ONTARIO
LABOUR RELATIONS BOARD

ANNUAL REPORT
1986-87

ONTARIO LABOUR RELATIONS BOARD

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Registrar and Chief Administrative Officer D.K. AYNSLEY

Senior Solicitor N.V. DISSANAYAKE

Board Solicitors
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Labour Relations
Board

Commission
des relations
de travail de l'Ontario

Office of the Chair

Bureau du président

400 University Avenue
Toronto, Ontario
M7A 1V4
416/965-4193

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 seventh Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1986 to March 31, 1987.

Sincerely,

Judge Rosalie S. Abella,
Chair.

CHAIR'S MESSAGE

Previous messages on this page alluded annually to the concentrated efforts at maintaining an atmosphere conducive to effective decision-making. The Board has historically enjoyed a remarkable degree of credibility through its decisions, decision-makers, settlement officers, administrative team, and support staff. These are still the benchmarks of a tribunal's integrity, and efforts this year continue to demonstrate the Board's desire to remain responsive through settlement and decision-making to the needs of the labour relations community. We have substantially reduced the backlog, decisions issue with greater alacrity, hearings are conducted and scheduled more expeditiously, and settlements remain a clear priority. The Board has met the challenge of First Contract legislation, introduced computers to streamline its process, and expanded the adjudicative pool to respond to an increased caseload.

But the Board, like any other institution, depends primarily for its prestige on its human resources. One of the most reliable of these resources has been the Registrar, Don Aynsley who will be retiring on July 31, 1987. For eleven years, Aynsley has patiently steered the Board and the labour bar through scheduling labyrinths. Daily, with respect for the system and its players, and with an overwhelming commitment to the Board, he has seen the tribunal through successions of personnel changes and has earned the deep affection and admiration of everyone with whom he has worked.

The bar rightly has a highly developed sense of gratitude for his wise discretion and accessibility. The support staff rightly has a highly developed sense of gratitude for his sensitivity in managing the scheduling process. The settlement officers rightly appreciate his perpetual willingness to listen, offer advice, and accommodate their needs. The Board members and vice-chairs are rightly in awe of his endless generosity, cooperation and collegiality. And every head of this Board who has had the privilege of working with him understands how prodigious is his willingness to adjust to the needs of changing times and personalities.

While it is undoubtedly true that no one is indispensable, particularly in a team-oriented working environment, it is equally true that some people are irreplaceable, through their unique gifts and their extraordinary willingness to share them with others in pursuit of a common cause. Aynsley's cause as Registrar was the Board, and everything he did in that role was done with wisdom, gentleness, and devotion. He remains an enduring presence and leaves a legacy he ought rightly to feel proud of.

I INTRODUCTION

This is the seventh 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, 1986 to March 31, 1987.

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 functions.

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 collectivebargaining 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 aBoard) 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 lock-out 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 of 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 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.

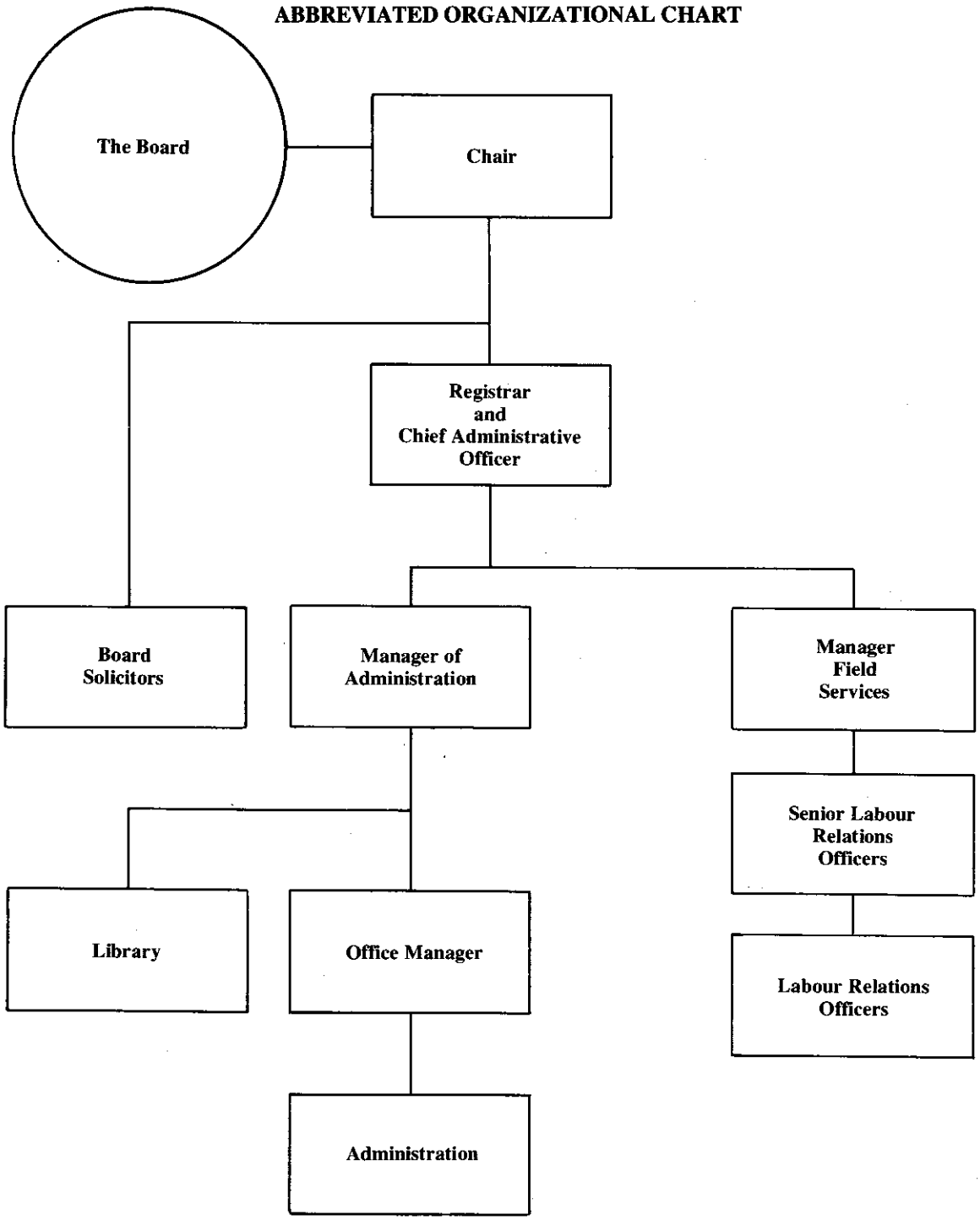
In June of 1984, the *Labour Relations Act, 1984*, S.O. 1984, c. 34 was enacted. This Act dealt with several areas. It gave the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited procedures in sections 92 and 135, rather than the more cumbersome process under section 89. The Act also permitted 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 established an appropriate voting constituency for strike, lock-out and ratification votes in that sector and provided a procedure for complaints relating to voter eligibility to be filed with the Minister of Labour. The new amendment also eliminated the 14 day waiting period before an arbitration award which is not complied with may be filed in court for purposes of enforcement.

In May of 1986, the *Labour Relations Amendment Act, 1986*, S.O. 1986, c. 17 was passed to provide for first contract arbitration. Where negotiations have been unsuccessful, either party can apply to the Board to direct the settlement of a first collective agreement by arbitration. Within strict time limits the Board must determine whether the process of collective bargaining has been unsuccessful due to a number of enumerated grounds. Where a direction has been given, the parties have the option of having the Board arbitrate the settlement.

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, first contract arbitration, 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 Chair and an Alternate Chair, several Vice-Chairs 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 Chair, Alternate Chair, 13 full-time Vice-Chairs, 4 part-time Vice-Chairs and 41 Board Members, 17 full-time and 24 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 18 "Application for Direction that a First Collective Agreement be Settled by Arbitration", and 19, "Settlement of First Collective Agreement by the Board", were issued.

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. 74. 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 the Chief Administrative Officer is the senior administrative official of the Board. He is responsible for co-ordinating 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 or on 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 manages the day-to-day administrative operation while the Manager of Field Services manages the field operations. An Administrative Committee comprised of the Chair, Alternate Chair, Registrar, Manager of Administration, Manager of Field Services and Senior 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 full-time 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 4,500 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 across Canada.

The Library staff maintains computer indexes 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.

The Library staff has also compiled a manual index to the Bargaining Units certified by the Board since 1980. This index provides access by union name and subject.

(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, the 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 921 assignments, of which 86.8 percent were settled by the efforts of the officers. The officers handled a total of 916 grievances in the construction industry of which 92.4 percent were settled. Of 276 certification applications dealt with under the waiver of hearings programme, the officers were successful in 182 or 66 percent.

The Alternate Chair of the Board supervises the activities of the field officers, and along with the Manager of Field Services and the Board Solicitors, 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 Chair. The Board also employs 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 Chair, Vice-Chair 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 Chair, 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 the 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 June, 1986, to reflect the amendments to the Act.

MEMBERS OF THE BOARD

At the end of the fiscal year 1986-87, the Board consisted of the following members:

JUDGE ROSALIE S. ABELLA *Chair*

Judge Abella assumed office as Chair 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, 1976-1984; 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.

RICHARD (RICK) MacDOWELL *Alternate Chair*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), an M.Sc. (with Distinction) in Economics from the London School of Economics and Political Science (1970) and an 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-Chair 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 Chair in an acting capacity.

LITA-ROSE BETCHERMAN *Vice-Chair*

Dr. Betcherman was appointed as a part-time Vice-Chair 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.

JAMES HAROLD BROWN *Vice-Chair*

Mr. Brown joined the Board as a Vice-Chair in July, 1986. He is a graduate of the University of Toronto (B.A., 1952), attended Osgoode Hall Law School, and was called to the Ontario Bar in 1956. He did graduate work in business administration at the University of Pennsylvania (1960-61). He was appointed Deputy Chairman of the Ontario Labour Relations Board in 1962, later serving as Alternate Chairman. Mr. Brown subsequently was Chairman of the Federal Public Service Staff

Relations Board. Mr. Brown is an experienced arbitrator and has been a lecturer in labour-management relations at the University of Toronto.

HARRY FREEDMAN *Vice-Chair*

Mr. Freedman was appointed a Vice-Chair 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-Chair. Mr. Freedman has been associated with Ryerson Polytechnical Institute for several years as a lecturer in industrial relations, and has 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 participates in the preparation of the labour law continuing education programme of the Law Society of Upper Canada. He is also 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-Chair*

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-Chair in 1969.

OWEN V. GRAY *Vice-Chair*

Mr. Gray joined the Board as a Vice-Chair 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-Chair*

Mr. Herman was appointed a Vice-Chair 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 law, both at Ryerson Polytechnical Institute and the Faculty of Law, University of Toronto.

