. The Board concluded that it had no jurisdiction to "read down" the *Interpretations Act* by applying provisions of the Charter, and that that was a function appropriate for a superior court. The Board observed in passing that in the circumstances of the case before it, if anything is to be struck down as contrary to the Charter, it is not the provision of the *Interpretations Act* but the exclusion of part-time employees from coverage in the *Colleges Collective Bargaining Act*.

The Board also rejected the union's second argument based on the equality provision in s. 15 of the Charter. The section had come into effect after the hearing but before the release of the decision. The Board disposed of this submission on the ground that s. 15 was not intended to operate retrospectively, but went on to observe that even if s. 15 did apply to the situation, the result would only lead to a finding that the provision in the *Colleges Collective Bargaining Act* excluding part-time employees was inoperative, not that they should fall under the *Labour Relations Act*.

In the result, the Board held that it had no jurisdiction to entertain the application and that if the employees had any remedy at all, it is one which must be sought in the courts or from the legislature. *Sault College of Applied Arts and Technology*, [1985] OLRB Rep. Aug. 1293.

Union conduct in signing collective agreement without conducting ratification vote as per usual practice held not to be unlawful

The Board issued its decision in a complaint in which several Eaton's employees alleged that the Retail, Wholesale and Department Store Union had acted unlawfully in signing a collective agreement on the basis of a ratification by its International President, without conducting a ratification vote among the employees, as per usual practice of the union. The employer supported the complainants' position.

The evidence indicated that the union decided not to follow its usual practice because of the concern that non-striking employees and strike replacements might vote down a proposed collective agreement and put the union in a situation where it had no collective agreement and no real chance of getting one. There was also the concern that if no collective agreement was signed within six months of the commencement of the strike, striking employees might lose their jobs and the union's bargaining rights might be terminated through an application initiated by non-striking employees.

The Board noted that the *Labour Relations Act* does not require ratification votes. Examining the provisions of the union's constitution, the Board concluded that under it, the International President did have authority to ratify the collective agreement and to thereby end the strike. While the union had made indications that ratification votes would be held, these were made in good faith. The reasons adduced by the union for its subsequent decision not to hold ratifi-

cation votes were reasonable considering that this was an unusual situation. The Board concluded that it did not demonstrate bad faith.

The Board also rejected the argument that the union's refusal to permit non-strikers to participate in return to work meetings demonstrated union hostility and ill-will towards them. Given that the purpose of the meetings was to ascertain the wishes of the strikers, the Board found that the union's decision was not indicative of any ill-will.

The Board held that the return to work vote conducted by the union was not a ratification vote within the meaning of section 72. Nor was it a strike vote within the meaning of that section. The Board concluded that a strike vote only included a vote authorizing a future strike but not a vote as to the wishes of employees already on strike to return to vote. To hold otherwise would be to permit non-striking employees to decide whether or not striking employees should end their strike.

Finally, the Board rejected the aspect of the complaint which alleged that the union's ratification and signing of the collective agreement was designed to discriminate or punish non-striking employees contrary to section 80(2) because of the possibility that they might file a termination application. Citing prior Board case law, the Board concluded that it was not unlawful for the union to seek to order its affairs so as to take full advantage of the provisions of the Act relating to timeliness of termination applications. In the result, the complaint was dismissed in its totality. *T. Eaton Company Limited, Re Retail, Wholesale and Department Store Union, Re Group of Employees*, [1985] OLRB Rep. Aug. 1309.

Union member entitled under s. 46(2) to protection from personal vendetta by union

The complainant and the union were involved in proceedings before the Board. At a time when these proceedings were still ongoing, a heated exchange occurred at the workplace between the complainant and the union's Business Manager Ronald Last, during which the complainant, who was the foreman on duty, ordered Last, who had gone into the shop on some union business, to get out.

Last filed a grievance and Egan received a warning not to have any further confrontation with Last. In addition, Last laid charges against Egan under the constitution. While the Trial Board hearing was pending, a further similar confrontation occurred for which Egan was suspended for 3 days. Egan did not attend the hearing before the Trial Board but sent a letter to be read at the hearing. In the meantime, a second charge was laid by Last based on the second confrontation. Egan sent a plea of not guilty but did not attend this hearing either. The first Trial Board found Egan guilty and fined him $1,000.00 and required him to post a further bond for $1,000.00. The second Trial Board fined him $2,250.00, banned him from membership or having any voice or vote for a period of 5 years. Both Trial Boards included a brother of the accusor, Ronald Last. When Egan refused to pay, the union grieved demanding that Egan be dismissed. Egan's complaint claimed that he was protected under s. 46(2)(g) since the fines were "unreasonable assessments".

The Board rejected the union's argument that the term "other assessments" does not cover fines. The Board held that the section is broad enough to include fines. The Board also rejected the argument that the Board's jurisdiction in adjudicating the reasonableness of the assessment relates to the quantum of fine. The Board stated that while the size of the fine may be a major factor that will be taken into account in determining reasonableness, it is not solely determinative.

The Board concluded that an unreasonable process which leads to imposition of a fine may also lead to a finding of unreasonableness. On the evidence, the Board held that the conduct of Last and the two Trial Boards constituted "a blatant attempt to get rid of Egan". The Board stated

that Last's interpretation of the collective agreement (which the Board stated could best be regarded as silly) and the allegation that Egan's conduct towards Last brought "the stature of the whole brotherhood" into disrepute, lent a sense of unreality to the charges laid against Egan. That these charges should result in substantial fines led the Board to the conclusion that the purpose of the charges was to drive Egan out of the union and consequently from his job. This is precisely what s. 46(2)(g) speaks to and the Board held that Egan was entitled to protection from such conduct.

While the Board noted that it may be that Egan had brought about his own misfortunes, it emphasized that there is no room for union officials to carry out a personal vendetta against a member, as Last had done in this case. The Board held that the fines, which Egan refused to pay, were unreasonable assessments within the meaning of s. 46(2)(g) and directed the union to cease and desist from requiring the employer to discharge Egan on account of his loss of union membership. *William Egan, Re Painters, Local 1590*, [1985] OLRB Rep. Aug. 1192.

Full-time employee filing termination application with respect to full and part-time units

The Board received an application for termination of bargaining rights in which the only named applicant was a full-time employee. The application sought a declaration of termination with respect to both the full and part-time bargaining units represented by the respondent union. The union submitted that the named applicant was not "an employee in the bargaining unit" within the meaning of s. 57 of the Act, as far as the application related to the part-time unit, and subsequently that aspect of the application should be dismissed.

The Board disagreed. It noted that the individual applicant was only the nominal applicant. The petition, which accompanied the application was signed by both full-time and part-time employees. All these signatories were applicants and therefore the application had in fact been made by employees in both units. *Economy Fair*, [1985] OLRB Rep. Sept. 1357.

Board officers empowered to use force to effect posting of notices ordered by Board; no reasonable apprehension Board is biased where officers use such force

The respondent employers had refused to comply with Board directions to post standard notices to their employees of the hearing of certification and related employer applications filed with the Board. The respondents' managers had then resisted attempts by a Board officer to post the required notices. Ultimately, a Board officer attended at the respondents' premises accompanied by a sheriff's officer, who ensured that the posting was accomplished unhindered by making it clear that anyone who interfered with the Board officer would be arrested.

The respondents argued that the Board officer had no authority to enter premises forcibly with the assistance of a sheriff's officer in order to post notices. This, it said, made the Board appear as the ally of the trade union, creating a reasonable apprehension of bias which deprived the Board, and every potential quorum of it, of jurisdiction to entertain the applications.

The respondents also argued that even if the Board had such power, it could use it only to post notices authorized by the Regulations. The respondent argued that all information included in the certification application itself should have been reproduced in paragraph 2 of Form 6 after the words "your attention is directed to the following information contained in the application" and, as it had not, the notice was not one authorized by the Regulations.

The respondent also argued that the allegations of wrongdoing set out in the union's certification application and section 89 complaint were so detailed and inflammatory as to raise a reasonable apprehension that any panel that read them would be biased.

Although the respondent sought consent under section 109 of the Act to subpoena several Board officers and employees, the Board withheld consideration of that request until the respondent led its own evidence about the matters concerning which the testimony of Board officers was sought. The Board will not ordinarily grant its consent under section 109 until the applicant has exhausted other means to adduce the evidence. This protects the impartiality of Board officers and employees.

The Board rejected the bias argument. The Board is required under the *Statutory Powers Procedure Act* to give notice of its hearings to those whose rights might be affected. The best method of giving notice to employees is by a posting at their workplace, as set out in the Board's Rule 77(1), authorized by sections 103(2)(d) and (g) of the Act. If the power to post could be exercised only with the occupant's consent, the power would be meaningless. Having regard to the language and statutory history of the pertinent provisions of the *Labour Relations Act*, section 27 of the *Interpretation Act* and relevant jurisprudence, the Board concluded that the *Labour Relations Act* empowered it to post notices in a workplace despite the occupant's opposition and to use reasonable force in so doing. It also concluded that no reasonable apprehension of bias could arise from the Board's having exercised such powers in the discharge of its obligation to give notice to employees.

With respect to the form of the notices, the Board concluded that there was no general requirement that all, or any, information from the certification application be inserted in paragraph 2 of Form 6, which would be completed with additional information only in the rare case the Board found it necessary or desirable to do so. The Board also observed that the power to post notices was not limited to those notices prescribed by Regulation, and that it had the power to modify prescribed forms when it considered that necessary or desirable.

The Board's rules, the rules of natural justice, and the provisions of the *Statutory Powers Procedure Act*, all require that a complainant file with the Board full particulars of the allegations of wrongdoing on which it relies, so that notice thereof can be given to the parties against whom they are made. The Board is fully able to distinguish between allegations and evidence, and no reasonable apprehension of bias could arise from the fact that the Board knows at the outset of its hearing what allegations will have to be dealt with therein. *Plaza Fibreglas Manufacturing Limited*, [1985] OLRB Rep. Oct. 1503.

Workers on a subsequent shift not "bound" by Health & Safety Inspector's report. Knowledge of report goes to reasonableness of subsequent refusal to work.

The union complained that thirty employees had been wrongfully disciplined for invoking section 23 of the *Occupational Health and Safety Act* in that employees were given a written warning for a refusal to work; the union submitted the assembly line was unsafe.

During the first shift on Thursday, the line had "jumped", causing one worker a minor injury. Maintenance work was completed in time for the second shift. Employees on this shift observed a slow pulsating motion and refused to work. An inspector from the Ministry found the line "not likely to endanger" the workers; and the line ran for the balance of the shift. The following day, the first shift refused to work. Management and union representatives discussed the events of the previous day with the workers. The refusal continued. A management representative told the employees that a major overhaul would cause a two-month shutdown, and that, if further stoppages occurred, units might have to be imported from other American plants. Employees were warned that their refusal could constitute an "illegal strike". An inspector was again called who found the line not to be unsafe. The employer subsequently took the disciplinary action in question.

The union argued that the refusal to work was reasonable under the circumstances and protected by the Act. It argued that employees were not bound by the inspector's assessment given during the previous shift and were entitled to a separate assessment. The union also argued that employer comments with respect to an illegal strike, warnings of an extended shutdown and importation of units from other plants, and the disciplinary letter, were reprisals for the work refusal contrary to section 24 of the Act.

The Board noted that there is nothing of itself improper in a refusal by a group of employees rather than a refusal on an individual basis and that an employee need not be correct in his or her assessment provided that there were reasonable grounds, objectively measured, for the refusal. However, after discussions with union and management representatives on the second day, a continued refusal was not justified. While the employees were not "bound" by the first report of the inspector, the fact that they came to know of it during the discussions was a factor in assessing the reasonablenes of their continued refusal. The line had been manned without incident for several hours on the second shift following the first inspector's assessment. There was no evidence that the line had "jumped" again. Given that the union wanted a complete overhaul of the line, the company's statement about an intended shutdown did not amount to intimidation or coercion contrary to section 24(1) of the Act. The statement about an illegal strike was merely a statement of company position regarding the refusal and not in violation of the Act. The Board observed that, with regard to statements concerning importing units from other plants, "there is a fine line between a statement of fact and a threat regarding alternatives open to the company in response to a work refusal." In the circumstances, the Board concluded the statement was not a violation of the Act.

Having found no reasonable grounds for the work refusal, the Board then considered the severity of discipline imposed. It found the written reprimand to be a mild form of discipline with which it would not interfere. Accordingly, the complaint was dismissed. *Camco Inc.*, [1985] OLRB Rep. Oct. 1431.

Board may state case of contempt to Divisional Court on ex parte application of a party; no hearing or other involvement of respondent necessary

The applicant union asked the Board to state a case for contempt against the respondent employer to Divisional Court under s. 13 of the *Statutory Powers Procedure Act*. That section provides that "the tribunal may, of its own motion or an application of a party to proceedings, state a case to the Divisional Court setting out the facts". The request arose after the respondent employer repeatedly failed to follow Board directions to post notices of hearing regarding proceedings pending before the Board, or to comply with a Board order to file employee lists and specimen signatures.

The Board considered the nature of its function under s. 13. It is the court, not the tribunal, which adjudicates and punishes in such proceedings. A decision by the Board to state a case does not involve a conclusive adjudication of the respondent's rights or the facts upon which its liability may depend. While the respondents have the onus of explaining or contradicting facts alleged in the stated case, they are free to present evidence and argue their case. The Board decided that the nature of its function under s. 13 made it unnecessary to hold a hearing or otherwise involve the respondent in its decision whether or not to state a case.

The Board consented to state a case as requested, and concluded that the factual allegations to be set out in the stated case should include observations made by a Labour Relations Officer in the exercise of duties and powers delegated to him by Board order and recited by him in the report

required by that Board order. *Plaza Fibreglass Manufacturing Limited*, [1985] OLRB Rep. Nov. 1648.

Related employer declaration not available in genuine subcontract. Section 1(4) inapplicable where bargaining stance of employer dictated by economic realities of subcontract

The applicant sought a declaration under s. 1(4) that a development company managing a downtown complex was a related employer to the service company holding the cleaning subcontract and for which the applicant held bargaining rights.

The development company gave the subcontractor a letter for use in bargaining stating that there would not be any increase in the contract price to reflect increased labour costs. The subcontractor also repeatedly told the union during bargaining that its positions were effectively dictated by the development company. It warned that a strike or high labour costs might cause the development company to award the contract to another firm. This was done without the development company's knowledge or consent.

The Board found this situation insufficient to support a related employer declaration. S. 1(4) was not intended to collapse most bona fide subcontracting relationships. The Board's discretion to make such a declaration should be exercised only where there is clear evidence of the mischief the section was intended to avoid; however, a declaration may be appropriate where labour services are contracted in, the subcontractor being so effectively dominated that joint control and direction result, and it appears that the subcontract was introduced to provide a non-union corporate vehicle for the performance of these services.

This was not such a case. The two companies had no common principals, shareholders, financial supporters, logos, solicitors, offices or personnel. Management, including the conduct of labour relations, was separate. Obviously, the subcontractor would have to take into account its competitors and the capacity of its customer to pay; and it may have chosen to adopt a collective bargaining posture emphasizing these themes, but that did not make the development company the "real employer" or warrant the invocation of s. 1(4).

The subcontractor was not a shell or device to avoid collective bargaining, nor an instrument of the development company. Although the development company had considerable leverage of its subcontract, this was the result of normal market conditions. A degree of functional interdependence is implicit in many subcontracting arrangements, but in the absence of other indicia of relatedness, or an erosion of bargaining rights, this would not trigger s. 1(4). The application was dismissed. *Food and Service Workers of Canada and Federated Building Maintenance Company Limited and Olympia & York Development Limited*, [1985] OLRB Rep. Nov. 1585.

Duty to bargain in good faith, scope of bargainable topics and duty to disclose

During the bargaining which took place between the complainant union representing the Royal Conservatory of Music faculty and the respondent, University of Toronto, the respondent's plan to separate the conservatory from the university was a great concern to the union.

It tabled a nine point proposal relating to the separation and made extensive information requests concerning the plan. The respondent viewed the separation as "non-negotiable". It would neither discuss them nor disclose the requested information. When the union complained to the Board that this stance constituted a breach of the duty to bargain in good faith under the Act, the respondent declined to continue any bargaining pending the Board's decision. The union amended its complaint to include this refusal.

The Board affirmed its position in *DeVilbiss* that the duty is based on "voluntarism". While the Board may monitor the bargaining process, it is not, in the absence of demands which are illegal or designed to thwart bargaining, concerned with its content. Since the parties are free to agree on any matter, there must be a corresponding freedom to table that matter for discussion. The definition of a collective agreement under s. 1(1)(e) of the Act is expansive. Provided the motive is not the avoidance of a collective agreement, the Board will not question the wisdom of the proposals or priorities put forward by the parties. The respondent's refusal to discuss the nine proposals was a breach of the duty. The Board emphasized that it need not agree with them, but it must respond by stating its position and giving an explanation.

The failure to disclose was not a breach of the duty. Disclosure is necessary where it is essential to rational, informed discussion in the bargaining process. But the duty to disclose is not co-extensive with the duty to bargain: a party may not use its own proposals as a springboard to force the other party to disclose. Apart from the *prima facie* right to information about existing terms and conditions of employment, the disclosure obligation is contingent upon the information being necessary for one party to adequately comprehend the position taken by the other. Where a party's proposal or response is rationally based, it may be required to prove the *bona fides* of that position through disclosure. Although the respondent's failure to disclose was not at that point a breach, some of the complainant's information requests might trigger a disclosure duty depending upon the university's response to the union's proposals, as directed by the Board.

The Board found no cogent reason precluding bargaining on outstanding issues pending the Board's decision. To allow a party to cease bargaining in the face of a complaint is disruptive of negotiations and may reward bad faith. The respondent's refusal to continue negotiations was held to be a breach of s. 15.

The Board affirmed its position in *Canadian Industries* that the focus of its remedial authority in s. 15 breaches should be on repairing the bargaining relationship. It issued a declaration that the respondent had contravened the duty and directed its compliance. To this end, it ordered the respondent to table within a reasonable time a full package of proposals on all issues, including a response to the complainants' nine points. *Royal Conservatory of Music Faculty Association and Governing Council of University of Toronto*, [1985] OLRB Rep. Nov. 1652.

Trade union not becoming an employer within meaning of Act's reverse onus provisions when referring persons to employment pursuant to a collective agreement

In this case, the Board heard a complaint that the respondent union had violated its duty of fair referral set out in Section 69 of the Act. Prior to the hearing, the respondent moved for a ruling that the reverse onus provision of Subsection 89(5) applied to the complainant. The Board, however, in an oral ruling, was not persuaded that a trade union becomes an employer or employers' organization when it refers persons to employment pursuant to a collective agreement. The reverse onus provision applies only to an employer or employers' organization, and these terms could not be stretched to fit the respondent without legislative amendment.

In its final decision, the Board referred extensively to its earlier decision in *Joe Portis*, [1983] OLRB Rep. July 1660, in which it pointed out that the union's discretion in operating a hiring hall must not be used to benefit friends and relatives, nor to punish enemies. The Board found that the complainant had incurred the wrath of the Local's president and business manager by running against their preferred candidate in local elections. The business manager had told other executive members that his rivals were to be laid off. The Board also found that the Local's hiring hall records had been altered by the business manager or someone under his direction for the purpose of misleading the Board or anyone else enquiring into the operation of the hiring hall. These alter-

ations caused the Board to discount the evidence of the president's daughter responsible for referrals as this evidence was heavily dependent on the records. Given the expressed willingness of the business manager to penalize political rivals, it was incumbent on the respondent to produce a plausible explanation for what appeared to be anomalous and arbitrary job referrals, and the respondent had failed to produce such an explanation. While Section 69 applies only to situations in which a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment pursuant to a collective agreement, the Section was applicable to the present complaint as the president's daughter had testified that she would not refer members to 'non-union jobs'.

Three of the six referrals challenged by the complainant were found to be in breach of Section 69. The Board accordingly directed the respondent to compensate the complainant for lost wages and benefits as a result of the contravention, taking into account contingencies, including the likelihood that the complainant would have refused one or more of the referrals, or would have been physically unable to perform the work if he had accepted. The complainant's request for costs was refused for the reasons set out in *Silknit Limited*, [1983] OLRB Rep. Nov. 1913, and because his success had been mixed. *Luciano D'Alessandro*, [1985] OLRB Rep. Dec. 1708.

Five minute work stoppage constitutes strike

The applicant company sought an illegal strike declaration, and a cease and desist order from the Board against the union and two of its officers who had helped instigate the first of a planned series of five minute work stoppages. The company had earlier announced the unilateral introduction of a new superclassification, something which had been rejected by the union in negotiations preceding the existing collective agreement. The union responded by invoking the appeal procedure set out in the collective agreement, and seeking expedited arbitration for the policy grievance it filed in the matter. Some of the respondents also filed an unfair labour practice complaint against the company. The union also sought to apply pressure on the employer to drop the superclassification through protest meetings and pamphlets. Ultimately, the union and employees agreed to a series of five-minute work stoppages, the first of which took place before the application.

The union argued that the work stoppage was not a strike within the meaning of the Act as the applicant company had not lost any production as a result. It also argued that the Board should exercise its discretion to deny relief to the applicant. Such a denial would be appropriate, in the opinion of the union, because the company had high handedly imposed a demand it was unable to achieve in bargaining, thus ensuring a hostile response from employees. The union also argued that it had done what was reasonable to contain employee discontent. If the controlled short stoppage had not taken place, a spontaneous wildcat strike of indefinite duration would have occurred. The employer was not before the Board with clean hands, while the union was merely responding as moderately as possible.

The Board rejected the union arguments and issued a cease and desist order. The five minute stoppage constituted a strike within the meaning of Paragraph 1(1)(o) of the Act. The union could not argue that no loss of production had occurred, or should be a factor for the Board's consideration, when the employees in that time period were normally producing goods and services for the applicant company. The Board also noted that the parties had pursued all avenues open to them under the Act and the collective agreement to resolve the dispute in a legal manner. This was an appropriate occasion for the application of the "work now, grieve later" principle, especially as any job loss feared by the union as a result of the company's decision would not occur before the issue had been resolved in a legal manner. Thus, a cease and desist order would preserve the *status*

quo until the real problem could be dealt with. *McDonnell Douglas Canada Ltd.*, [1985] OLRB Rep. Dec. 1750.

Bargaining demand that union withdraw unfair labour practice complaints violates duty to bargain in good faith if pressed to impasse

The union complained that the respondent employer had violated the duty to bargain in good faith on two counts: by demanding that the union withdraw outstanding unfair labour practice complaints relating to the discharge of striking employees, and by tendering, after the union's defeat in a lengthy strike, an offer less generous than its "final settlement offer" made prior to the commencement of the strike.

After a long strike of almost six months duration, the union purported to accept the company's "final offer" made before the strike. In a prior decision, the Board had decided that the offer was no longer open to acceptance, and directed the parties to return to the bargaining table. Much later, the company made an offer much less favourable than the earlier "final settlement offer". It also demanded that the union withdraw unfair labour practice complaints pending before the Board. The union offered to do so if the discharges in question were referred to arbitration. When the employer declined, it complained that the employer had breached its duty to bargain in good faith.

The Board found that the employer's offer, in itself, was "hard"—but not illegal—bargaining. There was nothing unusual in the fact that the employer's bargaining position may have changed between the commencement of the strike and the time of the offer complained of. In a volatile strike situation, the parties' demands may well change in accordance with economic circumstances and their tactical assessment of their own bargaining power. A change in bargaining positions resulting from the change of market conditions and relative bargaining power does not, of itself, constitute a breach of the duty to bargain in good faith. The employer was merely engaging in legal "hard bargaining" based on its superior bargaining power. While the Board may on occasion examine the content of the parties' proposals to determine whether an employer does not really intend to enter into a collective agreement or recognize the union as the exclusive bargaining agent, these factors were not at play in the present case. The company was prepared to enter into a collective agreement, albeit on its own terms. However, the scope of bargaining does not encompass demands which are illegal or inconsistent with the scheme of the *Labour Relations Act*. An employer is not entitled to rely on its superior bargaining power to compel the withdrawal of a complaint before the Board, nor to make the signing of a collective agreement contingent upon such a withdrawal. To do so would be interference with the union's right to represent employees and would penalize other members of the bargaining unit because discharged workers were seeking legal vindication. To hold otherwise would make the employees' statutory rights illusory and subject to the balance of bargaining power rather than the rule of law. Thus, a demand that unfair labour practice complaints be withdrawn would be a breach of the duty to bargain in good faith if pressed to impasse.

However, the Board found no breach of the duty as the union had in fact shown its willingness to bargain over the discharges. The union never objected that the demand was not an improper subject of bargaining nor demanded that it be removed from the table. It had not demanded that the company table a response absent the unfair labour practice complaint issue. If the company had refused to do so, or if its response could be construed as a "penalty" for refusing

to forego statutory rights, the complaint before the Board might have been successful. The Board directed the parties to return to the bargaining table. *Radio Shack*, [1985] OLRB Rep. Dec. 1789.

Contracting in of bargaining unit work found to result in common control or direction with subcontractors

Brantwood Manor Nursing Home had attempted to avoid high labour costs by "contracting in" to two outside agencies work hitherto performed by its unionized employees, who had then been laid off.

The union complained that the contracting in of bargaining unit work was an unfair labour practice and applied under Section 1(4) for a declaration that the employer and two subcontractors were one employer for the purposes of the *Labour Relations Act*.

The Board in its majority decision thoroughly reviewed the events leading up to the subcontracting, and the terms of these contracts. It held that "common control or direction" within the meaning of Section 1(4) can be the result of a contractual relationship even in the absence of any contractual relationship relating to legal ownership.

On the basis of the facts and the legal principles applicable, the Board concluded that Brantwood and the activities of persons provided by the subcontractors were clearly "associated or related activities or businesses". It also concluded that these activities were under common direction or control, the common element being the contractual arrangements between Brantwood and the two agencies.