ROBERT D. HOWE *Vice-Chair*

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

PATRICIA HUGHES *Vice-Chair*

Patricia Hughes is a graduate of McMaster University (B.A. Hons., 1970; M.A., 1971) and, following a year of teaching at Brandon University in Manitoba, of the University of Toronto

(PH.D., 1975, in Political Economy). After teaching political science for four years at Nipissing University College in North Bay, Dr. Hughes entered Osgoode Hall Law School; she received her LL.B. in 1982. She was called to the Ontario bar in 1984. As counsel in the Policy Development Division of the Ontario Ministry of the Attorney General, she assessed Ontario legislation in light of the requirements of the *Canadian Charter of Rights and Freedoms*, with particular responsibility for pension legislation. She has researched, lectured and published in various areas of political science and law, including Canadian politics, feminist analysis, the Charter of Rights and employment law. Dr. Hughes was appointed to the Board as a Vice-Chair in April, 1986.

PAULA KNOPF *Vice-Chair*

Mrs. Knopf joined the Board as a part-time Vice-Chair 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.

JUDITH McCORMACK *Vice-Chair*

Ms. McCormack was appointed to the Board as a Vice-Chair in 1986. She did her undergraduate work at Simon Fraser University, and graduated with an LL.B. from Osgoode Hall Law School in 1976. Upon her call to the Bar in 1978, she practiced labour law for the next eight years, first with a Toronto law firm and later as an in-house counsel. In 1986 she received her LL.M. in labour law from Osgoode Hall Law School. Ms. McCormack is the author of a number of articles on labour relations and has lectured in this area.

MORTON G. MITCHNICK *Vice-Chair*

Mr. Mitchnick was appointed as a full time Vice-Chair 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.

KEN PETRYSHEN *Vice-Chair*

Mr. Petryshen was appointed a Vice-Chair in June, 1986. He is a graduate of the University of Saskatchewan, Regina (B.A. Hons., 1972) and Queen's University, Kingston (LL.B. 1976). After articling with the Ontario Labour Relations Board and after his call to the Bar in 1978, Mr. Petryshen practised law as a staff lawyer for the Teamsters Joint Council, No. 52. Prior to his appointment as a Vice-Chair, Mr. Petryshen was a Board Solicitor.

NORMAN B. SATTERFIELD *Vice-Chair*

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-Chair. 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 was involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years prior to his appointment as a Vice-Chair. 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.

VICTOR SOLOMATENKO *Vice-Chair*

Mr. Solomatenko is a graduate of York University (B.A., 1969) and the University of Toronto (LL.B., 1974). Following his call to the Ontario Bar in 1976, Mr. Solomatenko was employed by several unions and a firm of pension and benefits consulting actuaries. From 1980 to 1985, he edited and published a pension and employee benefits newsletter. Prior to his appointment to the Board, Mr. Solomatenko was acting as a grievance arbitrator.

IAN C.A. SPRINGATE *Vice-Chair*

Mr. Springate had been a Vice-Chair of the Board since May of 1976 before being appointed as the Board's Alternate Chair 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-Chair. 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. From February 1984 to January 1985, he served as Acting Chairman of the Crown Employees Grievance Settlement Board. Mr. Springate reverted to part-time Vice-Chair status with the Board in February, 1987.

GEORGE T. SURDYKOWSKI *Vice-Chair*

Mr. Surdykowski joined the Board as a Vice-Chair in June, 1986. He is a graduate of the University of Waterloo (B.E.S., 1974) and Osgoode Hall Law School (LL.B. 1980). After his call to the Ontario Bar in 1982, Mr. Surdykowski practised law in Toronto until his appointment to the Board.

SUSAN TACON *Vice-Chair*

Ms. Tacon joined the Labour Relations Board as a Vice-Chair 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. She is an experienced arbitrator and has taught a seminar on collective bargaining and labour relations at Osgoode Hall Law School. 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, and the City of Toronto Award of Merit, March 1984.

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.

FRANK C. BURNET

In 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.

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, a position he held for thirteen years prior to his retirement. For many years, he has been an active member of various management organizations, including the Canadian Chamber of Commerce, the Canadian Manufacturers' Association and the Canadian Chemical Producers' Association. Mr. Gallivan continues to serve as management representative on arbitration boards and on various government boards and commissions on a part-time basis.

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.

JACQUELINE G. GRIFFIN

Ms. Griffin was appointed a part-time Board Member representing management in March, 1986. Ms. Griffin, who holds a B.A. from the University of Ottawa, has a long career in personnel administration with the Ontario Government. In 1980 she was appointed Personnel Commissioner for the City of Scarborough. Ms. Griffin is a former Director and Vice-President of the Personnel Association of Toronto and a current member of the Toronto Chapter Executive of the Institute of Public Administration, the Ontario Government's Classification Rating Committee, Public Service Grievance Board, and the Financial Times Human Resources Advisory Board.

ALBERT HERSHKOVITZ

Prior to being appointed a part-time Board Member representing labour in September, 1986, Mr. Hershkovitz served as business agent for the Fur, Leather, Shoe and Allied Workers' Union and the Amalgamated Meat Cutters and Butcher Workmen. He has been President of the Ontario Council-Canadian Food and Allied Workers, Vice-President of the Ontario Federation of Labour

and Chairman of the Metro Labour Council, Municipal Committee. As well as being Chairman of the Ontario Jewish Labour Committee and Vice-Chairman of the Urban Alliance for Race Relations, Mr. Hershkovitz has served as a member of the Board of Referees of the Unemployment Insurance Commission.

JOSEPH F. KENNEDY

Mr. Kennedy is the Business Manager of the International Union of Operating Engineers, Local 793, having served as Treasurer before becoming Business Manager. He has been instrumental in establishing a compulsory training program for hoisting engineers in the Province of Ontario. Mr. Kennedy is a Trustee for the Pension and Benefit Plans of Local 793, as well as a Trustee for the General Pension Plan of the International Union of Operating Engineers in Washington, D.C. He is a member of the National Safety Council, Chicago, Illinois, a member of the Construction Industry Advisory Board for the Province of Ontario, a Director of the Ontario Building Industry Development Board and, since May, 1983, he has been a part-time member of the Ontario Labour Relations Board representing labour.

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 1958-1962; 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.

DONALD A. MACDONALD

Prior to being appointed a full-time Board Member representing management in July, 1986, Mr. MacDonald was active in personnel management at Brown & Root Ltd. from 1957 to 1968 and at Lummus Canada from 1968-1981. From 1981 until his appointment at the Board, Mr. MacDonald was President of the Boilermaker Contractors' Association where he was responsible for negotiations, contract administration and liaison with other trade associations. Other activities include Chairman of the Industrial Contractors Association National Committee and Director of the Electrical Power Systems Construction Association.

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 the 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 to 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.

RENE R. MONTAGUE

In March of 1986 Mr. Montague was appointed a full-time Board Member representing labour. A member of the United Auto Workers for many years, Mr. Montague maintained many responsible positions in the union, including plant chairperson of Northern Telecom. He has extensive arbitration and bargaining experience. In 1985 Mr. Montague was elected to the Executive Committee of the United Way of Greater London and was a member of the Board of Directors and Campaign Committee of the United Way.

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.

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.

WILLIAM S. O'NEILL

In March, 1986 Mr. O'Neill was appointed a part-time Board Member representing management. Since 1969 Mr. O'Neill has held many responsible positions with Ontario Hydro, including Senior Construction Labour Relations Officer and Manager of Construction Labour Relations. He is a past Secretary-Treasurer of the Electrical Power Systems Construction Association and is currently its General Manager. He is also a director at large of the Construction Owners Council of Ontario.

DAVID A. PATTERSON

Mr. Patterson was appointed a full-time Board Member representing labour in April, 1986. A member of the United Steelworkers of America for many years, he served as President of Local Union 6500 and Director of District 6. He was elected Vice-President at large at the 1982 CLC convention and re-elected to that position in 1984. He has served as Chairman of the Safety and Health Convention Committee (CLC) as well as a member of the Board of Directors of the Mine Accident Prevention Association of Ontario.

HUGH PEACOCK

Mr. Peacock was appointed a full-time Board Member representing labour in November, 1986. Prior to joining the Board Mr. Peacock was Legislative Representative for the Ontario Federation of Labour which enabled him to gain broad knowledge of the legislative and political process in Ontario as well as its labour relations system. He came to the OFL after having been the Woodworkers' Education and Research Representative (1960-1961), worked in the UAW Canada Research Department (1962-1967), and been a negotiator for the Toronto Newspaper Guild (1972-1976). Mr. Peacock was a member of the Ontario Parliament, representing Windsor West (NDP) from 1967 to 1971. He is currently a member of various social and community organizations.

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.

JOHN REDSHAW

Mr. Redshaw was appointed a full-time Board Member representing labour in July, 1986. From 1966 to 1971 he served as business representative for Local 793, International Union of Operating Engineers. He was area supervisor for Hamilton, St. Catharines and Kitchener, a position which included organizing and negotiation of all collective agreements in the construction industry. From 1979 until his appointment to the Board Mr. Redshaw worked in the Union's Labour Relations Department, first in Toronto and then Cambridge. He has been Secretary-Treasurer of the Canadian Conference of Operating Engineers and Secretary of the Waterloo, Wellington, Dufferin, Grey, Building Trades Council.

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 an 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.

JUDITH A. RUNDLE

Ms. Rundle was appointed a full-time Board Member representing management in July, 1986. She joined the Board with an impressive background in the personnel field. After the University of Toronto, Ms. Rundle held responsible personnel positions at Toronto General Hospital and National Trust Company. Ms. Rundle joined the Riverdale Hospital in 1979, first as Assistant to the Director of Personnel and subsequently as Assistant Administrator of Human Resources. From January 1986 until her arrival at the Board, Ms. Rundle was employed as Acting Director of Personnel and Labour Relations at Toronto General Hospital. She was active as management representative on boards of arbitration and has been a member of various management organizations.

JANIS SARRA

Ms. Sarra was appointed a full-time Board Member representing labour in July, 1986. She was Human Rights Director of the Ontario Federation of Labour. Ms. Sarra has an M.A. in political economy from the University of Toronto and has been an instructor in occupational health and safety for the Centre for Labour Studies, Humber College. From 1979 to 1984 she was a Research Associate, Labour Relations and Women's Equality for the NDP Caucus, Legislative Assembly. Ms. Sarra was Executive Assistant to a Toronto city alderman from 1976 to 1979 and was formerly a researcher, Health Advocacy Unit, City of Toronto. She has been an active member of OPSEU, CUPE and OPEIU, holding offices such as steward, chair health and safety committee and negotiating team.