Having so found, the Board exercised its discretion to make declarations with respect to each of the two outside agencies, effective to the date each subcontractor engaged persons to perform work at Brantwood. In each case the subcontractor was held to be bound by the terms of Brantwood's collective agreement with the union. The Board found that the collective agreement had been violated and relied upon its remedial authority under Section 1(4) to direct that Brantwood reinstate workers laid off as a result of the subcontracting, and that these workers be compensated for losses arising from Brantwood's breach of the collective agreement. The quantum of these damages was left to the parties to settle. *Brantwood Manor Nursing Homes Limited*, [1986] OLRB Rep. Jan. 9.

Compensation to unfairly terminated employees awarded only to date job separation would otherwise have occurred

In this case the termination of four union supporters during an organizing campaign followed shortly after the employer lost two major contracts which would have made layoffs imminent anyway. While the employer was in the United States unsuccessfully attempting to negotiate a contract, two dissatisfied employees contacted a union. A meeting was held and many employees signed union cards. The employer arrived back the next day. He called an employee who had arranged the union meeting into his office. The employer implied he was aware of the union activities and terminated the employee for lack of work. On the same day three other employees who had signed union cards were terminated, while two outspoken union opponents were promoted. On the following day during working hours the employer held a meeting at which he announced the terminations and promotions, promised bonuses if the company's health improved, and told the employees they had better 'work more friendly'. Two days later the employer laid off another union supporter. Several other employees were laid off a month later when the order they were working on was completed. At the time of the hearing the company was employing only three employees and was in danger of bankruptcy.

The Board agreed that the first four terminations and the captive meeting were unfair labour practices. A discharge or layoff will constitute an unfair labour practice if motivated in whole or part by anti-union considerations. Here, anti-union motives were apparent notwithstanding the economic condition of the company. Two of the employees terminated the day after the union meeting had been responsible for contacting the union. The first four terminations occurred the day after many had signed union cards. The employer had made no attempt to keep on one of these employees whose skills could have been employed elsewhere. These actions constituted a breach of Sections 64 and 66 of the Act. The captive audience meeting was a forum for thinly veiled threats against union activity which exceeded acceptable limits of employer free speech. This contravened Sections 64 and 70. The subsequent terminations were done for legitimate business reasons and could not be attributed to anti-union motives.

However, the Board was concerned that the remedies available for unfair labour practices be tailored to fit the circumstances of the case. One of the employees had an alternate job offer at the time of his termination and commenced work shortly afterwards. The Board felt it appropriate to award him back pay only to the date he would otherwise have resigned to take the new job. Because layoffs were imminent in any case from the loss of the contracts, two of the terminated employees were ordered compensated only to the latest date they would otherwise have been laid off for business reasons. They were ordered reinstated at such time as work they were qualified to perform was available. The fourth employee had insufficient skills and it was clear he would have been shortly terminated for this reason. The Board ordered compensation to the latest date on which he would have been terminated for his unsatisfactory performance.

The Board further ordered a posting in a conspicuous place in the workplace to remedy the adverse psychological impact of the breaches of the Act. In view of the large number of layoffs, it ordered an employer-paid mailing of a Board notice to all employees as well. To counteract the effect of the captive audience meeting, the union was permitted to hold a one hour meeting with employees during working hours. *K & U Manufacturing Limited*, [1986] OLRB Rep. Jan. 115.

Duty of fair representation applies only within context of bargaining relationship with employer; motive behind complaint irrelevant in assessing duty owed by union

The complainant was a TTC driver who occasionally worked on a 'straight through' crew. Under the contract, specified straight through crews on weekends and holidays were not entitled to breaks. The complainant filed a grievance after his request for a break while on one of these crews was denied by the supervisor.

The union's assistant business agent informed the complainant that the matter did not constitute a valid grievance under the collective agreement, but might be grounds for complaint under the *Employment Standards Act*. At the time the union and employer were in negotiations and straight through crews were an important subject of bargaining. The union decided to keep the grievance timely at Step 3 pending the outcome of negotiations and a review of the collective agreement in the context of the *Employment Standards Act*. The complainant filed daily grievances which were kept timely at Step 3 along with the original.

The complainant pursued the matter, meeting with Employment Standards officials. They told him the company and union had not requested an exemption from the *Employment Standards Act* but had asked about the necessary steps to do so. The complainant was told that the union felt the collective agreement provided a greater benefit than the Act. Employment Standards had also been informed of a vote in the Queensway Division which overwhelmingly favoured existing arrangements. The union felt this vote to be representative.

At a subsequent union meeting, the complainant introduced two motions, one of which would require any union request for an exemption from the *Employment Standards Act* to be placed before the entire membership. In a written response, the union ruled the motions admissible, explaining that the union had attempted to negotiate paid breaks in earlier bargaining, and that the issue would be put to the membership after a decision was received from Employment Standards.

The complainant argued that the union was in breach of its duty of fair representation under Section 68 of the *Labour Relations Act* on four counts: it had negotiated a discriminatory provision in the collective agreement; it had refused to proceed with his grievances to arbitration; it had not properly represented him at the meeting with Employment Standards; and it had ruled against the motion for a referendum.

The Board found no merit in any of these allegations. The different provisions relating to entitlement to breaks were not discriminatory within the meaning of Section 68. Section 68 is aimed against singling out an individual or group for unfair treatment, particularly when the basis for identification of the individual or group is race, colour, creed, etc. But the collective agreement did not single out on the basis of improper criteria. While it did differentiate between some straight through crews and others, such differentiation is characteristic of collective agreements which routinely provide for categories of differentiation. Section 68 is not meant to preclude this.

Nor, under the circumstances, had the union acted improperly by failing to proceed to arbitration. It had kept the grievances timely without prejudice to the complainant while engaging in bargaining and awaiting a decision from Employment Standards. To have proceeded to arbitration before the decision would have required the union to repudiate its long standing bargaining position with negative impact on the bargaining relationship.

Section 68 did not require the union to support the complainant's position before Employment Standards. The duty of fair representation applies only to a trade union within the context of the collective bargaining relationship with the employer. It is not clear that the duty would extend to meetings with Employment Standards. The union was furthermore entitled to take a position supported by the majority of its membership.

There was no obligation on the union to hold a referendum as requested by the complainant. Given its longstanding bargaining position in favour of paid breaks and against split shifts, it was entitled to hold the Queensway vote as representative. The rulings on the complainant's motions were related to the motions and there was no evidence of reasons for them other than those stated by the union.

Throughout the process, the complainant had attempted to put political pressure on the union to back his position. While the union contended that the complainant acted from the improper motive of wishing to embarrass the union executive, this was not of concern to the Board. The motives behind a Section 68 complaint are irrelevant in considering whether the union had breached its duty of fair representation. *James Richard Hughes*, [1986] OLRB Rep. Jan. 103.

Polygraph evidence not admissible

This was an unfair labour practice complaint alleging that the respondent fired an employee for union activities. The respondent wished to introduce polygraph evidence to assist the Board in assessing his credibility.

The Board reviewed current practice in both courts and arbitration boards and noted that in the main such practice opposed admitting polygraph evidence. The Board also noted that the *Employment Standards Act* forbids the requirement by employers of a polygraph test.

The Board remarked on policy objections to admission. Permitting such evidence would create a battle of credibilities which might force employees to provide such evidence although the *Employment Standards Act* indicates the Legislature intended to relieve employees of precisely such pressures. Since non-admission would not restrict the respondent in presenting *viva voce* evidence complete with the protections of cross-examination, the Board decided that the refusal to admit such evidence would not prejudice the respondent's case. The adjudicative process has the means to assess the credibility of witnesses.

Admission of polygraph evidence was thus not necessary and could erode the protection of the *Employment Standards Act*. *Olympia and York Developments Ltd.*, [1986] OLRB Rep. Feb. 270.

Seven branches of trust company held to be unit appropriate for collective bargaining in the circumstances of the particular case

In an application for certification of various Metro Toronto branches of the respondent, National Trust Company, both parties conceded: that a single branch would be an appropriate unit; that terms and conditions of employment are established at the head office and are uniform throughout the various branches involved; that such terms and conditions are implemented at the branch level; that there is a similarity of skills and training involved in people doing similar work across the various branches.

The Board reviewed past jurisprudence on "appropriateness". The question to be asked was: "does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer?". The Board considered the employer's structure of administration which is hierarchical and noted that it is one factor but not a controlling factor in determining the appropriateness of a bargaining unit in the particular situation. The Board further noted that the seven units the applicant seeks to have considered as one unit cut across two of the respondent's regions but that this did not seem to impose a significant bargaining hardship. The facts indicated that the seven branches had sufficient community of interest to bargain together. The Board also noted that given the employer's structure of administration individual branch bargaining would be unrealistic. Since management itself conceded that all thirty-seven branches would have a sufficient community of interest to constitute a single bargaining unit, the Board held that any subgroup of this would of necessity have sufficient commonality of interest.

Pointing to the preamble to the *Labour Relations Act*, the Board emphasized the legislative predilection for collective bargaining. The jurisprudential movement concerning the appropriate bargaining unit has been in the direction of increasing the options available for organization. Appropriateness should not be considered in the abstract but in terms of the circumstances of the particular case. In the matter at hand, it was not a question of framing a unit to facilitate organization, since the union had successfully organized several branches. The question rather was whether combining those branches into one unit might be more conducive to collective bargaining. The Board determined it would be and certified that unit. *National Trust*, [1986] OLRB Rep. Feb. 250.

Agreement on composition of arbitration board and setting date of hearing constitute election under section 24(2) of the Occupational Health and Safety Act

This was a complaint alleging a violation of Section 24(1) of the *Occupational Health and Safety Act*. The grievor complained that fumes and inadequate ventilation at the water treatment plant of the respondent municipality resulted in a persistant cough and illness severe enough to cause him to miss several days of work. Complaints to his employer brought no change; he therefore discussed the matter with the Health and Safety Branch of the Ministry of Labour and so informed his employer.

He claims that this attempt to exercise his rights was the reason for his transfer and subsequent termination. He filed a grievance seeking reinstatement without loss of benefits, wages or seniority. This grievance proceeded through the prescribed stages. In July of 1985, the union filed notice of intent to arbitrate. The parties agreed upon a three person Board and a hearing was scheduled for June, 1986. This complaint to the Board was filed in November, 1985.

The respondent asserted that there must be an election of forum under Section 24(2), and that by starting the grievance procedure, the complainant had in fact made that election. While counsel for the complainant conceded the requirement of an election under 24(2), he argued that election was only with respect to the *Occupational Health and Safety Act* issue. The arbitration of which the trade union had carriage concerned an improper layoff. The Board could hear a complaint concerning an alleged penalty under the Act. That is to say the election concerned whether or not there was compliance with the Act.

The points at issue were: 1) whether the *Occupational Health and Safety Act* issue was severable from the grievance, permitting the Board to hear the former and the arbitration panel to hear the layoff issue and, 2) if it was not severable, at what point did the election occur.

The Board held that the "matter" referred to in Section 24(2) is the alleged violation of Section 24(1) — penalizing a worker for complying or seeking enforcement of the Act. Thus improper or unjust discipline is precisely such a matter.

With regard to the election, the Board noted that workers should be encouraged to utilize grievance procedures before pursuing statutory ones. The election occurs once the grievor goes beyond the grievance procedure to arbitration. At that point, the trade union which has carriage of the grievance has committed both time and resources. On the other hand, the worker and not the trade union is protected under Section 24(1). The Board did not wish to preclude recourse to the statutory remedy where the trade union decided not to take a matter to arbitration.

However, once the union proceeded to arbitration and made concrete steps in that direction, the election can be held to have taken place. Agreement upon an arbitration panel and setting a date are such concrete steps. The Board therefore dismissed the application. *Municipality of Metropolitan Toronto*, [1986] OLRB Rep. Feb. 283.

Daycare homeworkers held to be dependent contractors

The respondent "Creche" in this certification application was an agency, licensed under the *Day Nurseries Act*, providing day care services on both a group and a private home basis. The application concerned only the latter service.

The applicant union argued that the home workers ("providers") were employees within the meaning of the *Labour Relations Act*, or in the alternative, dependent contractors within the meaning of Section 1(1)(h). The respondent, to the contrary, asserted that the providers were independent contractors.

The Board found that the respondent was responsible for assuring compliance with minimum standards of the *Day Nurseries Act*. Lengthy assessment preceded selection of a provider. Ongoing supervision through home visits and required orientation and refresher courses maintained those minimum standards. The relationship between the Creche and the provider is governed by a standard form agreement containing undertakings required by the *Day Nurseries Act*, the number of children the provider will accept and the hours of care that will be given. Although the Creche does not guarantee the number of placements and requires providers to have an alternate source of income, the Creche pays providers and supervises them closely. The Creche can terminate placements with a provider and its agreement with the provider at any time. It is recognized that this is an infrequent occurrence, but remains a possibility.

There are no standard hours of care, but the fee schedule set by Metro for a full day of care is based on ten hours. The days and hours which a provider gives care is decided between the provider and the parents. The Board decided that it was more appropriate to examine the status of providers under the definition of dependent contractors. It applied the two tests in *Abdo Contracting*, [1981] OLRB Rep. Nov. 1587. Both tests must be established before a person can be found to be a dependent contractor: 1) a contractor must be in a position of economic dependency on the client closely analogous to that of an individual employee; and, 2) the contractor must be under an obligation to perform duties for the client roughly analogous to the obligation an individual employee has to perform duties for his employer.

In considering the facts, the Board found that the majority of providers are economically dependent upon the Creche. The Creche controls the source of referrals, and restricts the number of children who can be cared for. This limitation restricts earnings from any other source. Providers take no risk in collecting fees. The Creche takes the only entrepreneurial risk — the collection of fees. Thus, providers meet the test of being directly and substantially dependent.

With regard to the second test, the Board recognized that providers have some latitude in meeting their obligations. They can refuse children or may terminate a placement. The Board however, noted Creche control behind this, since the Creche requires a willingness to provide care as a basis for retaining the provider on its roster for referral.

The Board also recognized that providers have some characteristics of entrepreneurship: they can arrange their own time off; can refuse work; can limit their hours of work; and bear the costs of liability insurance.

The fact that the demands of the *Day Nurseries Act* and the Creche's contract with Metro impose the need for most of the control which the Creche exercises over the providers does not alter the fact of their economic dependence. Moreover, they provide only their homes and their labour. Customers and a standard operating manual are provided by the Creche. Taken in conjunction with the Creche's training requirements and performance supervision, the Board found that the providers did have an obligation to perform duties for the Creche analogous to those of employees. In the Board's view the facts pointed to a relationship more closely resembling an employer/employee relationship than one of client and independent contractor. *Cradleship Creche*, [1985] OLRB Rep. Feb. 225.

Sale of a moribund operation without inventory, employees or customers not a sale of a business; section 63 not applicable

Canada Safeway sold twenty-two of its operating stores in southern Ontario to the Oshawa Group, which agreed to honour existing bargaining rights. On the same day, it concluded an agreement to sell the Oshawa Group three "dark" stores which had been closed the previous year. Employees at these dark stores had already exercised seniority rights to transfer to other Safeway operations. After extensive renovations these stores were reopened by the purchaser and staffed by employees from its other stores or hired through Canada Manpower. The applicant union argued that a single sale of business had taken place and asked for a Section 63 declaration which would bind the purchaser to existing bargaining rights at the dark stores.

The Board found that no sale of business had taken place with respect to the dark stores. Two transactions, separate in character and in fact, had taken place. The purchase of the three stores was not the purchase of a business, but the purchase of a moribund operation without inventory, employees or customers. The stores had been closed before a deal was struck or a potential purchaser identified. The fact of renovations and temporary closure were not determinative, but the totality of circumstances indicated that a mere physical shell rather than an operating business had been transferred. The sale of the dark stores was a transfer of assets to which Section 63 was inapplicable. The application was dismissed. *Canada Safeway Limited*, [1986] OLRB Rep. March 305.

Board has discretion to order production of notes referred to by witness in refreshing memory; production inappropriate where adjournment necessary and factual basis lacking

In proceedings before the Board, the complainant admitted under cross-examination that he had referred to notes before giving his evidence in chief. However, he claimed he had refreshed his memory prior to giving evidence primarily by reading the detailed particulars of his application to the Board. During examination-in-chief the complainant did not refer to any notes. Counsel for the respondent sought production of the notes.

The Board reviewed relevant court decisions and concluded that it is a matter for the discretion of the trier of fact to determine whether to order the production of notes used to refresh a witness's memory prior to giving evidence, but not referred to during the course of his evidence. The time lapse between referring to the notes and giving evidence was a relevant factor in exercising this discretion.

The Board denied the motion for disclosure under the circumstances, noting that the respondent had not prepared the minimum factual basis for production. It had not asked the complainant when he had last referred to his notes, nor had it summonsed the notes despite ample time to do so. *Michele Gargaro*, [1986] OLRB Rep. March 329.

Certification vote rejected where anti-union petition may have been influenced by statements and actions of local community leaders associated with management

In exercising its discretion under subsection 7(2) to direct the taking of a representation vote, the Board considered the voluntariness of an anti-union petition filed in the certification application for employees of a small auto parts manufacturer in Dundalk. The applicant union argued that the voluntariness of the petition was undermined by the reasonable apprehension that two community leaders warning of job loss were expressing the views of the employer.

During the organizing campaign, the local newspaper published a letter from the Chairman of the local committee which had persuaded the employer to locate in the community. The writer cautioned that "I am led to believe a union vote would cause management to farm out more jobs in other areas, with an actual loss of jobs here". Later in the campaign the paper published a letter from the former reeve, who was well known locally and active in community affairs. He had been instrumental in persuading the employer to locate in Dundalk and was also a trustee for funds lent by community people to the employer. Certain comments in the letter implied that he was in communication with management and that unionization would result in job loss. Two anti-union petitions were circulated within a week of the publication of the second letter, although they were never filed with the Board. Shortly afterwards, some employees met with the former reeve, who told them he had been talking with the plant manager and promised to convey their concerns to him. The former reeve toured the plant on the invitation of management, talking briefly to several employees. Anti-union petitions were filed after the Board's notice of application for certification had been put up at the plant.

The Board decided the petitions could not be regarded as a voluntary expression of employee wishes. The Board has always been concerned that management not engage in any action during an organization campaign which might be perceived by employees as a threat to job security. Such concerns do not generally arise with respect to members of the public who enter into the debate. However, to the extent that a member of the public may be associated in the minds of employees with management, his actions and statements will take on a greater significance.

Given the association between the two community leaders and the employer, and the content of their letters, it would have been reasonable for an employee to assume that they had access to inside information from management. This perception would only have been heightened by the tour of the plant, which presumably was not open to members of the public without management permission. Nevertheless, management did nothing to dissociate itself from these statements or actions. Given that the employer was the major employer in the community, there was a reasonable likelihood that employees who had become union members subsequently signed the petition, not out of a genuine change of heart, but due to a fear that unionization would result in a threat to their job security. The Board accordingly declined to exercise its discretion to order a representation vote. *Trim Trends Canada Limited*, [1986] OLRB Rep. March 364.

VI COURT ACTIVITY

During the year under review, the Courts dealt with nine applications for judicial review. Of these, eight were dismissed. In the other case the majority of Divisional Court agreed with the applicant that the Board had violated the rules of natural justice, particularly the *audi alteram partem* rule, in having the panel hearing the case discuss a draft decision with other members and staff of the Board in the absence of the parties. The Board has been granted leave to appeal this decision to the Ontario Court of Appeal.

The Divisional Court in December 1985 heard argument by the parties and the Board in a further matter involving judicial review of a Board order that the employer and union arbitrate a grievance. The Divisional Court has reserved its decision in this case, pending the Supreme Court of Canada's decision on the appeal of a Quebec Court of Appeal decision.

In two of the eight applications for judicial review which were dismissed by the Divisional Court, the Ontario Court of Appeal declined to grant the applicants leave to appeal the Divisional Courts' decisions.

Three applications were withdrawn, discontinued or abandoned by the applicants in the year under review. The Registrar of the Supreme Court of Ontario has served Notice of Intention to Dismiss for Delay four other applications which had not been perfected in a timely fashion.

The Courts dealt with several preliminary matters as well in the year under review. In one matter the Divisional Court made a preliminary ruling on the use of affidavits in applications for judicial review. In another matter the Court granted a motion by a trade union to be added as a party to the company's application for judicial review. Finally, the Divisional Court permitted an applicant to amend its application for judicial review originally relating to a procedural ruling of the Board so as to include the subsequent decision certifying the union.

During the fiscal year seven applications to stay Board proceedings were made and all but one were dismissed. In the one application for a stay which was granted the effects of the Board's order that two companies were related employers were stayed pending the hearing of the application for judicial review. Two motions to the High Court for an expedited hearing of an application for judicial review were withdrawn by the parties prior to the scheduled Court hearings.

The following are brief summaries of matters involving the Labour Relations Board which went to court during the fiscal year.

Securicor Investigation and Security Ltd.
Supreme Court of Ontario, Divisional Court
Preliminary Ruling, April 17, 1985 — 50 O.R. (2d) 570, 10 Admin L.R. 189
April 4, 1985; Unreported

The union withdrew its complaint against the employer and, with Board consent, proceeded solely against the security firm hired by the employer to infiltrate the union during a lawful strike. The Board found that the conduct of the security firm, through an employee who posed as a striker and acted as an "agent provocateur", constituted interference with the administration of a trade

union and with the representation of employees, contrary to section 64 of the Act. The Board found that this conduct prolonged the strike by five weeks and ordered the firm to compensate employees for half of their lost earnings and the union for half of the strike pay it paid during this time. They only had to pay half of the totals because the employer may have been liable for the other half. The Board also ordered the security firm to give notice in a form prescribed to any union representing employees of an employer which retained them in anticipation of or during any strike or lockout, for a period of two years from the date of the Board decision.

The security firm applied for judicial review on the grounds that the Board exceeded its jurisdiction by granting leave to withdraw the complaint against the employer and by denying leave to the applicant to add the employer as a party or claim any relief from it; that the Board lacked jurisdiction to hear the complaint against it because the matter of *lis* between it and the union did not pertain to an employer-employee relationship or otherwise fall within the ambit of the Act; that the Board was not properly constituted to hear the complaint because no member of the Board was a representative of private investigators or security guards; that there was a bias or likelihood of bias on the part of the Board against the applicant; that the Board erred in law by misinterpreting section 64 of the Act or alternatively, that section 64 is of no force and effect for being inconsistent with the *Charter*; that there were no facts to support certain findings of the Board; that the damages assessed were "punitive, excessive, remote and without compensatory basis"; that the Board erred in apportioning liability because the employer was completely responsible in law for any damages; that the Board lacked jurisdiction to make the order for notice and to order the firm to stop infiltrating unions on behalf of employers during or in anticipation of any strike or lock-out.

In a preliminary ruling the Divisional Court held that affidavits as to the evidence before a statutory body were admissible in proceedings under the *Judicial Review Procedure Act* only for the purpose of demonstrating a complete absence of evidence on an essential point.

The application for judicial review was dismissed by the Divisional Court on April 4, 1985.

470469 Ontario Limited (Golden Griddle)
Supreme Court of Ontario, Divisional Court
May 6, 1985; Unreported

The employer sought judicial review of a Board decision on the ground that the Board exceeded its jurisdiction by certifying the respondent union without first determining whether the majority of employees who cast ballots in a representation vote wanted it to represent them. The employer objected to certain employees being on the voters' list. Nonetheless, the Board enforced a waiver, signed by the employer, allowing them to vote. A majority of ballots were cast in favour of the union. Therefore, a certificate was issued. The employer did not challenge the result of the vote during the Board hearing.

The Divisional Court dismissed the application May 6, 1985.

Consolidated-Bathurst Packaging Ltd.
Supreme Court of Ontario, Divisional Court
May 15, 1985 – 51 O.R. (2d) 481, 16 Admin. L.R. 37
Ontario Court of Appeal, June 24, 1985; Unreported

The employer's application, filed in January 1984 for judicial review on the basis of a denial of natural justice as a result of the panel having discussed a draft decision with other members and staff of the Board, was heard by the Divisional Court on April 15 and 16, 1985. The majority of the Divisional Court (Osler J. dissenting) agreed with the applicant that the Board had violated the

rules of natural justice, particularly the *audi alteram partem* rule. Costs were also awarded against the Board.

On June 24, 1985, the Ontario Court of Appeal granted the union and the Board leave to appeal the Divisional Court's decision.

The hearing of the appeal is tentatively scheduled for June 24, 1986.

Montgomery Elevator Co. Limited; Northern Elevator Limited
Supreme Court of Ontario, Divisional Court
Oct. 17, 1985; Unreported

The applicant union applied in November 1984 for judicial review of two Board decisions under section 124 of the Act holding the respective employers entitled to reassign grievors to new work without regard to collective agreement seniority provisions.

The applicants had referred grievances to the Board pursuant to its power under section 124 of the *Labour Relations Act*. Those decisions were being challenged on the ground that the Board gave the collective agreement an interpretation which the agreement could not reasonably bear, and thereby committed errors of law going to its jurisdiction.

The Divisional Court dismissed these two applications on October 17, 1985. While the relevant provisions of the collective agreement might bear a meaning different to that given to them by the Board, the Court held that it could not say that the Board gave the collective agreement a patently unreasonable meaning.

Chrysler Canada Ltd.
Supreme Court of Ontario, Divisional Court
Aug. 22, 1985; Unreported
Ontario Court of Appeal, Nov. 4, 1985; Unreported

An application for judicial review as filed by the grievor in February 1985 seeking to quash a Board decision wherein the Board exercised its discretion under section 89 of the Act to dismiss a complaint of an unfair labour practice on preliminary grounds (here, the grievor's delay in bringing the application) without entertaining the complaint on its merits. The issue raised struck at the exercise of the Board's discretion under section 89 of the Act.

On August 22, 1985, the application was dismissed by the Divisional Court. The Court held that the Board had a discretion under subsection 89(4) of the Act whether or not to hear the complaint and that the Board, in refusing to hear the complaint because of extreme delay, was not acting arbitrarily but was exercising its discretion in a reasonable and proper fashion. On November 4, 1985, the Ontario Court of Appeal dismissed the applicant's motion for leave to appeal.