GORDON O. SHAMANSKI

A graduate of the University of Chicago (B.A.), Mr. Shamanski was appointed a full-time Board Member representing management in July, 1986. He joined the Board with an impressive background in the personnel field, having been Personnel Manager at Rothmans of Pall Mall Canada Ltd., 1963-1970, and at Canadian Motor Industries Holdings Limited, 1970-1971. From 1972 to 1985 Mr. Shamanski was Corporate Director of Personnel and Industrial Relations at Domglas Inc. where he was responsible for labour contract negotiations, labour board hearings, compensation and benefits design, health and safety, management development and training, and staff recruitment. He has lectured in industrial relations and is a member of various management organizations.

ROBERT M. SLOAN

Prior to being appointed a full-time Board Member representing management in November, 1986, Mr. Sloan was employed by Alcan as Corporate Industrial Relations Manager and Occupational Health and Safety Co-ordinator. In this capacity Mr. Sloan, a graduate of Sir George Williams University (B.A.) was directly involved in all phases of the personnel and labour relations scene including representation in various management organizations.

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 Metalurgy 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 resigned from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently, he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canada 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. 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, 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.

DANIEL WOZNIAK

Mr. Wozniak was appointed a part-time Board Member representing management in March, 1987. A graduate of the University of Manitoba (B.A.) and the Manitoba Law School (LL.B.), Mr. Wozniak has held various personnel-related positions. He started his business career with DuPont of Canada Ltd. where he held various positions in the employee relations department. In 1960, he joined Standard Brands Limited (now known as Nabisco Brands Ltd.) in Montreal and was promoted to the position of Vice-President, Personnel and Industrial Relations. In 1976 he joined Canada Wire and Cable Ltd. in Toronto where he held the position of Vice-President, Personnel and Industrial Relations until his retirement in 1987. A member of various management organizations, Mr. Wozniak served as the Deputy Employer's representative to the 72nd ILO Convention in Geneva (1986).

V HIGHLIGHTS OF BOARD DECISIONS

No breach of duty of fair representation by union even though union representing both groups whose interests were at stake

This case involved a complaint alleging the violation of the duty of fair representation, section 68, and an application pursuant to section 63, the sale provision, of the *Labour Relations Act* as a result of the purchase by the respondent Great Atlantic and Pacific Tea Company Limited (A & P) of the "warehouse operation" of the intervener Dominion Stores. Although it was not disputed that the transaction by which A & P acquired the warehouse constituted a "sale" within the meaning of section 63 of the Act, the parties nonetheless disagreed as to the legal impact of that transaction on the Dominion warehouse employees. Although initially A & P did not wish to integrate the Dominion warehouse operation, in the end it agreed that the company would purchase the warehouse, including the trucking fleet, on the basis that the operations would be integrated with the A & P warehouses under the A & P collective agreement. The Canadian Director of the union was convinced that unless the union accepted the company's proposal for integration, A & P would either not purchase the warehouse operation at all or would acquire, but close, the facilities for an indefinite period. He felt that accepting the A & P offer on integration was the only means to preserve approximately 250 jobs of the Dominion employees in question. The union called a meeting of the Dominion warehouse bargaining unit wherein the A & P proposal was outlined to the workers. Following the presentation, there was an open question period wherein workers were free to express their views on the subject of the proposal put forward. As counsel had given a legal opinion that a vote was not required in the circumstances, the Canadian Director decided against holding a vote for fear that "in the heat of the meeting, the proposition would be turned down". As a result, a number of employees proceeded with the complaint to the Board that the union had contravened its duty of fair representation by agreeing to the endtailing of Dominion's seniority list.

The complainants submitted that the memorandum of agreement contravened section 63 of the Act insofar as a successor employer is bound by the collective agreement in force with respect to the vendor's business until the Board declares otherwise. It was not open to the parties themselves to terminate the collective agreement. As it was not disputed that the transaction between Dominion and A & P constituted a sale within the meaning of section 63, the issue to be determined was whether the memorandum of agreement precluded or avoided the legislative consequences of the sale. The Board held that while section 63 createssome permanence to bargaining rights regardless of changes in ownership, it does not preserve the context in which the collective agreement existed prior to the sale. It was noted that the Board would not lightly interfere with a party's resolution of such matters. The Board felt that what had transpired in the instant case was the purported alteration, on agreement of A & P and the union, of the scope provision in the A & P collective agreement so as to include within the bargaining unit the warehouse facilities purchased from Dominion. The Board affirmed the right of parties to a collective bargaining relationship to alter or amend their collective agreement on consent. As a collective agreement is the parties' own document, parties must therefore be free to amend that document to respond to changing circumstances. The Board held that there was nothing contrary to the Act in the parties arrangement up to the point of the expiry date of the Dominion collective agreement. The arrangement had the legal result of rewriting the Dominion collective agreement

so as to replicate the A & P contract. As it was not disputed that intermingling of employees had occurred, the Board thereby exercised its authority pursuant to section 63(6) to declare that A & P was no longer bound by the Dominion collectiveagreement. Rather, the A & P collective agreement was binding on the warehouse employees, including the "former" Dominion employees.

With respect to the section 68 complaint, the Board noted that there were unique aspects to this case insofar as the same local of the same union had held bargaining rights for both groups of employees for a considerable length of time. The Board held that the allegation that the union faced a conflict of interest insofar as it represented both the A & P and Dominion bargaining units was unfounded. Section 68 clearly requires a union in these circumstances to put its mind to the issues, including the bona fides of the offer in question. In the circumstances of this case, the Board was satisfied that such appropriate consideration was given. It was noted that the union need not be "correct" in its assessment in order to fulfill the duty of fair representation. The union's conclusion that the A & P offer represented the only means of saving the jobs was not unreasonable and did not violate section 68. Another element of section 68 to be considered was a review of the process culminating in the acceptance of the A & P proposal. The Board noted that a union must be given considerable latitude in setting strategies in making decisions to best advance the interest of the employees. On the facts of this case, the Board felt that the meeting organized by the union permitted full discussion and attempted to answer questions. The union was not required to hold a vote in these circumstances. Thus, the Board did not find a contravention of section 68 in the manner in which the union had "negotiated" with A & P with respect to the proposal. Further, although not relevant, the Board noted that the A & P collective agreement could not be characterized as inferior to the Dominion agreement. The bargain struck between the parties was recognized as a delicate balance of trade offs and the Board commented that it should accord a bargaining agent considerable latitude in balancing the various competing interests at stake.

On the facts of this case the Board held that the union reached its determination by considering the relevant factors from the viewpoint of the Dominion employees and concluding that the A & P proposal represented the "best possible deal". The Board noted that such an assessment was eminently reasonable and not contrary to section 68. Thus, although the Board commented that it could sympathize with the emotional response of the Dominion employees to the events surrounding the sale, nonetheless the union had represented their interest as well as could be expected in the difficult circumstances. The representation clearly satisfied the duty imposed by section 68 of the Act. The Board further declared that A & P was not bound by the Dominion collective agreement as of September 1985 or, in the alternative, as of the date of sale. The A & P collective agreement was to be binding on the warehouse employees, including the Dominion employees covered by the A & P scope clause. *Great Atlantic and Pacific Tea Company Limited*, [1986] OLRB Rep. Apr. 485.

Sale of a business remedies only to be invoked where there is *de facto* overlap or merger of bargaining units rendering preservation of bargaining rights in the "like unit" difficult

A section 63 application relating to a retail food store in Chatham, Ontario was brought before the Board. For many years the applicants, U.F.C.W. Locals 175 and 633, had represented employees working in A & P's retail food stores across Ontario. A province-wide, multi-store collective agreement regulated the terms and conditions of employment for these employees. In the spring of 1985, A & P purchased 92 retail food stores from Dominion Stores Limited. One of the newly purchased retail food stores was the Chatham, Ontario location where the employees were already represented by Local 206 of the United Food & Commercial Workers International Union. On January 26, 1986 at this location, all "Dominion" signs and logos were removed from

the premises and equipment, and replaced with A & P signs and logos. Thus, for all intents and purposes, the Chatham New Dominion Store had in fact become an A & P store with all employer responsibilities with respect to payment, unemployment insurance, income tax deductions, workers' compensation, etc. to be undertaken by A & P. In fact, it was anticipated that as of February 23, 1986, New Dominion would no longer exist as an independent corporate entity, but rather would become "The New Dominion Stores Division" of A & P.

The applicants asserted that A & P had become a "successor employer" within the meaning of section 63 of the *Labour Relations Act* and had thereby assumed the collective bargaining obligations of New Dominion. The problem arose, however, in that if A & P was bound by the collective agreement between New Dominion and Local 206, the terms of that agreement were in conflict with its own province-wide collective agreement. The conflict was underlined by the fact that there was already an A & P store in Chatham, where the employees were covered by the provincial agreement. The applicants further submitted that there had been an "intermingling" of employees, thereby triggering the remedial responses enumerated in section 63(6) of the Act. In the respondent's submission, however, it was argued that there had been no intermingling and the purpose of section 3 was to preserve not extend bargaining rights.

The Board held that there had been a "transfer of business" within the meaning of section 63 of the Act, thereby rendering A & P the successor to New Dominion with respect to the collective bargaining obligations formerly existing between Local 206 and New Dominion. With respect to the intermingling argument, however, the Board had difficulty accepting the applicant's assertion that the bargaining rights of Local 206 should be terminated or a representation vote directed. It was noted that the purpose of section 63 of the Act is to preserve a union's bargaining rights and the employees' collective agreement upon the transfer of a business from one employer to another. Though the Board was not persuaded that the applicants had established an intermingling of employees,it went on to comment that even if it found a token intermingling which could technically trigger the remedies contemplated by section 63(6), there was no reason on the facts of this case to invoke such remedies. It was noted that section 63(6) is directed to situations in which there is a *de facto* overlap or merger of bargaining units such that it is difficult to preserve bargaining rights in the "like unit" without creating operational problems for the successor employer or prejudicing the established rights of the employees. This mischief was not present on the facts of this case insofar as the former New Dominion Store in Chatham was easily defined and the employee complement represented by Local 206 had not, in fact, been altered by transfers out of that bargaining unit, or by the introduction of new employees who may have had different union allegiances. The Board felt there was no reason at this stage to "put the bargaining rights of Local 206 to the test of a representation vote". Thus, the Board was not prepared to declare that A & P was no longer bound by the Local 206 agreement, nor was it prepared to exercise its remedial discretion under section 63(6) to direct that a representation vote be taken. In order to resolve the apparent conflict between the two collective agreements to which A & P had become bound, however, the Board held that the provincial collective agreement should be amended so as to preclude its application to the former New Dominion Store where Local 206 had bargaining rights, and likewise to amend the current Local 206 agreement to make it clear that it would not apply to other existing stores or those which may open in the Chatham-Wallaceburg area. The Board thus preserved but confined the rights of Local 206 to the store where it had bargaining rights prior to the transaction in question. *New Dominion Stores Inc.*, [1986] OLRB Rep. Apr. 519.