Mini-Skool Ltd.
Supreme Court of Ontario, Divisional Court
June 24, 1985; Unreported
Ontario Court of Appeal, Dec. 3, 1985; Unreported

The Board dismissed a union complaint that the employer had failed to observe the relative seniorities of pre-deadline and post-deadline strike returnees in assigning employees to work after conclusion of the strike. The issue before the Board related to whether the employer had committed an unfair labour practice by the manner in which it was recalling employees after the

strike against it had settled. The union applied in November 1983 for judicial review of this Board decision on the ground that the Board gave a patently unreasonable interpretation to sections 66 and 73 of the *Labour Relations Act*.

The application was dismissed by the Divisional Court on June 24, 1985; the Court found that the Board's interpretation of section 73 was not patently unreasonable. The applicant sought leave to appeal that decision, which motion was dismissed by the Ontario Court of Appeal on December 3, 1985.

Ontario Hydro
Supreme Court of Ontario, Divisional Court
Feb. 10, 1986; Unreported

The Board dismissed the union's grievance under section 124 of the Act that the employer had, in violation of the collective agreement, refused to employ the grievor in a job at Ontario Hydro's nuclear power plant to which he had been referred by the union's hiring hall, on the ground that a previous conviction rendered him a security risk. The union applied in December 1984 for judicial review of this decision.

The Board in this case held that, in the absence of language reserving an unfettered hiring discretion, it was not unreasonable to infer that in agreeing to a particular hiring hall arrangment Hydro had also agreed to fetter its hiring discretion. The Board went on to hold, however, that Hydro did not have to hire all tradesmen referred, regardless of their reliability or competency, but that the agreement in issue did not impose a standard of "just cause" or "correctness" on Hydro. 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.

In the particular case before the Board, the Board held that the employer was reasonably justified in its concerns about hiring the grievor at the nuclear sites. The matter was remitted back to the parties to consider the refusals to hire at various non-nuclear sites.

The applicant sought judicial review on the grounds that the Board erred in dismissing the referral and declining to give effect to the bargaining rights arising from the collective agreement; in failing to give effect to the *Canada Act*, *Constitution Act, 1982* and the *Charter*; in admitting certain evidence; in placing the onus of proof on the applicant in certain circumstances; in interpreting the collective agreement; in relying upon certain considerations; and in relying upon certain evidence.

In March 1985 the Registrar of the Supreme Court allowed a motion by the respondent to dismiss the application for the applicant's delay in perfecting the application. The Registrar's decision was overturned on application to the Divisional Court on March 25, 1985. A further application was brought on May 21, 1985, by the respondent to dismiss the application because of the applicant's failure to perfect. The Registrar allowed the applicant 10 days in which to file its factum, with which the applicant complied.

The Divisional Court dismissed the application on January 15, 1986, for reasons released February 10, 1986. On the matters of onus and the admission of particular evidence the Court found that the Board had not committed any jurisdictional errors.

Kirkpatrick & Town of Oakville
Supreme Court of Ontario, Divisional Court
March 11, 1986; Unreported

The complainant applied in June 1985 for judicial review of three decisions of the Board. In its April 13, 1984, decision the Board held that the Corporation of the Town of Oakville was entitled to be present at the hearing of the complainant's section 68 complaint against the union. In its May 1, 1984, decision the Board referred the complainant's complaint to arbitration and ordered that the union ensure certain legal representation at the arbitration hearing. In its January 8, 1985, decision, the Board confirmed its May 1, 1984, decision, but varied the order dealing with representation of the complainant by legal counsel.

The grounds for the applicant-complainant's application for judicial review included allegations that the Board erred in referring the matter to arbitration; in allowing the Town to be present; in ordering the union to represent the Applicant at the arbitration hearing ordered; and in not ordering the Town to produce certain documents or to appear for discoveries. The applicant argued that the Board had violated the principles of natural justice and various sections of the *Charter of Rights and Freedoms*.

An application for a stay of the Board's order was dismissed by the Divisional Court on July 12, 1985.

The Divisional Court dismissed the application on March 11, 1986, holding that it could see no jurisdictional error in the orders of the Board.

VII CASELOAD

In fiscal year 1985-86, the Board received a total of 3,236 applications and complaints, a decrease of 8 percent over the intake of 3,509 cases in 1984-85. Of the three major categories of cases that are brought to the Board under the Act, applications for certification of trade unions as bargaining agents decreased by 11 percent from last year, complaints of contravention of the Act decreased by 7 percent, and referrals of grievances under construction industry collective agreements remained about the same as last year. The total of all other types of cases decreased by 11 percent. (Tables 1 and 2).

In addition to the cases received, 930 were carried over from the previous year, for a total caseload of 4,166 in 1985-86. Of the total caseload, 2,912, or 70 percent, were disposed of during the year; proceedings in 238 were adjourned sine die* (without a fixed date of further action) at the request of the parties; and 1,016 were pending in various stages of processing at March 31, 1986.

The total number of cases processed during the year produced an average workload of 320 cases for the Board's full-time chairman and vice-chairmen, and the total disposition represented an average output of 224 cases.

Labour Relations Officer Activity

In 1985-86, the Board's labour relations officers were assigned a total of 2,263 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 54 percent of the Board's total caseload, and included 664 certification applications, 39 cases concerning the status of individuals as employees under the Act, 780 complaints of alleged contraventions of the Act, 737 grievances under construction industry collective agreements, and 43 complaints under the Occupational Health and Safety Act. (Table 3).

The labour relations officers completed activity in 1,887 of the assignments, obtaining settlements in 1,524, or 81 percent. They referred 209 cases to the Board for decisions; proceedings were adjourned sine die in 154 cases; and settlement efforts were continuing in the remaining 376 cases at March 31, 1986.

Labour relations officers were also successful in having hearings waived by the parties in 376, or 81 percent, of 463 certification applications assigned for this purpose.

Representation Votes

In 1985-86, the Board's returning officers conducted a total of 223 representation votes among employees in one or more bargaining units. Of these votes, 221 were concluded in cases that were either disposed of during the year or in which a final decision closing the case had not been rendered by the Board by March 31, 1986. Of the 221 votes concluded, 181 involved certification applications, 37 were held in applications for termination of existing bargaining rights, and 3 were taken in successor employer applications. (Table 5).

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

Of the certification votes, 132 involved a single union on the ballot and 49 involved two unions. Of the two-union votes, all entailed attempts to replace incumbent bargaining agents.

A total of 13,431 employees were eligible to vote in the 221 elections that were concluded, of whom 11,854, or 88 percent, cast ballots. Of those who participated, 53 percent voted in favour of union representation. In the 181 certification elections, 88 percent of the eligible votes cast ballots, with 55 percent of those who participated voting for union representation. In the 132 elections that involved a single union, 88 percent of the eligible voters cast ballots, of whom 48 percent voted for union representation. In the two-union elections 89 percent of the eligible voters cast ballots, with 72 percent of the participants voting for union representation.

In the 37 votes in applications for termination of bargaining rights, 93 percent of the eligible voters cast ballots, with only 25 percent of those who participated, voting for the incumbent unions. Of the 63 employees who cast ballots in the elections held in successor employer cases, 6 or 10 percent, voted for union representation.

Last Offer Votes

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff are used to conduct these votes because of their expertise and experience in conducting representation votes under the Act.

Of the 24 requests received by the Minister during the fiscal year, votes were conducted in 12 situations, settlements were reached in 7 cases before a vote was taken, 4 cases were withdrawn, and 1 is pending.

In the 12 votes held, employees accepted the employer's offer in 4 cases by 576 votes in favour to 284 against, and rejected the offer in 8 cases by 742 votes in favour to 473 against.

Since the section was introduced in June 1980, a total of 137 requests were made to the Minister up to March 31, 1986. The employer's offer was accepted in 23 cases and turned down in 70 cases. Settlements were reached in 34 cases and the request was withdrawn in 9 cases prior to a vote being conducted.

Hearings

The Board held a total of 1,306 hearings and continuation of hearings in 1,468, or 35 percent of the 4,166 cases processed during the fiscal year. This was an increase of 55 sittings from the number held in 1984-85. Seventy-nine of the hearings were conducted by vice-chairmen sitting alone, compared with 88 in 1984-85.

Processing Time

Table 7 provides statistics on the time taken by the Board to process the 2,912 cases disposed of in 1985-86. Information is shown separately for the three major categories of cases handled by the Board — certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements — and for the other categories combined.

A median of 43 days was taken to proceed from filing to disposition for the 2,912 cases that were completed in 1985-86, compared with 39 days in 1984-85. Certification applications were

processed in a median of 29 days, compared with 25 in 1984-85; complaints of contravention of the Act took 57 days, compared with 50 in 1984-85; and referrals of construction industry grievances required 15 days, compared with 20 in 1984-85. The median time for the total of all other cases decreased to 64 days from 77 in 1984-85.

More than 73 percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 78 percent for certification applications, 70 percent for complaints of contraventions of the Act, 83 percent for referrals of construction industry grievances, and 57 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete rose to 411 from 289 in 1984-85.

Certification of Bargaining Agents

In 1985-86, the Board received 1,025 applications for certification of trade unions as bargaining agents of employees. This was a decrease of 123 cases, or 11 percent, over 1984-85. (Tables 1 and 2).

The applications were filed by 108 trade unions, including 42 employee associations. Fifteen of the unions, each with more than 20 applications, accounted for 73 percent of the total filings: Labourers (88 cases), Carpenters (40 cases), Public Employees (CUPE) (78 cases), Food and Commercial Workers (49 cases), Service Employees International (48 cases), International Operating Engineers (73 cases), Teamsters (58 cases), United Steelworkers (78 cases), Retail Wholesale Employees (37 cases), Auto Workers (41 cases), Hotel Employees (40 cases), Ontario Public Service (45 cases), Ontario Nurses Association (26 cases), Electrical Workers (IBEW) (21 cases) and Plumbers (23 cases). In contrast, 68 percent of the unions filed fewer than 5 applications each, with the majority making just one application. These unions together accounted for 7 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 72 percent of the applications received, concentrated in construction (216 cases), health and welfare services (157 cases), accommodation and food services (61 cases), retail trade (38 cases), education and related services (64 cases), wholesale trade (47 cases), and other services (41 cases). These seven groups comprised 85 percent of the total non-manufacturing applications. Of the 289 applications involving establishments in manufacturing industries, 58 percent were in seven groups: food and beverage (22 cases), metal fabricating (37 cases), rubber and plastic products (20 cases), non-metallic minerals (20 cases), printing and publishing (22 cases), machinery (24 cases) and miscellaneous manufacturing (24 cases).

In addition to the applications received, 291 cases were carried over from last year, making a total certification caseload of 1,316 in 1985-86. Of the total caseload, 1,034 were disposed of, proceedings were adjourned in 16 cases, and 266 cases were pending at March 31, 1986. Of the 1,034 dispositions, certification was granted in 704 cases including 34 in which interim certificates were issued under section 6(2) of the Act, and 5 that were certified under section 8; 172 cases were dismissed; proceedings were terminated in 12 cases; and 146 cases were withdrawn. The certified cases represented 68 percent of the total dispositions.

Of the 888 applications that were either certified, dismissed or terminated, final decisions in 182 cases were based on the results of representation votes. Of the 182 votes conducted, 130 involved a single union on the ballot; and 52 were held between two unions, all of which affected incumbent bargaining agents. Applicants won in 91 of the votes and lost in the other 91. (Table 6).

A total of 12,776 employees were eligible to vote in the 182 elections, of whom 11,226 or 88 percent cast ballots. In the 91 votes that were won and resulted in certification, 5,012 or 82 percent of the 6,125 employees eligible to vote cast ballots, and of these voters 3,539 or 71 percent favoured union representation. In the 91 elections that were lost and resulted in dismissals, 6,214 or 93 percent of the 6,651 eligible employees participated, and of these only 36 percent voted for union representation.

Small units continued to be the predominant pattern of union organizing efforts through the certification process in 1985-86. The average size of the 704 applications that were certified was 33 employees, compared with 37 in 1984-85. Units in construction certifications averaged 7 employees, (no change from 1984-85) and in non-construction certifications they averaged 38 employees, compared with 46 in 1984-85. Seventy-six percent of the total certifications involved units of fewer than 40 employees, and about 35 percent applied to units of fewer than 10 employees. The total number of employees covered by the 704 certified cases decreased to 22,937 from 24,997 in 1984-85. (Table 10).

A median time of 22 calendar days was required to complete the 704 certified cases from receipt to disposition. For non-construction certifications the median time was 22 days, and for construction certifications the median time was 15 days. (Table 11).

Eighty-three percent of the 704 certified cases were disposed of in 84 days (3 months) or less, 75 percent took 56 days (2 months) or less, 57 percent required 28 days (one month) or less, and 40 percent were processed in 21 days (3 weeks) or less. Seventy-nine cases required longer than 168 days (6 months) to process, compared with 22 cases in 1984-85.

Termination of Bargaining Rights

In 1985-86, the Board received 155 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions. In addition, 45 cases were carried over from 1984-85.

Of the total cases processed bargaining rights were terminated in 83 cases, 35 cases were dismissed, 16 were withdrawn, 1 case was adjourned sine die, proceedings were terminated in 1 case, and 64 cases were pending at March 31, 1986.

Unions lost the right to represent 1,440 employees in the 83 cases in which termination was granted, but retained bargaining rights for 1,309 employees in the 51 cases that were either dismissed or withdrawn.

Of the 118 cases that were either granted or dismissed, dispositions in 38 were based on the results of representation votes. A total of 749 employees were eligible to vote in the 38 elections that were held, of whom 696 or 93 percent cast ballots. Of those who cast ballots, 170 voted for continued representation by unions and 526 voted against. (Table 6).

Declaration of Successor Trade Union

In 1985-86, the Board dealt with 40 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, compared to 71 in 1984-85.

Affirmative declarations were issued by the Board in 34 cases, 4 cases were withdrawn, proceedings were adjourned sine die in one case, and 1 case was pending at March 31, 1986.

Declaration of Successor or Common Employer

In 1985-86, the Board dealt with 294 applications for declarations under section 63 of the Act, on the bargaining rights of trade unions at a successor employer resulting from a business sale, 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 12 cases, 94 cases were either settled or withdrawn by the parties, 20 cases were dismissed, proceedings were terminated or adjourned sine die in 24 cases, and 144 cases were pending at March 31, 1986.

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. One case was withdrawn and two cases were pending at March 31, 1986.

Declaration and Direction of Unlawful Strike

In 1985-86, the Board dealt with four applications seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. Three cases were withdrawn and proceedings were adjourned sine die in one case.

Twenty-nine applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 6 cases, 1 case was dismissed, 11 were withdrawn or settled, proceedings were terminated or adjourned sine die in 10 cases, and 1 case was pending at March 31, 1986.

Twenty-five applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. Directions were issued in 4 cases, 1 case was dismissed, 9 were withdrawn or settled, proceedings were terminated or adjourned sine die in 8 cases, and 3 were pending at March 31, 1986.

Declaration and Direction of Unlawful Lock-out

Three applications were processed in 1985-86, seeking declarations under section 93 of the Act against alleged unlawful lock-out by construction employers. One case was dismissed, one settled and one was pending at March 31, 1986.

Four applications were also processed in seeking directions under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. Proceedings were terminated or adjourned sine die in two cases, and two were pending at March 31, 1986.

Consent to Prosecute

In 1985-86, the Board dealt with 13 applications under section 101 of the Act, requesting consent to institute prosecution in court against trade unions and employers for alleged commission of offences under the Act.

Of the 13 applications processed, which included two carried over from the previous year, 8 were disposed of, two adjourned sine die and three were pending at March 31, 1986. All eight cases disposed of were withdrawn or settled.

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. In handling these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1985-86, the Board received 855 complaints under this section, a decrease of 7 percent over the 920 filed in 1984-85. 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. These charges 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, 270 cases were carried over from 1984-85. Of the 1,125 total processed, 758 were disposed of, proceedings were adjourned sine die in 61 cases, and 306 cases were pending at March 31, 1986.

In 621 or 82 percent of the 758 dispositions, voluntary settlements and withdrawal of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 35 cases, 67 cases were dismissed, and proceedings were terminated in the remaining 35 cases.

In the cases settled by labour relations officers and those in which Board awards were made, compensation amounting to about $636,575 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 35 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay compensation to 183 employees for wages and benefits lost in a specified period, and 36 of these employees were also ordered reinstated.

In addition, employers in 13 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 6 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 encourages voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1985-86, the Board received 745 cases under this section, a decrease of less than one percent from the 751 filed in 1984-85. 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 subcontracting and hiring arrangements in the collective agreement.

In addition to the cases received, 107 were carried over from 1984-85. Of the total 852 processed, 614 were disposed of, proceedings were adjourned sine die in 112 cases, and 126 cases were pending at March 31, 1986.

In 552 or 90 percent of the 614 dispositions, voluntary settlements and withdrawal of the grievance were obtained by labour relations officers, awards were made by the Board in 32 cases, 14 cases were dismissed, and proceedings were terminated in the remaining 16 cases. (Table 4).

Payments totalling about $1,206,600 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

Religious Exemption

Seventeen 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. Exemptions were granted in seven cases, six cases were dismissed, one case was withdrawn and three cases were pending at March 31, 1986.

Early Termination of Collective Agreements

Twenty-nine applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 23 cases, proceedings were terminated in one case and five were pending at March 31, 1986.

Union Financial Statements

Eight complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. One case was dismissed, proceedings were terminated in three cases, and four were pending at March 31, 1986.

Jurisdictional Disputes

Thirty-nine complaints were dealt with under section 91 of the Act, involving union work jurisdiction. Fourteen cases were settled or withdrawn, proceedings were terminated or adjourned sine die in 2 cases, and 23 cases were pending at March 31, 1986.

Determination of Employee Status

The Board dealt with 98 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Fifty cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by the Board in 5 cases, in which 2 of the 11 persons in dispute were found to be employees under the Act. Two cases were dismissed, proceedings were terminated or adjourned sine die in 5 cases, and 36 cases were pending at March 31, 1986.

Referrals by Minister of Labour

In 1985-86, the Board dealt with 5 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 sections 44 or 45. Determinations were made in 4 cases, in which the Board declared the Minister's authority to appoint a conciliation officer, and 1 case was settled.

One case was referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and the employer agencies in a bargaining

relationship in the industrial, commercial and institutional sector of the construction industry. The case was pending at March 31, 1986.

Trusteeship Reports

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

Occupational Health and Safety Act and Environmental Protection Act

In 1985-86, the Board received 48 complaints under section 24 of the Occupational Health and Safety Act, and one complaint under section 134b of the Environmental Protection Act alleging wrongful discipline or discharge of employees for acting in compliance with these Acts. Twelve cases were carried over from 1984-85.

Of the total 61 cases processed, 25 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Four cases were granted and 5 were dismissed by the Board, proceedings were terminated or adjourned sine die in 2 cases, and the remaining 25 were pending at March 31, 1986.

Colleges Collective Bargaining Act

Twenty-six complaints were dealt with under section 78 of the Colleges Collective Bargaining Act, alleging contraventions of the Act. Seven cases were settled, 2 were dismissed, and in seventeen cases proceedings were terminated. Two cases were adjourned sine die, and 8 were pending at March 31, 1986.

One application was dealt with under section 82 for decisions on the status of individuals as employees under the Act. The case was pending at March 31, 1986.

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

VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The *Ontario Labour Relations Board 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 also available in French.

Monthly Highlights: A publication in leaflet form containing scope notes of significant Board decisions on a monthly basis. This publication also contains Board notices of interest to the industrial relations community and information relating to new appointments, retirements and other internal developments.

Pamphlets: To date the Board has published three pamphlets. Two of these, "Rights of Employees, Employers and Trade Unions" and "Certification by the Ontario Labour Relations Board", are available in English, French, Italian and Portuguese. The third pamphlet published last year and entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board," describes unfair labour practice proceedings before the Board and also contains useful instructions in filling out Form 58, which is used to institute proceedings.

All of the Board's publications may be obtained by calling, writing, or visiting the Board's offices. The Ontario Labour Relations Board Report is available on annual subscriptions, (January – December issues inclusive) presently priced at $45.00. Individual copies of the report may be purchased at the Government of Ontario Bookstore. Order forms for subscriptions are available from the Board.

IX STAFF AND BUDGET

At the end of the fiscal year 1985-86, the Board employed a total of 95 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 $5,107,400.

X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1985-86.

Table 1

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1985-86

Type of Case	Caseload			Disposed of, Fiscal Year 1985-86							Pending March 31, 1986
	Total	Pending April 1, 85	Received Fiscal Year 1985-86	Total	Granted*	Dismissed	Termi-nated	With-drawn	Settled	Sine Die	
Total	**4,166**	**930**	**3,236**	**2,912**	**953**	**325**	**77**	**611**	**946**	**238**	**1,016**
Certificate of Bargaining Agents	1,316	291	1,025	1,034	704	172	12	146	—	16	266
Declaration of Termination of Bargaining Rights	200	45	155	135	83	35	1	16	—	1	64
Declaration of Successor Trade Union	40	26	14	38	34	—	—	4	—	1	1
Declaration of Successor Employer or Common Employer Status	294	103	191	128	12	20	2	35	59	22	144
Accreditation	3	3	—	1	—	—	—	1	—	—	2
Declaration of Unlawful Strike	4	—	4	3	—	—	—	3	—	1	—
Declaration of Unlawful Lockout	3	1	2	2	—	1	—	—	1	—	1
Direction respecting Unlawful Strike	54	4	50	35	10	2	3	10	10	15	4
Direction respecting Unlawful Lockout	4	2	2	1	—	—	1	—	—	1	2
Consent to Prosecute	13	2	11	8	—	—	—	7	1	2	3
Contravention of Act	1,125	270	855	758	35	67	35	189	432	61	306
Exemption from Union Security Provision in Collective Agreement	17	3	14	14	7	6	—	1	—	—	3
Early Termination of Collective Agreement	29	1	28	24	23	—	1	—	—	—	5
Trade Union Financial Statement	8	5	3	4	—	1	3	—	—	—	4
Jurisdictional Dispute	39	16	23	15	—	—	1	8	6	1	23
Referral on Employee Status	98	35	63	58	5	2	1	29	21	4	36

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1985-86

Type of Case	Caseload			Disposed of, Fiscal Year 1985-86							Pending March 31, 1986
	Total	Pending April 1, 85	Received Fiscal Year 1985-86	Total	Granted*	Dismissed	Terminated	Withdrawn	Settled	Sine Die	
Total	**4,166**	**930**	**3,236**	**2,912**	**953**	**325**	**77**	**611**	**946**	**238**	**1,016**
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	5	3	2	5	4	—	—	—	1	—	—
Referral of Construction Industry Grievance	852	107	745	614	32	14	16	155	397	112	126
Referral from Minister on Construction Bargaining Agency	1	1	—	—	—	—	—	—	—	—	1
Complaint under Occupational Health and Safety Act	61	12	49	35	4	5	1	7	18	1	25

* 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 1981-82 to 1985-86

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1981-82	1982-83	1983-84	1984-85	1985-86	Total	1981-82	1982-83	1983-84	1984-85	1985-86
Total	**15,391**	**2,749**	**2,762**	**3,135**	**3,509**	**3,236**	**13,628**	**2,608**	**2,445**	**2,797**	**2,866**	**2,912**
Certification of bargaining agents	4,891	1,089	758	871	1,148	1,025	4,704	1,101	767	817	985	1,034
Declaration of termination of bargaining rights	647	98	115	124	155	155	591	78	120	119	139	135
Declaration of successor trade union or employer	400	50	47	22	193	88	321	35	51	19	131	85
Declaration of common employer status	472	36	41	174	104	117	318	30	31	118	58	81
Accreditation	6	1	1	1	3	—	5	—	3	—	1	1
Declaration of unlawful strike or lockout	22	4	3	7	2	6	19	3	2	3	6	5
Direction respecting unlawful strike or lockout	289	59	76	63	39	52	209	34	61	47	31	36
Consent to prosecute	72	17	18	15	11	11	58	10	17	12	11	8
Contravention of Act	4,011	640	724	872	920	855	3,570	622	674	787	729	758
Referral of construction industry grievance	3,702	551	831	824	751	745	3,059	516	577	732	620	614
Miscellaneous	879	204	148	162	183	182	774	179	142	143	155	155

Table 3

**Labour Relations Officer Activity in Cases Processed*
Fiscal Year 1985-86**

Type of Case	Total Cases Assigned	Cases in Which Activity Completed					
		Settled			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
Total	**2,263**	**1,887**	**1,524**	**80.8**	**209**	**154**	**376**
Certification	664	593	477	80.4	116	—	71
Interim certificate	37	27	23	85.2	4	—	10
Pre-hearing application	95	72	65	90.3	7	—	23
Other application	532	494	389	78.7	105	—	38
Contravention of Act	780	581	485	83.5	51	45	199
Construction industry grievance	737	649	504	77.7	37	108	88
Employee status	39	36	34	94.4	2	—	3
Occupational Health and Safety Act	43	28	24	85.7	3	1	15

* 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 1985-86**

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
Total	**1,464**	**1,248**	**85.2**
Contravention of Act	758	621	81.9
Construction industry grievance	614	552	89.9
Employee status	58	50	86.2
Occupational Health and Safety Act	34	25	73.5

* 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 1985-86**

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
Total	**221**	**13,431**	**11,854**	**6,304**
Certification	181	12,642	11,117	6,133
Pre-hearing cases				
One union	35	3,908	3,505	1,383
Two unions	27	3,445	3,030	2,187
Construction cases				
One union	6	70	64	18
Two unions	11	54	49	37
Regular cases				
One union	91	4,673	4,006	2,198
Two unions	11	492	463	310
Termination of Bargaining Rights	37	726	674	165
Successor Employer	3	63	63	6

* 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.