Offering grievors alternate positions on the condition that grievances are withdrawn does not constitute an unfair labour practice

The Board considered a complaint filed under section 89 of the *Labour Relations Act* alleging that two grievors had been dealt with by their employer contrary to the provisions of sections 66

and 70 of the Act by requiring the employees in question to withdraw grievances against the employer as a condition of accepting jobs which the employer was obligated to offer them pursuant to the collective agreement. In order to determine whether the employer had contravened the Act, the Board held that it must first decide whether the grievors had a right under the Act to have their grievances properly processed by the union under the grievance and arbitration provisions of the collective agreement. It must then be determined whether the employer had interfered with that right in a manner which contravened the Act. The Board noted that an activity does not have to be expressly covered by any one section of the Act in order to be found to be a right protected by the Act's substantive provisions. As section 44(2) of the Act mandates that an agreement provide for the settlement of differences between parties respecting the interpretation, application, administration or alleged violation of the agreement or be deemed to include such a provision, then the right to have the procedures followed must be a right under the Act. Thus it remained for the Board to determine whether the employer had violated sections 66 and 70 of the Act by requiring the two employees in question to withdraw their grievances as a condition of accepting the employer's offers of the junior planner jobs, i.e. in making acceptance of its job offers to the employees conditional upon them dropping their grievance, was the employer seeking by threat of dismissal or other penalty to compel the employees to cease exercising rights under the Act contrary to section 66(c) or seeking by intimidation or coercion to compel them to refrain from exercising rights under the Act contrary to section 70?

The Board held that as a matter of theory, any compromise settlement of an employee's grievance made conditional upon withdrawal of the grievance may come within the definition of an unfair labour practice insofar as such a settlement could be characterized as a successful attempt by the employer to compel a grievor or his union, by threat of pecuniary or other penalty, to waive or cease exercising a right available under the Act. On the other hand, it wasnoted that a grievor may waive his or her right to have full enforcement of literal rights under the collective agreement. In fact, as the purpose of the grievance procedure itself as mandated by the *Labour Relations Act* is to bring about settlement of disputes, arguably it would be counter-productive to place a party responding to a grievance at risk of being found in violation of the Act formaking withdrawal of a grievance a condition of a settlement offer. Thus, although the Board acknowledged that there may be particular circumstances where causing an employee to choose between retaining employment and exercising his rights to have the collective agreement enforced could constitute a violation of the Act, this was held not to be such a case. Rather, on the facts of this case, the union and the employer had an honest disagreement over the scope of the employer's obligation under the redundancy provisions of the collective agreement. In the process of attempting to resolve their differences, the Board felt that the employer had "played hardball" with the union, but nothing more. Thus, although an arbitrator may have found that the employer had violated the collective agreement in its dealings with the two employees in question, the Board could not find that the employer's conduct constituted a violation of sections 66 or 70 of the *Labour Relations Act. The Corporation of the City of Ottawa*, [1986] OLRB Rep. Apr. 533.

Failure to proceed to arbitration despite unanimous membership vote to do so not breach of fair representation duty

This was a complaint under section 89 of the Act alleging a contravention of the duty of fair representation, section 68, for the union's failure to take a grievance to arbitration despite a unanimous membership vote to do so. It is well established that the test in duty of fair representation cases is not whether the union made the "right" decision, but whether the union acted reasonably in the circumstances. A union can decide to subordinate an individual interest to the collective interest so long as it does not act in an arbitrary or discriminatory way or in bad faith in so doing. Legitimate factors for the union to consider in making its decision are the likelihood of

winning the grievance, the cost of taking the grievance to arbitration, the relative cost in light of resources available to the union and the interest of other members of the union. The Board held that these factors were all properly taken into account by the union representative in deciding not to take the complainant's grievance to arbitration. It was noted that the resources of the local were in dire straits, and the money required to fund an arbitration was not readily available.

In discussing the elements of the section 68 complaint, the Board noted that it is not necessary to establish hostility underlying "discriminatory" treatment to bring it within section 68. The inclusion of "good faith" as a separate head under section 68 encompasses notions of ill-will or hostility. It was further noted that access to the discrimination head of section 68 is not limited to those who can point to a traditional basis (such as race, sex or religion) for the different treatment, but rather is available to any employee who believes he or she has been subject to differential treatment. The Board noted, however, that different treatment in itself will not guarantee a complainant's success. Once an employee has established a prima facie case of differential treatment, it becomes incumbent upon the union to explain that treatment and to show that it was based on non-discriminatory factors. The Board held that the complainant did not establish that the union had represented him unfairly by discriminating against him on the basis of his health problems. Likewise, the Board held that the complainant's allegations did not encompass any suggestion that the union had acted in bad faith. The Board held that the union had decided not to take the complainant's grievance to arbitration because the results of an earlier group grievance indicated that the complainant's grievance was not likely to be successful, and further, because of the union's difficult financial condition. The Board held that it would be unreasonable to find the vote taken at the membership meeting to pursue the grievance to be binding on the union since it had been taken before the members were aware that the issue had been lost at an earlier arbitration. As the union had acted reasonably, the complaint was dismissed. *Mike Brinovec*, [1986] OLRB Rep. May 585.

Trade union status established despite fact that steps for formation of union not taken at a single meeting but at separate meetings on different dates

The issue in this case was the status of a trade union within the meaning of section 1(1)(p) of the *Labour Relations Act*. The respondent argued that the applicant did not have status as a "trade union" on three grounds. The first of these was that the applicant did not take the proper steps, in the proper order, in drafting and adopting the constitution, having the employees become members in the applicant "union", and subsequently adopting and ratifying the constitution. The Board, however, found that when the events in question were taken together in context, the applicant could be said to satisfy the test normally invoked by the Board. The applicant was formed during a meeting at which time a constitution and regulations were adopted. Although employees did not join and become members at that same meeting, in meetings throughout the province in the two-month period following this date employees were presented with the constitution, and after becoming members of the applicant, thereupon approved the constitution. An interim executive, elected at the initial formation meeting, remained in office throughout this period. Subsequently, an executive duly elected by the members replaced the interim executive. Looking at these activities and meetings, the Board was satisfied that the applicant had taken the necessary and proper steps to acquire status as a trade union within the meaning of the Act. The Board stated that it was not fatal that these steps had not taken place at one meeting attended by all members, but rather had occurred in separate meetings on separate dates. A constitution was drafted and subsequently placed before several meetings of employees for approval where it was approved and employees attending such meetings were subsequently admitted to membership. Subsequent to these steps, officers were elected pursuant to those constitutional provisions.

The Board noted that even if it was incorrect in its view that the applicant had followed the proper steps, in any event by the time of the election of the new executive, any deficiencies had been corrected. At the first general congress, attended by members from throughout the province, a new constitution was placed before the membership, was subsequently adopted and ratified and elections were held to elect a new executive. The Board held that where the initial steps taken by an organization are faulty in some respect, it is open to the organization to correct any such deficiencies in subsequent proceedings. It was noted that if it were otherwise, then an organization which inadvertently omitted or wrongly performed a given step in the procedure would "forever be precluded from correcting their mistake" and forever precluded from becoming a "trade union".

The respondent's second argument against the trade union status of the applicant, concerning the alleged discriminatory and offensive nature of certain provisions in the constitution, was dismissed. The Board will not deny an organization status as a trade union only because provisions of the constitution might be discriminatory. The Board must just be satisfied that such provisions do not affect whether the organization is a viable entity for purposes of collective bargaining, and, in this case, they did not. The final argument raised by the respondent was that the applicant would not be a viable entity for purposes of collective bargaining by virtue of its lack of presence in Ontario and its inability to properly serve its members therein. The Board stated that while the applicant did not currently have a physical office in the Province, nonetheless, it had established that it had a permanent office in Hull, Quebec, immediately across the river from where the respondent's place of business was located. It was also noted that the applicant had conducted business for many years throughout the Province of Quebec, and clearly had a viable presence throughout that Province. Taking these factors together, the Board stated that it could not be maintained that the applicant did not have a viable presence within this Province. Thus, in all the circumstances, the Board found that the applicant had established trade union status within the meaning of section 1(1)(p) of the *Labour Relations Act*. *Dustbane Enterprises Limited*, [1986] OLRB Rep. May 607.

Related employer provisions of the Act not infringing freedom of association guaranteed by *Canadian Charter of Rights and Freedoms*

During the course of hearings in this matter, a preliminary objection was raised regarding the jurisdiction of the Board to deal with a request for an order under section 1(4) of the Act. The respondent argued that the related employer provisions of the Act infringed the guarantee of freedom of association provided in section 2(d) of the *Canadian Charter of Rights and Freedoms*. It was argued that as this infringement cannot be justified under section 1 of the Charter as a reasonable limit in a free and democratic society, section 1(4) of the Act must be declared unconstitutional and of no force and effect.

While noting its obligation to deal with and determine a constitutional issue which is being raised before it, the Board nonetheless held that on the facts of this case, in the absence of proper notice to the Attorney General, it was without jurisdiction to adjudicate upon the constitutional validity of the related employer provisions on the basis of section 35 of the *Judicature Act*, R.S.O. 1980, c. 223. The Board stated that the fact that the respondent had subsequently given notice to the Attorney General as required by section 35 of the *Judicature Act* was irrelevant insofar as at the time the constitutional validity of section 1(4) was called into question, the Board was without jurisdiction to adjudicate upon its constitutional validity. Further, the Board held that the respondents did not have standing to raise the constitutional validity of section 1(4) of the Act insofar as they were not asserting that the section interfered with their constitutionally protected rights, but rather with the constitutionally protected rights of others. The Board relied on previous jurisprudence wherein the courts have shown a reluctance to permit an employer to invoke on behalf of

other persons, and in particular, on behalf of the employees, rights which did not belong to the employer but did belong to other persons.

On the chance that the Board was wrong on either issue, it proceeded to deal with the challenge on its merits. It was noted that the purpose of section 1(4) of the *Labour Relations Act* is to preserve the bargaining rights of the trade union and thereby to protect the decision of the majority of employees to be represented by a trade union. Without such protection, an employee's choice to be represented by a specific trade union would be undermined by an employer's decision to create subsequent non-union companies and to perform part or all of its business activities, previously carried out by the unionized company, through the non-union company. It was noted that section 1(4) is part of an overall scheme of the Act including certification, termination and unfair labour practice provisions to guarantee employees the right to bargain collectively with their employer through a certified trade union of their choice, and further to protect this right from the conduct of an employer which either incidentally or intentionally destroys the collective bargaining rights acquired pursuant to the Act. The Board stated that in its view, section 1(4) does not interfere with the right of employees to select a bargaining agent when a majority of employees so desire but rather, preservesthat right and thus cannot be said to contravene section 2(d) of the Charter. Thus, the respondent's objections to the constitutionality of section 1(4) were denied by the Board. The Board then went on to find that the criteria set forth in section 1(4) had been satisfied in the circumstances although, on the evidence before it, the Board was not prepared to find that there had been a sale of business within the meaning of section 63 of the *Labour Relations Act*. *F. D. V. Construction Limited*, [1986] OLRB Rep. May 617.

Maintenance department electricians not constituting an appropriate bargaining unit in the mining industry

In this application for certification, the I.B.E.W. sought to represent a bargaining unit composed of 106 electricians working in the company's maintenance department. The union claimed that this unit was appropriate based on the assertion that the electricians were a separate and distinct group of employees with a unique community of interest and that, as such, should constitute an appropriate bargaining unit under section 6(1). In a prior decision the Board had ruled against the union's second argument that the electricians formed a "craft unit" which is deemed appropriate under section 6(3) of the Act. In this decision the Board dealt primarily with the union's assertions that the electricians in the maintenance department formed an appropriate bargaining unit.

In reviewing the Board's approach to making bargaining unit determinations, the Board reiterated its concern about the possible fragmentation and division of the employee complement into a number of potentially competing collective bargaining units represented by different unions and stated that "[f]or anyone concerned about promoting collective bargaining stability and minimizing competitive bargaining, inter-union rivalry, jurisdictional disputes, and industrial conflicts, a possibility of a multiplicity of bargaining units is not one to be welcomed." The Board also referred to its traditional reluctance to define bargaining units on the basis of employee classifications or employer departments because of the high potential for fragmented bargaining which such practices create. Having reviewed the evidence the Board concluded that there was no doubt that the electricians, as a group, had certain skills and performed certain work which was different from that of other employees or other skilled tradesmen. The Board found, however, that these facts did not make the electricians unique nor did it mean that they shared a separate community of interest for collective bargaining purposes or that, from a collective bargaining perspective, they would be a separate "appropriate" bargaining unit. Indeed the Board found that the most striking feature of the electrician's employment was the *absence* of employment characteristics unique to electricians which would have supported their claim for a separate bargaining

unit. Electricians shared the same wage progression system, the same source of work and a similar wage rate to the other skilled tradesmen involved in maintenance and were co-ordinated by the same supervisory staff. The Board stated that "[t]he work of various of trade groups cannot be divided into watertight compartments", and since it had found that the electricians shared the same work situation and job conditions of most of the other employees, the union's application for a single unit of electricians was denied.

The Board also dealt with the applicant's *Charter* argument which asserted that the electricians constitute a coherent grouping of employees whose right to engage in collective bargaining should not be limited by the Board's policy prescriptions or definitions of the "appropriate" bargaining unit. The union asserted that the constitutional right of freedom of association was violated by the requirement that electricians seek trade union representation only in a broader-based bargaining unit instead of a group of their own choosing. The Board termed the union's argument as "Charter gloss" which involved a fundamental challenge to the Legislature's right to regulate the structure of collective bargaining and the Board's ability to shape bargaining units in such a way as will promote orderly, stable and harmonious collective bargaining relationships. The Board ruled that "it was by no means clear that 'freedom of association' entails the protection of collective bargaining rights, let alone entitlement to any particular bargaining unit or trade union representative." After having reviewed both Court and Labour Board rulings on the protections afforded by s. 2(d) of the *Charter*, the Board commented that even the more expansive views of the scope of freedom of association do not address the right of individual groups of employees to engage in collective bargaining in a bargaining unit of their own choosing apart from other employees of the same company. Moreover the Board found that it was clear that limits on employee access to certification do not necessarily violate the *Charter*.

For the purpose of this decision, however, the Board was prepared to *assume* that, to some extent, section 6(1) did impinge on employees' freedom of association. The Board reasoned that any bargaining unit or voting constituency not based on total employee unanimity will almost certainly include some workers who do not wish to associate for collective bargaining purposes with others, or at all, and the unit definition may well exclude some individuals who would prefer to be included. It does not matter where the Board draws the line. Some employees are always going to be included or excluded against their wishes; and, if one equates the freedom of association with the right to bargain collectively (or not) in a group of one's own choosing, there would almost never be a bargaining unit determination which did not infringe upon someone's freedom of association. Further, the Board reasoned, a dissatisfied group might also have the right to *dissociate* and form its own collective bargaining unit. In face of this likely infringement on someone's freedom of association the question for the Board was whether the Board's determination of the "appropriate" bargaining unit can be regarded as a reasonable limit on freedom of association demonstrably justifiable in a free and democratic society. The Board was satisfied that "[t]he Act promotes and protects collective bargaining rights which did not exist at common law, and may not have any independent constitutional protection. To the extent that the regulatory framework also limits the employees' freedom of association, it is our opinion that such limitation is reasonable, and from the Board's experience and collective bargaining perspective, demonstrably justifiable". The *Charter* therefore did not preclude the Board from determining that the unit sought by the I.B.E.W. was not appropriate for collective bargaining and therefore dismissing the application. *Kidd Creek Mines Ltd.*, [1986] OLRB Rep. June 736.

Discharge not appropriate penalty where refusing employee relies on mistaken advice of health and safety representatives

The complainant who had a long record of disciplinary problems complained under section 24 of the *Occupational Health and Safety Act* that he was improperly fired for refusing to work with an

unsafe weed-eater. The complainant refused to use the sling-held weed-eater after he sustained a minor burn to his arm on June 13, expressing concern that he would burn himself or perhaps others on its exhaust. Parenthetically the Board noted that the complainant was not fully trained on the machine and on the day in question was not wearing the work clothes prescribed by the City. The first refusal to use a weed-eater occurred on July 26, 1984. At this time an inspector from the Ministry of Labour was called to investigate the complaint and concluded that the muffler did become excessively hot and ordered that the workers be protected by appropriate apparel or in the alternative that heat shields be installed on the machines. The City's response was to provide workers with protective welders' sleeves. The complainant, however, misapprehended the inspector's ruling and insisted on the installation of heat guards. On August 7, 1984 the complainant again refused to use the weed-eater and refused to wear the welders' sleeve because it was restrictive and uncomfortable. The City assigned him other work and a second Ministry investigator was summoned. Having reviewed the prior order, the second investigator advised that the steps taken by the City were satisfactory, and the Board noted that the City for its part continued throughout the day on August 7 to try and allay the concerns expressed by the complainant. On August 15, 1984 the complainant again refused to use a weed-eater. However, on this occasion there was no alternative work available. When contacted, the Ministry of Labour inspectors refused to attend to perform yet another inspection on a situation that they had already reviewed. The complainant sought advice with regards to his refusal to work from his health and safety representative who advised him that he could continue to refuse to work if he felt the work was unsafe. A second union health and safety representative who knew that the proper test for further refusal was "reasonable grounds" also advised the complainant that he could continue his refusal to work. In evidence it became apparent that he had misapprehended the original Ministry order to have required that heat guards be installed on the mufflers. The complainant's refusals continued for the next three working days and on August 20 the complainant was fired.

The Board noted that the complainant continued to insist that the only way to guard the muffler was by a heat shield. The Board stated that the basis upon which an employee is entitled under the Act to refuse to perform an assigned task is initially that the employee has "reason to believe" that the work is unsafe. These words establish a test that is *subjective* in nature. After management has taken steps to investigate and remedy the situation, however, the requirement for continued refusal becomes "reasonable grounds". This term provides for an *objective* test.

With regards to the function of the Director of Appeals, the Board stated that on appeal the Director is asked to decide whether the original inspector was right or wrong in terms of whether the machine, device, thing, workplace or part thereof is likely to endanger. He does not decide whether the refusing employee has reasonable grounds for his refusal. With regards to the employee's assertion that the welders sleeves provided for his protection were uncomfortable, the Board stated that "comfort" did not appear to be a basis for invoking the refusal to work provision of the Act. Nor could the complainant rely on his own misreading of the first inspector's report to establish reasonable grounds for continued refusal. The test is, as noted, an objective one and the order of the first inspector clearly gave the City the option of providing a guard on the muffler *or* providing adequate safety apparel. The Board therefore ruled that there were no reasonable grounds for continued refusal on the part of the complainant to use the weed-eater, at least not after the issuance of the second inspector's report. The refusal to work was therefore not in compliance with the Act and the complainant was legitimately liable to disciplinary action by the City.

The issue before the Board then became whether or not, in the light of a lengthy record of disciplinary problems, a discharge was appropriate. The Board stated that the City, which had correctly assessed the risk level in the workplace and had made every reasonable effort to satisfy the complainant, ought not to carry the burden of the complainant's loss of pay. Further, the

Board ruled that should it find that an employee had abused the *Occupational Health and Safety Act* in an effort to frustrate or "tie up" superiors, any thought of mitigation of the penalty would be out of the question.

The Board, however, noted that this complainant did not act completely on his own, but had been advised by two different health and safety representatives who did not share his defiant attitude toward his employers. Both health and safety representatives had advised him that he was within his rights to continue to refuse to work based on their misapprehension of the original inspector's order. The Board found that the complainant's misapprehension of his legal position under the Act was fostered at least in part by the advice of individuals on whom it was not unreasonable for him to have relied and that this fact did lessen the severity of the complainant's insubordination and the extent to which the Board could conclude that management's authority was being wilfully undermined with regards to the mitigation of penalty. The Board was also influenced by the fact that on the occasion of his last refusal the complainant was not aware that it would result in his immediate termination. In the past he had always been provided with alternative work even when the City considered his complaints unjustified. In conclusion, the Board ruled that even an employee as unsatisfactory and obdurate as the complainant is entitled to a clearer opportunity to make "a last chance" judgment about continuing his employment. Accordingly, the complainant was reinstated without loss of seniority or service credit but without compensation for lost pay. *The Corporation of the City of Ottawa*, [1986] OLRB Rep. June 798.

Food store chain changing to franchise operation not a change in the character of business sufficient to cause Board to terminate existing bargaining rights

RPKC Holding Corporation ("RPKC") holds a franchise to a Mr. Grocer store from Willett Foods Limited, a wholly owned subsidiary of Dominion Stores Limited. RPKC requested that the Board terminate bargaining rights held by the Retail, Wholesale and Department Store Union pursuant to section 63 of the Act, alleging that there had been a change in the character of the business so as to make it substantially different from the business of Dominion. The Union applied under section 1(4) of the Act, alleging that associated or related activities or businesses were being carried out under common control or direction by Dominion, RPKC, and Willett Foods Limited c.o.b. as Mr. Grocer. The Union also alleged that it had been dealt with by the respondents contrary to the provisions of sections 50, 64, 66, and 67 of the Act.