Table 6

Results of Representation Votes in Cases Disposed of*
Fiscal Year 1985-86

Type of Case	Number of Votes			Eligible Votes			All Ballots Cast			Ballots Cast in Favour of Unions		
					In Votes			In Votes			In Votes	
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
Total	**223**	**98**	**125**	**13,588**	**6,266**	**7,322**	**11,985**	**5,146**	**6,839**	**6,007**	**3,614**	**2,393**
Certification	182	91	91	12,776	6,125	6,651	11,226	5,012	6,214	5,804	3,539	2,265
Pre-hearing cases												
One union	35	13	22	3,652	906	2,746	3,323	737	2,586	1,304	465	839
Two unions	29	19	10	3,679	2,084	1,595	3,239	1,788	1,451	1,870	1,239	631
Construction cases												
One union	5	1	4	46	19	27	42	18	24	14	10	4
Two unions	11	6	5	54	38	16	49	36	13	36	33	3
Regular cases												
One union	90	41	49	4,783	2,687	2,096	4,041	2,072	1,969	2,227	1,496	731
Two unions	12	11	1	562	391	171	532	361	171	353	296	57
Termination of Bargaining Rights	38	5	33	749	89	660	696	82	614	170	44	126
Successor Employer	3	2	1	63	52	11	63	52	11	33	31	2

* 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.

Table 7

Time Required to Process Applications and Complaints Disposed of, by Major Type of Case Fiscal Year 1985-86

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 89 Cases		Section 124 Cases		All Other Cases	
	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent
Total	**2,912**	**100.0**	**1,034**	**100.0**	**758**	**100.0**	**614**	**100.0**	**506**	**100.0**
Under 8 days	58	2.0	7	0.7	6	0.8	20	3.3	25	4.9
8-14 days	308	12.6	78	8.2	49	7.3	169	30.8	12	7.3
15-21 days	534	30.9	276	34.9	52	14.1	187	61.2	19	11.1
22-28 days	262	39.9	151	49.5	53	21.1	36	67.1	22	15.4
29-35 days	128	44.3	50	54.4	45	27.0	17	69.9	16	18.6
36-42 days	125	48.6	48	59.0	33	31.4	19	73.0	25	23.5
43-49 days	189	55.1	65	65.3	74	41.2	13	75.1	37	30.8
50-56 days	161	60.6	44	69.5	64	49.6	10	76.7	43	39.3
57-63 days	148	65.7	31	72.5	63	57.9	18	79.6	36	46.4
64-70 days	91	68.8	27	75.1	38	62.9	7	80.8	19	50.2
71-77 days	72	71.3	15	76.6	32	67.2	6	81.8	19	54.0
78-84 days	53	73.1	11	77.7	21	69.9	7	82.9	14	56.7
85-91 days	51	74.9	12	78.8	12	71.5	6	83.9	21	60.9
92-98 days	56	76.8	11	79.9	22	74.4	6	84.9	17	64.2
99-105 days	37	78.1	9	80.8	12	76.0	4	85.5	12	66.6
106-126 days	97	81.4	22	82.9	17	78.2	20	88.8	38	74.1
127-147 days	72	83.9	18	84.6	21	81.0	13	90.9	20	78.1
148-168 days	59	85.9	7	85.3	20	83.6	8	92.2	24	82.8
Over 168 days	411	100.0	152	100.0	124	100.0	48	100.0	87	100.0

Table 8

Union Distribution of Certification Applications Received and Disposed of Fiscal Year 1985-86

Union	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
All Unions	**1,025**	**1,034**	**704**	**184**	**146**
CLC* Affiliates	**537**	**585**	**409**	**104**	**72**
Aluminum Brick and Glass Workers	1	2	2	—	—
Auto Workers	41	45	29	13	3
Bakery and Tobacco Workers	3	2	2	—	—
Brewery and Soft Drink Workers	6	6	4	—	2
Broadcast Employees	—	1	—	—	1
Canadian Brewery Workers	8	10	8	1	1
Canadian Paperworkers	16	12	9	3	—
Canadian Public Employees (CUPE)	78	70	51	5	14
CLC Directly Chartered	2	2	1	1	—
Clothing and Textile Workers	6	6	5	1	—
Communications-Electrical Wkrs.	1	2	—	2	—
Electrical Workers (UE)	2	4	1	3	—
Energy and Chemical Workers	14	9	5	2	2
Food and Commercial Workers	49	84	47	18	19
Glass, Pottery & Plastic Wkrs.	1	1	—	—	1
Graphic Communications Union	12	12	10	2	—
Hotel Employees	40	71	53	7	11
Ladies Garment Workers	6	6	3	—	3
Machinists	6	5	3	1	1
Molders	1	1	—	1	—
Newspaper Guild	2	2	1	1	—
Office and Professional Employees	3	4	2	2	—
Ontario Public Service Employees	45	47	36	8	3
Postal Workers	2	2	2	—	—
Railway, Transport and General Workers	7	3	3	—	—
Retail Wholesale Employees	37	44	34	8	2
Rubber Workers	1	1	—	1	—
Seafarers	1	—	—	—	—
Service Employees International	48	46	38	6	2
Technical Engineers	1	1	1	—	—
Theatrical Stage Employees	3	2	1	—	1
Transit Union (Intl.)	1	—	—	—	—

Table 8 (Cont'd)

Typographical Union	3	2	1	1	—
United Garment Workers	1	—	—	—	—
United Paperworkers	1	1	—	1	—
United Steelworkers	78	70	50	15	5
United Textile Workers	1	1	1	—	—
Upholsterers	1	1	—	—	1
Woodworkers	8	7	6	1	—

* Canadian Labour Congress.
** Includes cases that were terminated.

Non-CLC Affiliates	**488**	**449**	**295**	**80**	**74**
Allied Health Professionals	2	2	1	1	—
Asbestos Workers	2	1	1	—	—
Boilermakers*	4	6	4	2	—
Bricklayers International*	7	8	7	—	1
Carpenters*	40	45	26	9	10
Canadian Educational Workers	1	—	—	—	—
Canadian Operating Engineers	10	9	4	3	2
Canadian Steelworkers	2	2	2	—	—
Christian Labour Association	11	9	5	3	1
Electrical Workers (IBEW)*	21	12	8	2	2
Film Craftspeople	1	1	—	—	1
Food and Service Workers	1	1	1	—	—
Independent Local Union	42	45	25	12	8
International Operating Engineers*	73	64	50	7	7
Labourers*	88	89	50	15	24
Ontario English Catholic Teachers	2	1	—	—	1
Ontario Nurses Association	26	23	18	2	3
Ontario Public School Teachers	11	1	—	1	—
Ontario Secondary School Teachers	8	11	6	3	2
Painters*	11	9	7	2	—
Plant Guard Workers	3	3	3	—	—
Plasterers	1	—	—	—	—
Plumbers*	23	18	14	2	2
Sheet Metal Workers*	15	17	12	1	4
Structural Iron Workers*	9	6	5	—	1
Sudbury Mine Workers	1	1	—	1	—
Teamsters	58	56	42	11	3
Textile Processors	15	9	4	3	2

* 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, Structural Iron Workers have not joined the Federation.
** Includes cases that were terminated.

Table 9

Industry Distribution of Certification Applications Received and Disposed of Fiscal Year 1985-86

Industry	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
All Industries	**1,025**	**1,034**	**704**	**184**	**146**
Manufacturing	**289**	**272**	**182**	**65**	**25**
Food, beverages	22	26	21	5	—
Tobacco products	—	—	—	—	—
Rubber, plastic products	20	17	15	1	1
Leather industries	2	—	—	—	—
Textile mill products	8	11	8	3	—
Knitting mills	—	—	—	—	—
Clothing industries	8	8	5	—	3
Wood products	14	12	9	2	1
Furniture, fixtures	17	17	11	3	3
Paper, allied products	14	11	8	3	—
Printing, publishing	22	19	13	6	—
Primary metal industries	10	10	5	5	—
Metal fabricating industries	37	38	30	5	3
Machinery, except electrical	24	23	13	8	2
Transportation equipment	19	20	9	8	3
Electrical products	10	10	5	3	2
Non-metallic mineral products	20	21	13	4	4
Petroleum, coal products	—	—	—	—	—
Chemical, chemical products	18	13	7	5	1
Miscellaneous manufacturing	24	16	10	4	2
Non-Manufacturing	**736**	**762**	**522**	**119**	**121**
Agriculture	—	—	—	—	—
Forestry	—	—	—	—	—
Fishing, trapping	—	—	—	—	—
Mining, quarrying	5	5	5	—	—
Transportation	26	22	18	3	1
Storage	7	7	4	2	1
Communications	—	1	—	1	—
Electric, gas, water	7	9	5	2	2
Wholesale trade	47	47	36	10	1
Retail trade	38	48	36	9	3
Finance, insurance	4	6	4	2	—
Real Estate	19	20	11	1	8
Education, related services	64	57	31	14	12
Health, welfare services	157	144	115	16	13
Religious organizations	—	—	—	—	—
Recreational services	8	6	3	1	2
Management services	5	8	4	4	—
Personal services	5	1	—	—	1
Accommodation, food services	61	116	70	20	26
Other services	41	44	31	7	6

Table 9 (Cont'd)

Federal government	—	—	—	—	—
Provincial government	—	—	—	—	—
Local government	26	22	19	—	3
Other government	—	—	—	—	—
Construction	216	199	130	27	42

* Includes cases that were terminated.

Table 10

Employees Covered by Certification Applications Granted
Fiscal Year 1985-86

	Total		Construction**		Non-Construction	
Employee Size*	**Number of Applications**	**Number of Employees**	**Number of Applications**	**Number of Employees**	**Number of Applications**	**Number of Employees**
Total	**704**	**22,937**	**130**	**907**	**574**	**22,030**
2-9 employees	249	1,212	107	434	142	778
10-19 employees	139	1,991	15	208	124	1,783
20-39 employees	145	4,096	7	187	138	3,909
40-99 employees	129	7,336	1	78	128	7,258
100-199 employees	30	4,008	—	—	30	4,008
200-499 employees	10	2,726	—	—	10	2,726
500 employees or more	2	1,568	—	—	2	1,568

* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 771 bargaining units were certified in the 704 applications in which certification was granted.

** Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 130 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 1985-86**

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	**704**	**100.0**	**574**	**100.0**	**130**	**100.0**
Under 8 days	—	—	—	—	—	—
8-14 days	53	7.5	14	2.4	39	30.0
15-21 days	230	40.2	202	37.6	28	51.5
22-28 days	119	57.1	117	58.0	2	53.1
29-35 days	35	62.1	28	62.9	7	58.5
36-42 days	34	66.9	28	67.8	6	63.1
43-49 days	31	71.3	28	72.6	3	65.4
50-56 days	27	75.1	22	76.5	5	69.2
57-63 days	19	77.8	13	78.7	6	73.8
64-70 days	19	80.5	17	81.7	2	75.4
71-77 days	9	81.8	5	82.6	4	78.5
78-84 days	8	83.0	6	83.6	2	80.0
85-91 days	7	83.9	7	84.8	—	—
92-98 days	6	84.8	3	85.4	3	82.3
99-105 days	4	85.4	2	85.7	2	83.8
106-126 days	9	86.6	5	86.6	4	86.9
127-147 days	11	88.2	8	88.0	3	89.2
148-168 days	4	88.8	3	88.5	1	90.0
169 days and over	79	100.0	66	100.0	13	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.