In the preliminary ruling the Board stated that delay on the part of the union in filing its complaints had not resulted in prejudice to the respondents that the Board could not, if necessary, address in any remedial response it found necessary to make. The Board ruled that section 89(5) of the *Labour Relations Act* did not offend section 11(d) of the *Charter* and in that respect followed the *Third Dimension Manufacturing Limited*, [1983] OLRB Rep. Feb. 261. The Board stated that even if the union's section 89 complaints succeeded, the Board could only award remedial and compensatory relief; Board had no jurisdiction to impose punitive sanctions under section 89. The Board found it unnecessary to deal with the respondent's further *Charter* argument that section 89(5) also offended section 15(1) of the *Charter*.

In reviewing the evidence before it, the Board found that by 1982 it had become apparent to Dominion management that profits and productivity were being eroded, and that generally many of the Dominion Stores were smaller, less contemporary and less efficient than those of their major competitors. In an effort to make Dominion less vulnerable to market conditions, Dominion management conceived of a franchising and wholesaling scheme to be run through Willett. Dominion therefore took steps to close a number of its own stores and begin a franchising operation in which Willett would distribute and manage a string of Mr. Grocer stores. Dominion management was at this time of the view that they would be unable to make a success of the Mr.

Grocer franchise program under the existing collective agreement. However, the union insisted that it would not be drawn into dealing with the company on a store by store basis, and, although discussions were held, the parties were unable to reach an accord. The Board found that thereafter decertification of some if not all of the stores became a part of the Mr. Grocer "game plan".

Mr. R. Ferencz, a former Dominion store manager, negotiated a Mr. Grocer franchise and sublease agreement with Willett which he entered through the corporate vehicle of RPKC Holdings Limited of which he was the president and majority shareholder. Because the RPKC franchise agreement was the first to be signed, it came to be used as a precedent for subsequent franchise agreements executed by Willett. The Board found that Mr. Ferencz was aware at all material times that RPKC was bound by the collective agreement then in place between the union and the respondent and obligated to honour it. However, he chose to entirely disregard its provisions, particularly with regards to the staffing of his Mr. Grocer outlet. Neither Dominion nor Willett took any steps to direct or encourage the franchisee to recall or hire laid off Dominion employees and Mr. Ferencz hired whomever he wished to staff his store. RPKC did deduct union dues from employees wages but instead of forwarding them to the union as per the agreement, it deposited them instead in a trust account. While some former Dominion employees were hired, no recognition was given to seniority acquired through previous employment with Dominion. No payments were made on behalf of employees to the pension plan as provided in the collective agreement nor did RPKC adhere to contractual obligations regarding a Christmas bonus.

RPKC conceded that there had been a sale of business by Dominion (through Willett) to RPKC but contended that it had changed the character of the business such that it was substantially different from the business of Dominion, the predecessor employer, and accordingly asked the Board to terminate the union's bargaining rights.

The Board was of the opinion that the changes affected by RPKC did not render its business substantially different from that conducted by the predecessor employer. Although the Mr. Grocer outlet had been remodelled, so that it was now selling food and other items to the public under the Mr. Grocer trademark rather than that of Dominion, it remained a retail foodstore in which cashier clerks, meat cutters, department managers and other employees use the same skills to perform essentially the same tasks that were performed by the persons previously employed by Dominion at that store. The Board ruled that the change from being one store in a chain of retail food stores to being one in a number of franchised retail food stores over which the franchisee is empowered to, and in fact does, exert a substantial degree of direction and control is not a change in the character of the business such that it is substantially different from the business which the predecessor employer carried out on the same premises. The Board therefore dismissed RPKC's application for termination of the union's bargaining rights.

With regards to the union's application under section 1(4) that Mr. Grocer be declared a successor employer, the Board was of the opinion that RPKC and Willett were carrying on associated or related activities or businesses under common direction or control within the meaning of section 1(4) of the Act. Although the franchisee controlled some aspects of the Mr. Grocer business such as staffing levels, work assignments and the ordering of products and store hours, the franchisor still retained a substantial degree of control over many aspects of the business. In particular, the Board noted Willett's right to inspect RPKC's premises and methods of operation, its control over the manner and timing of the way in which advertising fees were applied towards the advertisement and promotion of the Mr. Grocer concept, and the fact that Willett supplied the majority of products which are sold by Mr. Grocer stores. The Board found that Willett's broad discretion in respect of the prices that it charged for products supplied to Mr. Grocer and its discretion in respect of the portion of the volume purchase discounts or rebates which it passed along to RPKC and other franchises combined with its power to determine the

maximum selling price RPKC could charge for products sold gave Willett effective power over RPKC's gross margins which in turn had a direct effect on its gross and net profits. Although Willett did not exercise all its powers on a daily basis, it exercised many of them and retained the right to exercise the rest whenever it wished. The Board was therefore of the opinion that RPKC and Willett exercised common direction and control over associated or related activities or businesses which they had been carrying on at all material times. Accordingly, the Board in the exercising of its discretion under section 1(4) declared that it would treat Dominion, Willett, and RPKC as constituting one employer for the purposes of the *Labour Relations Act*.

The Board further concluded that the implementation of the franchise program was tainted by an anti-union motivation to the extent that it was understood by Dominion management that they would be unable to make a success of the Mr. Grocer franchise program without substantial modifications to the collective agreement. When it became apparent that the union was not going to agree to such changes, some of the persons responsible for the franchise program began to view decertification as one of the means by which the franchised stores could become economically viable. Thus, decertification became an important element in the implementation of the franchise program. The Board further concluded that the conduct of Dominion and Willett contravened ss. 50, 64 and 66 of the Act because Mr. Ferencz purposely disregarded the contract provisions in the staffing of his Mr. Grocer franchise. RPKC was also in violation of these sections of the Act. The Board remained seized of the proceedings to deal with any remedial matters on which parties were unable to agree. *RPKC Holding Corporation*, 1986] OLRB Rep. June 828.

Employer's insistence on clause allowing employer to discharge with or without cause not a breach of the duty to bargain in good faith

The respondent employer had, *inter alia*, insisted to the point of impasse on a clause allowing the employer to discharge employees, regardless of whether just cause existed, upon payment of a specified amount as severance pay or in lieu of notice. Both parties agreed that the employer was not motivated by anti-union animus nor by the desire to avoid entering into a collective agreement. The complainant union suggested that such a clause was contrary to the spirit and intent of the Ontario *Labour Relations Act*. In the words of the Board: "In effect, the applicant has conceded insofar as the 'process' of collective bargaining is concerned, the respondent employer has not violated section 15. The applicant is really suggesting that the 'content' of the proposed clause is per se illegal and therefore a violation of section 15". The Board adopted the approach taken in *Governing Council of University of Toronto (Royal Conservatory of Music)*, [1985] OLRB Rep. Nov. 1652 and stated that it was not for the Board in a complaint alleging bad faith to assess the wisdom or merits of a particular bargaining position or bargaining proposal. The Board's concern is to ensure that the "process" of collective bargaining proceeds properly and unless it were found that the contents of a particular proposal impeded that "process", or violated some other sections of the *Labour Relations Act*, it would not be appropriate for the Board to inject itself into the collective bargaining process, nor for the Board to attempt to redress the economic imbalances between the parties. Although a "just cause for discharge" clause is the foundation for most collective agreements, the Board found nothing in the statute which required a particular employer to provide such protection nor to agree that it be in that collective agreement. As long as the process of collective bargaining is not hampered, parties are free to take hard bargaining stances, provided they are not taking to impasse an illegal clause and provided there is no suggestion that the process of collective bargaining is being hampered. *Formula Plastics Inc.*, [1986] OLRB Rep. July 954.

Failure to file Form 9 not fatal to request for pre-hearing vote. Mailed ballots for occasional teachers not appropriate in this case

The applicant applied for certification by way of a pre-hearing representation vote for a unit of occasional teachers. The Labour Relations Officer that met with the parties notified the Board that the applicant had failed to file a Form 9 Declaration. The applicant had expected that a Form 9 Declaration filed in a previous application was to have been transferred to this file. The Board said that its requirement of a fresh Form 9 Declaration when membership evidence is transferred from one file to another was well settled. Further paragraph 2 of Form 9, indicates that a declaration prepared for the purposes of a previously filed application could not comply with the requirements of Rule 6 of the Board's Rules of Procedure. Having concluded that a new Form 9 would have to be filed the Board followed *Northridge Plastics Limited*, [1986] OLRB Rep. July 1011 in stating that the applicant's failure to file a Form 9 Declaration made with specific reference to the instant application did not prevent the Board from acting on appearance created by the application for membership and receipt cards transferred to this application. The failure to provide the Form 9 will be a fatal omission only if it remains unremedied when the application comes on for hearing. As it appeared on an examination of the records that not less than thirty-five percent of the employees of the respondent in the voting constituency were members of the applicant at the appropriate time, the Board directed that a pre-hearing representation vote among the appropriate employees be conducted. However, the ballot box was ordered sealed and the ballots cast not counted unless and until an apparently proper Form 9 Declaration was filed by the applicant with the leave of the Board. The Board exercised its discretion to grant leave and extended the time for filing by the applicant of a new Form 9 Declaration.

The case also raised the issue of whether or not a pre-hearing vote amongst occasional teachers could appropriately be conducted via the mail as requestd by the applicant. The Board found that while there may be some difficulty in adopting its ordinary approach to certification applications to matters involving "occasional teachers" it did not compel the use of mailed ballots. The Board reasoned that a central location or locations could be identified such that the effort required to travel to it (or one of them) is not substantially different from the effort which might be involved in travelling to work on a teaching assignment and that the polls could be open both during and outside the ordinary hours of work of occasional teachers to ensure that they would be able to attend.

In dismissing the need for a ballot by mail vote, the Board noted that a mailed ballot is by no means administratively simpler than a poll vote, it involves higher administrative costs and runs the risk of disenfranchising those voters whose addresses are inaccurately recorded. Nor can the Board be certain that ballots returned were cast by the eligible voters or that the ballots will be received by the Board before the specified deadline. Further there is the problem of retrieving ballots mailed to wrong addresses. Finally, the Board observed that mailed ballots may well be perceived by the voters as a less secret type of poll.

In conclusion, the Board commented that its broad pronouncement on the superiority of mailed ballots in certification applications affecting occasional teachers may have been premature. While the Board did not suggest abandoning the mailed ballot for all but the most extreme cases, the case of mailed notice and central polls should be seriously considered in each case. The method of voting in cases involving occasional teachers should be a matter for the Registrar, unless otherwise addressed in the decision directing the vote. In this case the Board saw no reason to direct that the vote be conducted by mail. *The Halton Roman Catholic Separate School Board*, [1986] OLRB Rep. July 962.