Table 12

Employment Status of Employees in Bargaining Units Certified by Industry
Fiscal Year 1985-86

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	**771**	**22,937**	**246**	**8,631**	**65**	**1,659**	**72**	**2,110**	**388**	**10,537**
Manufacturing	**189**	**8,816**	**94**	**4,204**	**2**	**17**	**16**	**628**	**77**	**3,967**
Food, beverages	22	856	13	599	—	—	2	44	7	213
Rubber, plastic products	14	1,031	5	310	—	—	3	190	6	531
Textile mill products	8	384	5	326	—	—	—	—	3	58
Clothing industries	5	639	3	419	—	—	—	—	2	220
Wood products	9	405	6	193	—	—	—	—	3	212
Furniture, fixtures	11	428	4	199	—	—	1	38	6	191
Paper, allied products	8	418	5	312	—	—	1	36	2	70
Printing, publishing	16	1,315	13	336	—	—	—	—	3	979
Primary metal industries	5	290	2	110	—	—	2	154	1	26
Metal Fabricating industries	31	1,208	7	232	—	—	2	34	22	942
Machinery, except electrical	13	236	7	178	—	—	1	24	5	34
Transportation equipment	9	487	5	336	—	—	1	41	3	110
Electrical products	5	201	2	63	—	—	1	14	2	124
Non-metallic mineral products	16	440	9	267	1	2	—	—	6	171
Chemical, chemical products	7	193	5	158	—	—	—	—	2	35
Miscellaneous manufacturing	10	285	3	166	1	15	2	53	4	51
Non-Manufacturing	**582**	**14,121**	**152**	**4,427**	**63**	**1,642**	**56**	**1,482**	**311**	**6,570**
Mining, quarrying	5	243	1	148	—	—	—	—	4	95
Transportation	19	797	6	47	3	19	—	—	10	731
Storage	4	52	1	22	—	—	—	—	3	30
Electric, gas, water	5	41	3	28	—	—	—	—	2	13
Wholesale trade	40	825	18	409	4	17	3	179	15	220
Retail trade	45	1,263	20	513	4	52	10	272	11	426
Finance, insurance	4	18	1	3	1	3	—	—	2	12
Real Estate	13	87	4	41	1	4	1	16	7	26
Education, related services	34	1,411	9	211	9	668	8	86	8	446
Health, welfare services	137	4,071	44	1,644	25	589	23	628	45	1,210
Recreational services	4	87	2	79	1	3	—	—	1	5
Management services	4	94	1	9	—	—	—	—	3	85
Accommodation, food services	76	2,963	18	826	9	178	5	139	44	1,820
Other services	34	907	13	331	2	12	—	—	19	564
Local government	25	382	10	111	4	97	5	127	6	47
Construction	133	880	1	5	—	—	1	35	131	840

Table 13

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1985-86

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	**77**	**22,937**	**246**	**8,631**	**65**	**1,659**	**72**	**2,110**	**388**	**10,537**
CLC	**460**	**18,006**	**176**	**1,175**	**41**	**738**	**62**	**1,867**	**181**	**8,226**
Aluminum Brick and Glass Wkrs	2	66	2	66	—	—	—	—	—	—
Auto Workers	28	1,446	8	624	1	3	2	155	17	664
Bakery and Tobacco Workers	2	213	1	141	—	—	—	—	1	72
Brewery and Soft Drink Workers	4	116	1	38	—	—	1	17	2	61
Canadian Brewery Workers	8	102	6	66	—	—	2	36	—	—
Canadian Paperworkers	10	1,108	4	99	2	5	1	36	3	968
Canadian Public Employees (CUPE)	59	2,133	23	1,070	7	83	12	413	17	567
CLC Directly Chartered	1	4	—	—	—	—	—	—	1	4
Clothing and Textile Workers	5	320	5	320	—	—	—	—	—	—
Electrical Workers (UE)	1	39	1	39	—	—	—	—	—	—
Energy and Chemical Workers	6	142	4	100	—	—	1	20	1	22
Food and Commercial Workers	60	1,698	25	638	7	118	9	231	19	711
Graphic Communication Union	10	439	8	367	—	—	—	—	2	72
Hotel Employees	56	2,237	12	544	5	103	3	47	36	1,543
Ladies Garment Workers	3	408	3	408	—	—	—	—	—	—
Machinists	3	94	1	48	—	—	—	—	2	46
Newspaper Guild	1	146	1	146	—	—	—	—	—	—
Office and Professional Empls	2	20	1	6	—	—	—	—	1	14
Ontario Public Service Empls	47	961	20	428	6	95	10	112	11	326
Postal Workers	2	83	—	—	—	—	—	—	2	83
Railway, Transport and General Workers	3	57	2	34	—	—	—	—	1	23
Retail Wholesale Employees	41	2,020	16	711	3	19	7	225	15	1,065
Service Employees International	42	1,241	10	264	7	261	6	116	19	600
Technical Engineers	1	14	—	—	—	—	1	14	—	—
Theatrical Stage Employees	1	5	—	—	—	—	—	—	1	5
Typographical Union	2	44	2	44	—	—	—	—	—	—
United Steelworkers	53	2,601	15	783	3	51	6	407	29	1,360
United Textile Workers	1	20	—	—	—	—	—	—	1	20
Woodworkers	6	229	5	191	—	—	1	38	—	—

Table 13 (Cont'd)

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1985-86

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	**311**	**4,931**	**70**	**1,456**	**24**	**921**	**10**	**243**	**207**	**2,311**
Allied Health Professionals	1	46	—	—	—	—	1	46	—	—
Asbestos Workers	1	2	—	—	—	—	—	—	1	2
Boilermakers	4	99	2	36	—	—	—	—	2	63
Bricklayers International	7	36	—	—	—	—	—	—	7	36
Carpenters	26	500	4	198	—	—	2	34	20	268
Canadian Operating Engineers	4	116	—	—	1	15	—	—	3	101
Canadian Steelworkers	2	18	1	11	1	7	—	—	—	—
Christian Labour Association	6	155	2	47	1	20	—	—	3	88
Electrical Workers (IBEW)	8	79	4	37	—	—	—	—	4	42
Food and Service Workers	1	69	—	—	—	—	1	69	—	—
Independent Local Union	25	582	9	136	3	185	2	37	11	224
International Operating Engineers	52	505	4	35	1	22	1	35	46	413
Labourers	53	610	6	259	1	4	1	16	45	331
Ontario Nurses Association	24	288	6	71	78	100	—	—	10	117
Ontario Secondary School Teachers	6	694	—	—	5	541	—	—	1	153
Painters	7	50	—	—	—	—	—	—	7	50
Plant Guard Workers	3	22	1	18	1	2	1	2	—	—
Plumbers	14	75	—	—	—	—	1	4	13	71
Sheet Metal Workers	12	44	—	—	—	—	—	—	12	44
Structural Iron Workers	5	69	1	25	—	—	—	—	4	44
Teamsters	46	734	27	461	2	25	—	—	17	248
Textile Processors	4	138	3	122	—	—	—	—	1	16

Table 14

Occupational Groups in Bargaining Units Certified by Industry
Fiscal Year 1985-86

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	**771**	**22,937**	**584**	**18,187**	**59**	**1,134**	**49**	**1,420**	**20**	**657**	**59**	**1,539**
Manufacturing	**189**	**8,816**	**178**	**8,569**	**4**	**79**	**1**	**14**	—	—	**6**	**154**
Food, beverages	22	856	19	830	1	4	—	—	—	—	2	22
Rubber, plastic products	14	1,031	14	1,031	—	—	—	—	—	—	—	—
Textile mill products	8	384	8	384	—	—	—	—	—	—	—	—
Clothing industries	5	639	5	639	—	—	—	—	—	—	—	—
Wood products	9	405	9	405	—	—	—	—	—	—	—	—
Furniture, fixtures	11	428	11	428	—	—	—	—	—	—	—	—
Paper, allied products	8	418	8	418	—	—	—	—	—	—	—	—
Printing, publishing	16	1,315	13	1,219	1	43	—	—	—	—	2	53
Primary metal industries	5	290	5	290	—	—	—	—	—	—	—	—
Metal Fabricating industries	31	1,208	30	1,205	1	3	—	—	—	—	—	—
Machinery	13	236	13	236	—	—	—	—	—	—	—	—
Transportation equipment	9	487	9	487	—	—	—	—	—	—	—	—
Electrical products	5	201	4	187	—	—	1	14	—	—	—	—
Non-metallic mineral products	16	440	16	440	—	—	—	—	—	—	—	—
Chemical, chemical products	7	193	4	85	1	29	—	—	—	—	2	79
Miscellaneous manufacturing	10	285	10	285	—	—	—	—	—	—	—	—
Non-Manufacturing	**582**	**14,121**	**406**	**9,618**	**55**	**1,055**	**48**	**1,406**	**20**	**657**	**53**	**1,385**
Mining, quarrying	5	243	5	243	—	—	—	—	—	—	—	—
Transportation	19	797	18	791	—	—	—	—	1	6	—	—
Storage	4	52	4	52	—	—	—	—	—	—	—	—
Electric, gas, water	5	41	3	23	—	—	—	—	—	—	2	18
Wholesale trade	40	825	32	611	3	20	—	—	2	16	3	178
Retail trade	45	1,263	18	403	7	117	—	—	16	623	4	120
Finance, insurance	4	18	1	3	3	15	—	—	—	—	—	—
Real Estate	13	87	10	80	2	4	—	—	—	—	1	3
Education, related services	34	1,411	12	190	10	335	8	822	1	12	3	52
Health, welfare services	137	4,071	56	2,408	19	444	39	552	—	—	23	667
Religious organizations	87	4	87	—	—	—	—	—	—	—	—	
Management services	4	94	2	68	1	6	—	—	—	—	1	20
Accommodation, food services	76	2,963	72	2,850	1	8	—	—	—	—	3	105
Other services	34	907	25	757	5	32	—	—	—	—	4	108
Local government	25	382	11	172	4	74	1	32	—	—	9	104
Construction	133	880	133	880	—	—	—	—	—	—	—	—

Table 15

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1985-86

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	**771**	**22,937**	**584**	**18,187**	**59**	**1,134**	**49**	**1,420**	**20**	**657**	**59**	**1,539**
CLC	**460**	**18,006**	**176**	**14,741**	**41**	**991**	**16**	**332**	**20**	**657**	**49**	**1,285**
Aluminum Brick and Glass Wkrs	2	66	2	66	—	—	—	—	—	—	—	—
Auto Workers	28	1,446	26	1,440	2	6	—	—	—	—	—	—
Bakery and Tobacco Workers	2	213	2	213	—	—	—	—	—	—	—	—
Brewery and Soft Drink Workers	4	116	4	116	—	—	—	—	—	—	—	—
Canadian Brewery Workers	8	102	5	63	1	26	—	—	—	—	2	13
Canadian Paperworkers	10	1,108	8	1,057	2	51	—	—	—	—	—	—
Canadian Public Employees (CUPE)	59	2,133	27	1,395	11	311	3	34	1	12	17	381
CLC Directly Chartered	1	4	—	—	1	4	—	—	—	—	—	—
Clothing and Textile Workers	5	320	5	320	—	—	—	—	—	—	—	—
Electrical Workers (UE)	1	39	1	39	—	—	—	—	—	—	—	—
Energy and Chemical Workers	6	142	4	86	—	—	—	—	—	—	2	56
Food and Commercial Workers	60	1,698	44	1,321	3	19	—	—	12	349	1	9
Graphic Communication Union	10	439	9	405	—	—	—	—	—	—	1	34
Hotel Employees	56	2,237	55	2194	—	—	—	—	—	—	1	43
Ladies Garment Workers	3	408	3	408	—	—	—	—	—	—	—	—
Machinists	3	94	3	94	—	—	—	—	—	—		
Newspaper Guild	1	146	1	146	—	—	—	—	—	—	—	—
Office and Professional Empls	2	20	—	—	1	14	—	—	1	6	—	—
Ontario Public Service Empls	47	961	14	224	11	210	9	254	—	—	13	273
Postal Workers	2	83	2	83	—	—	—	—	—	—	—	—
Railway, Transport and General Workers	3	57	3	57	—	—	—	—	—	—	—	—
Retail Wholesale Employees	41	2,020	25	1,428	4	44	—	—	6	290	6	258
Service Employees International	42	1,241	26	884	9	273	3	30	—	—	4	54
Technical Engineers	1	14	—	—	—	—	1	14	—	—	—	—
Theatrical Stage Employees	1	5	1	5	—	—	—	—	—	—	—	—
Typographical Union	2	44	2	44	—	—	—	—	—	—	—	—
United Steelworkers	53	2,601	49	2,404	2	33	—	—	—	—	2	164
United Textile Workers	1	20	1	20	—	—	—	—	—	—	—	—
Woodworkers	6	229	6	229	—	—	—	—	—	—	—	—

Table 15 (Cont'd)

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1985-86

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	**311**	**4,931**	**256**	**3,446**	**12**	**143**	**33**	**1,088**	**—**	**—**	**10**	**254**
Allied Health Professionals	1	46	—	—	1	46	—	—	—	—	—	—
Asbestos Workers	1	2	1	2	—	—	—	—	—	—	—	—
Boilermakers	4	99	3	95	1	4	—	—	—	—	—	—
Bricklayers International	7	36	7	36	—	—	—	—	—	—	—	—
Carpenters	26	500	26	500	—	—	—	—	—	—	—	—
Canadian Operating Engineers	4	116	3	101	1	15	—	—	—	—	—	—
Canadian Steelworkers	2	18	2	18	—	—	—	—	—	—	—	—
Christian Labour Association	6	155	4	71	—	—	1	6	—	—	1	78
Electrical Workers (IBEW)	8	79	6	64	1	6	—	—	—	—	1	9
Food and Service Workers	1	69	1	69	—	—	—	—	—	—	—	—
Independent Local Union	25	582	16	318	4	57	3	138	—	—	2	69
International Operating Engineers	52	505	48	463	—	—	1	5	—	—	3	37
Labourers	53	610	50	603	2	4	—	—	—	—	1	3
Ontario Nurses Association	24	288	2	43	—	—	22	245	—	—	—	—
Ontario Secondary School Teachers	6	694	—	—	—	—	6	694	—	—	—	—
Painters	7	50	7	50	—	—	—	—	—	—	—	—
Plant Guard Workers	3	22	3	22	—	—	—	—	—	—	—	—
Plumbers	14	75	14	75	—	—	—	—	—	—	—	—
Sheet Metal Workers	12	44	12	44	—	—	—	—	—	—	—	—
Structural Iron Workers	5	69	5	69	—	—	—	—	—	—	—	—
Teamsters	46	734	42	665	2	11	—	—	—	—	2	58
Textile Processors	4	138	4	138	—	—	—	—	—	—	—	—