Rigid bargaining which may not violate s. 15 may, in the context of a particular bargaining relationship, justify an imposed settlement of a first contract

The applicant union had been certified as bargaining agent for a group of the respondent's employees on November 5th, 1984. A "no board" report was issued in October of 1985 and in spite of the fact that the union had made substantial economic concessions to the company, negotiations broke off in November of 1985 and the union applied for first contract arbitration. Although the parties agreed on most substantive provisions the employer steadfastly refused to consider the union proposals with regards to seniority rights, particularly for members who had previously been fired and reinstated by the Board, and the employer insisted on a 3 year term for any agreement.

The Board stated that the first contract arbitration remedy "does not supplant the primacy of the free bargaining process; rather, it recognizes that the negotiation of the first agreement may sometimes be thwarted by unjustified intransigence. Although this is remedial legislation and should be given a liberal construction and interpretation, the scheme of section 40a does not envision the automatically imposed settlement of a first collective agreement in all cases where the parties are unable to negotiate one". What it provides is access to this remedy where the conditions enumerated in subsection (a)-(d) of section 40a(2) have been met. The Board said it was thereby obliged to consider the "process of collective bargaining". In this regard the conduct of both parties is relevant, not only for understanding why the process has been unsuccessful, but also for assessing whether it has been unsuccessful for any of the enumerated reasons. The Board also indicated that section 40a contemplates a cause – and – effect oriented assessment. The applicant will be called upon to demonstrate that the reason for the unsuccessful bargaining process is the employer's refusal to recognize the union's bargaining authority, the respondent's unreasonably uncompromising bargaining proposals, the respondent's dilatory or unreasonable efforts to reach an agreement, or any other reason the Board deems relevant. Unless the applicant is able to do so, the Board will not be entitled to direct the imposition of a first contract arbitration.

The Board also stated that with reference to the principles of "bargaining in good faith", it will not be bound by whether or not the conduct complained of in an application for binding arbitration violates section 15. "Given the Board jurisprudence pursuant to section 15, wherein the Board has held that hard bargaining is not necessarily bargaining in bad faith (*T. Eaton Company Limited*, [1985] OLRB Rep. March 491; *Radio Shack*, [1985] OLRB Rep. Dec. 1789), one is left with the inescapable conclusion that the legislature has intended a different standard to apply in the determination of first contract disputes, a standard peculiar to section 40a adjudications." The absence of sufficient facts upon which the Board could find a contravention of section 15 does not preclude the application of section 40a. "Hard bargaining may not violate section 15, but rigid bargaining proposals may, if they fall within subsections (a)-(d) of section 40a(2), justify the imposed settlement of a first collective agreement."

The Board noted that in collective bargaining uncompromising positions are frequently taken as strategies to elicit compromise and that a bargaining proposal's reasonable justification must be weighed in the context of the current climate of collective bargaining, the particular bargaining process undergone by the parties, the institutional realities from which it derives, and its intrinsic merit.

In examining the evidence the Board was satisfied that the collective bargaining process had been unsuccessful because of the uncompromising nature of the respondent's bargaining position with respect to the term of the agreement and particularly with respect to the employer's refusal to accept a seniority rights clause, both without reasonable justification. The Board therefore directed settlement of a first collective agreement by arbitration. *Nepean Roof Truss Limited*, [1986] OLRB Rep. July 1005.

Employees working only in the ICI sector of the construction industry cannot terminate bargaining rights for the non-ICI sector unit

In this case the applicant sought to terminate the bargaining rights for both the industrial, commercial and institutional (ICI) and non-ICI sector bargaining units of a particular employer. Although the employer in question had at one time worked in all sectors of the construction industry, in recent years the company had been engaged only in residential construction. At the date of application there was no collective agreement in effect covering non-ICI construction activities, and the union had not made any recent attempts to bargain for or represent employees working on residential projects. The dispute centered on the legal significance of the introduction in 1978 of the statutory scheme imposing and regulating province-wide bargaining in the ICI sector of the construction industry. The question before the Board was to determine whether the applicant could seek termination of bargaining rights for both the ICI sector, covered by the statutory provincial collective agreement, and the non-ICI sectors where it is agreed that there was no collective agreement. In both cases the applications would be "timely".

The Board noted that despite the unique characteristics of the construction industry and its special statutory bargaining scheme, it was not unusual to group employees into different bargaining units depending upon their work characteristics. In those cases, the Board has generally held that employees applying for termination of bargaining rights must actually be employed "in" the bargaining unit on the date of application. Thus an employee in one unit cannot seek termination of bargaining rights for another unit. The Act envisages that there shall be only one collective agreement at a time between a trade union and employer with respect to the employees in a bargaining unit defined in that collective agreement. Further, given the transitory nature of employment relationships in the construction industry, an agreement can be negotiated even where there are no employees in a bargaining unit at the time the agreement is entered into. Thus, there is nothing anomalous in the proposition that employees in the ICI sector and non-ICI sectors may be in different bargaining units, or that the "ICI unit" could remain empty for some years without affecting the validity of the ICI agreement. It was noted that if there were only one bargaining unit with two collective agreements, there would be an apparent conflict with section 49 which dictates that there be only one collective agreement and a potential difficulty in calculating the timeliness of a representation application insofar as both sections 5 and 57 provide that such applications can only be made during the last two months of a collective agreement pertaining to an established bargaining unit.

The Board further considered that under sections 144(1) and 144(2), although the initial bargaining unit configuration may include both ICI and non-ICI employees for the purposes of establishing entitlement to certification, nonetheless, the Board is required to issue two certificates establishing two separate bargaining relationships for ICI and non-ICI work. Further, the statutory scheme and the statutory language governing the process of bargaining seem to contemplate a provincial ICI unit separate and distinct from any other bargaining units of an employer's employees. Likewise, the timeliness restrictions on construction industry termination applications suggest that there are two units for which bargaining rights can be terminated, at different times, by separate applications. Insofar as ICI bargaining rights are concerned, the provincial ICI agreement covers the timeliness of any termination application brought pursuant to section 57(2), whereas non-ICI bargaining rights would be subject to termination pursuant to section 123(1) of the Act.

In this case the union's bargaining rights pre-existed the provincial bargaining scheme and in fact, it could be said that prior to 1978 there was a single provincial, multi-sector, bargaining unit. The Board held, however, that this position could not be maintained after the introduction of the provincial bargaining scheme which created, in law, a separate provincial ICI bargaining unit with

particular characteristics and a special set of bargaining rules. Rather, what remained was another provincial bargaining unit comprising all employees working in sectors other than the ICI sector. The fact that the parties were unable to bargain a separate collective agreement for that bargaining unit does not alter the fact that after 1978 those employees were in a separate bargaining unit.

Counsel for the employer argued that the process by which bargaining rights are acquired should be the same as that by which they are terminated, i.e. the statute should not be interpreted so as to diminish the extent of the bargaining rights which could be terminated by a timely application. If it is unnecessary to have employees working in the ICI sector at the time bargaining rights were acquired for that sector, it should not be necessary to have employees working in the ICI sector for the purpose of terminating ICI bargaining rights. The Board held that while "an appeal for symmetry always has some attraction", nonetheless the mechanisms for acquiring and terminating bargaining rights are not the same. In fact, the Board stated that "it is simply wrong to assume that bargaining rights must be acquired and lost in precisely the same way". The scheme of the Act itself reflects that ICI and non-ICI employees are now in different bargaining units, subject to a different regulatory scheme. Thus the Board found that in all the circumstances, the company had two bargaining units, — one ICI sector and a separate unit outside the ICI sector. At the time the application was made, there were no employees in the provincial ICI bargaining unit. Thus no one was entitled to bring a termination application as there were no "ICI employees" whose views could be canvassed before determining the disposition of such an application. On that basis the termination application was dismissed insofar as it related to the ICI sector. On the other hand, the employees working outside the ICI sector were entitled to bring this timely termination application, and in respect of those employees the union's bargaining rights were terminated insofar as the union had indicated that it did not seek to maintain bargaining rights. *Fred Jantz Masonry Construction Company Limited*, [1986] OLRB Rep. Aug. 1083.

One year shelter period from termination application not applicable to construction industry

This case involved an application for a declaration terminating bargaining rights in the construction industry pursuant to section 123(1) of the *Labour Relations Act*. The preliminary issue to be decided by the Board was whether the application was rendered untimely by virtue of section 61(1) of the Act, which extends the protection from termination applications to accommodate the conciliation process. The Board noted the similarity of the wording of sections 57, the general termination provision, and 123, the construction industry termination provision, the only significant difference being that a union's bargaining rights under the former are protected from a termination application for a period of one year, while under the construction industry provision, they are stated to be protected for six months. Nowhere in the "construction" provisions of the Act does it say that the "general" provisions of the Act are not to apply, but rather, the matter is dealt with as a question of override or "conflict" in section 118.

The respondent argued that all of section 61(1) applies to the construction industry thereby protecting a union's bargaining rights from a termination application for a minimum period of one year. The only Board case to previously consider the relationship between the sections in question was *K. J. Beamish Construction*, [1967] OLRB Rep. May 205 wherein it was held that the one-year period referred to in section 61(1) was to be read, for construction applications under section 123, as a six-month period, while the additional time limits relating to completion of the process of conciliation would be applicable to the construction industry as well and could extend the time during which bargaining rights are protected. However, section 91 [now 118] was amended since the time of that decision to its present form, specifically omitting section 61, *inter alia*, from section 118's repugnancy declaration. On this basis the respondent argued that section 61 can no longer be read to be qualified by section 123 insofar as section 123 was intended to be a "no activity" section, only exposing the trade union to jeopardy for its bargaining rights when six months have passed

without the union having even applied for conciliation. While the Board acknowledged that the respondent had put forward a possible interpretation of the various sections, nonetheless it held that on a plain reading of the language used by the legislature, the applicant's interpretation of the scheme of the Act was more plausible. It was noted that sections 57(1) and 123(1) were clearly corresponding provisions for the "general" versus "construction" portions of the Act. The Board held that section 123 seems to reflect a deliberate decision by the Legislature to choose a general framework of one year for non-construction and six months for construction.

In considering whether the amendment to section 118, omitting a series of sections including section 61, should be read as a legislative intent to reverse the Board's position in *Beamish*, the Board noted that section 61(1) is not the source of the one year "shelter" from non-construction termination applications but, rather, the source of that hiatus is to be found in section 57. The corresponding section to section 57 in construction is section 123; the latter clearly overrides the former pursuant to the provisions of section 118. The Board accepted the applicant's argument that the sections which were deleted from section 118 were so deleted because there was no possibility of conflict, i.e. the Legislature was satisfied with the Board's interpretation in *Beamish*, and, in any event, section 61 was covered by amending section 57 to say "subject to section 61". On this basis, it was accepted that sections 57 and 61 are to be read as one section on the issue of timeliness. As sections 123 clearly overrides section 57 with respect to the six month period, then section 61(1) should be read *mutatis mutandis*. On this basis, the Board held that the scheme of the Act is to substitute for the construction industry a six-month period following certification for insulation of a trade union's bargaining rights from termination applications, subject to any extension that the conciliation related time limits in section 61(1) might bring. As the application in this case had been filed outside the six-month period, and more than thirty days after the exhaustion of the conciliation process, it was found to be timely. *International Union of Operating Engineers, Local 793*, [1986] OLRB Rep. Aug. 1097.

Board exercising its discretion to refuse a timely termination application filed nine days after certification

At the outset of this termination application under section 57 of the Act, the respondent requested that the Board refuse to entertain the application pursuant to section 103(2)(i). The application was filed with the Board only nine days after the local in question had been certified as the bargaining agent of the intervener's employees. It was conceded, however, that the application was timely in the sense that it was filed during the "open period". When the union was certified it immediately became bound by a province-wide collective agreement which was due to expire. Therefore, the termination application, although filed shortly after certification, was timely in that it was filed during the "open period". Counsel for the employer submitted that the Board had no discretion to refuse to entertain a termination application insofar as section 57 is a mandatory provision. In the alternative, it was argued that the Board should recognize as paramount the right of the employees to terminate their agent's bargaining rights and, on that basis, should direct the taking of a representation vote. The Board rejected the argument that it lacked jurisdiction to refuse to entertain a termination application made under section 57(2). Thus the question remaining before the Board was whether it was appropriate in the circumstances to refuse to entertain the application. The Board noted that in cases where a union was faced with a second challenge to its bargaining rights in a short period of time by virtue of an unsuccessful application being quickly followed by either a certification or termination application, the Board has generally taken the approach that once a representation issue had been dealt with on its merits, in the absence of special circumstances, an incumbent trade union ought to be afforded a reasonable opportunity to demonstrate that it can successfully negotiate a collective agreement. However, in this case there had not been an unsuccessful challenge to the respondent's bargaining rights

followed by another application, but rather, the unsuccessful application relied upon by the union arose out of the initial contest for bargaining rights, when the respondent union and an employee association had vied for bargaining rights. The termination application in question was in fact, the first attempt to dislodge the local as bargaining agent for the intervener's employees. Further, the articulated policy of giving parties an opportunity to negotiate a collective agreement appears to be of less importance in the construction industry given the advent of provincial bargaining. In the spectrum of provincial bargaining, the employer and union play a very minor role, if any, in the negotiation of the collection agreement to apply to them. A further factor noted by the Board was that it would have no power to refuse to entertain the termination application if it were not for the employee association's unsuccessful certification application, i.e. if there had been no intervening application for certification filed, the Board would not have the jurisdiction to refuse to entertain a termination application filed in a timely manner.

However, despite these considerations, the Board nonetheless held that after certification, parties require a period of time in order to develop a sound bargaining relationship. Although acknowledging that section 123(1) did not apply in this case, nonetheless the Board recognized that implicit in that section was a recognition that a period of time is needed for parties, not only to negotiate a collective agreement, but also to provide a basis for creating a bargaining relationship. It was noted that if the termination application were permitted to proceed, the Board would direct the taking of a representation vote to determine if the employees wanted the local in question to continue to be their bargaining agent. It was this very representation issue, however, that was determined by means of a representation vote merely three weeks prior to the filing of the termination application at hand. The Board again reiterated that as the parties were entitled to a reasonable period of stability after a representation issue had been decided by a vote, it would be unwise to place in issue the bargaining rights of the local a short time after that local had acquired those rights by means of a representation vote. It was noted that a competition for bargaining rights causes considerable disruption among the employees requiring, where possible, a cooling off period. Thus, in the exercise of its discretion under section 103(2)(i) of the Act, in balancing the interests at issue on the facts before it, the Board held that it should refuse to entertain the termination application. *R.L.D. Electric*, [1986] OLRB Rep. Aug. 1145.

Applying "two-job" rule in hiring hall to striking local member but not to travellers from another local not breaching section 69

The complainant alleged that his union, Local 120, I.B.E.W., violated section 69 of the Act by failing to refer him to a job on which he had bid, essentially alleging that the union did not apply its "two job" rule properly. The "two-job" rule prohibits a local member from being dispatched to a job if he is already employed at another job in the electrical industry. The complainant was not unemployed but on strike from a Hydro project job he had held for some five years. As a result, he was barred by the Local's two-job rule from being referred to a job for which he had bid and would have otherwise been referred, until he was able to produce a separation slip indicating that he was no longer employed on the Hydro site. The element of discrimination arises from the fact that "travellers" (members from other locals) are able to apply for jobs in Local 120's jurisdiction that have been "abandoned" by Local 120 members. Local 120's administration assumed that travellers coming into their local to take abandoned work would be unemployed; the "two-job" rule was not applied to them. As a result, a traveller who was on strike was referred to a job before the complainant. Thus the effect of the "two-job" rule was to prevent striking members of Local 120 from getting jobs that travellers were referred to.

Shortly after the Local refused to refer the complainant to a particular job, Local 120's Executive Board agreed to modify the rule so that striking members of Local 120 would have priority on abandoned jobs (jobs in which no Local 120 member had bid) over travellers. After this

modification, the complainant found work within Local 120 where he stayed until the Hydro strike ended.

The complainant did not question the fairness of the two-job rule; he complained because it was applied to him and not to travellers. Under the province-wide bargaining scheme, the normal pattern is that all workers are on strike at the same time; however, hydro projects are an exception. In the Board's view, the failure of Local 120 to anticipate this situation and to incorporate a contingency into its rules could not be seen as arbitrary in light of the usual reality of bargaining in the construction industry. Furthermore the Board pointed out that as soon as the Local became aware that striking members were being required to quit their jobs before being referred for other employment, it addressed its mind to it and developed a rational solution to deal with that problem.

The Board stated that it did not intend to "second guess" the union's decision nor pass judgment on all aspects of the internal practices or policies of the union except to the extent to which the policies are motivated by bad faith or are arbitrary or discriminatory. The Board affirmed that unions are permitted to make mistakes so long as it can be shown that the mistakes are not the result of conduct proscribed by section 69.

With regards to the complainant's allegation that he was told he would be referred to a particular job and that the rescinding of that referral was arbitrary action on behalf of the union, the Board indicated that even if the complainant had received a referral to the job, once the two-job rule had come to the attention of the union, it would not have been improper for it to rescind the referral even after it had been given. Any cancellation would have been for the purpose of conforming to the rule.

The complainant's allegation of systemic discrimination emanated from the fact that a traveller who was also on strike was able to obtain an abandoned job when the complainant was not. Systemic discrimination results when a neutral rule has disproportionate negative impact on individuals because they belong to a certain group or possess certain characteristics. The Board indicated that the issue was not really one of systemic discrimination but one of differential application. It was not the rule itself which had the alleged discriminatory result but the fact that it was applied to the complainant and not to travellers. The concept of discrimination within the meaning of section 69, is not restricted to the traditional or invidious forms of discrimination such as racial discrimination. An intentional difference in the treatment between travellers and members of Local 120 would likely fall within the prohibition against discrimination under section 69 of the Act subject to a finding of "cogent labour relations purposes". With regards to the question as to whether the cogent labour relations purposes test should be applied prior to a determination that there has been discrimination or afterwards, the Board indicated that applying the test prior to a determination of whether there has been discrimination within the meaning of section 69 is more consistent with the scheme of the Act. Although the Board found no evidence of actual discrimination against the complainant, the two-job rule was found to have as aconsequence of its application a more favourable treatment of travellers than certain of its members. Further, the Board stated that even if it had found the two-job rule discriminatory, it existed for a cogent labour relations purpose. It was a rational method of distributing work fairly and equitably and it was not unreasonable to the Local 120 business manager to expect that other locals would refer him unemployed members or to assume that a traveller willing to come into 120's jurisdiction would be unemployed. *Ron Lawrence*, [1986] OLRB Rep. Sept. 1241.

Time limits set out in section 40(a)(4) are directory only

The Board issued its formal decision confirming its unanimous opinion that first contract arbitration was appropriate in this case on July 24, 1986. The employer had called no evidence. On July 29th the Board received notification that the parties had agreed that the Labour Relations Board should arbitrate the agreement. On August 22, 1986 the Board received a formal application from the applicant with attached documentation. The respondent made no reply and filed no material. The Board sent parties a notice of hearing in Form 8 fixing September 10, 1986 as the date for the commencement of the arbitration proceeding. Thereafter the Board received a letter from the counsel for the respondent requesting reconsideration of the original direction to go to arbitration. Although the Board felt that on its face the language of the statute was broad enough to permit this panel to reconsider a decision made by another panel, it was their view that they should not do so in this case. Nor were they prepared to adjourn the arbitration proceeding pending review by the panel which had issued the original direction to arbitration.

The day before the scheduled hearings, the Registrar received a letter from counsel for the respondents indicating that the employer would not be attending, nor would it make any representations on the terms of the agreement the Board should impose. It was also submitted that the Board had lost jurisdiction to arbitrate the terms of the first collective agreement as it had failed to commence the hearing within twenty-one days of the giving of notice to the Board of the parties agreement that the Board should arbitrate the settlement as required by section 40a(4) of the Act. In assessing this timeliness argument, the Board noted that it was without the benefit of the employer's submission on the question, nor did the Board have the benefit of the employer's evidence or representations on any of the other issues arising in the arbitration proceedings. The respondent had simply asserted that because the Board did not begin the arbitration within the twenty-one days, it had "lost jurisdiction".

In assessing the legal effect when a hearing does not commence or a decision does not issue within the time limits specified in the statute, the Board noted that section 40a involved an extraordinary procedure in which both the hearings and decision must be completed within a relatively narrow time frame. The Board concluded that it had not met the time limits specified in section 40a(4) of the Act and although it was unable to establish why the delay had occurred, it did determine that whatever delay there may have been could not be attributed to the applicant. The Board was not willing to construe this administrative oversight as being one that should deprive the union, through no fault of its own, of the opportunity of presenting its case before the Board. The Board rejected the respondent's submission that it had lost the jurisdiction to consider the matter and stated that in its view the time limits in section 40a(4) are not "mandatory", in the sense that a failure by the Board to meet them deprives the parties of the process which they have already voluntarily set in motion. The Board found no default by the trade union or any prejudice to the employer arising from the few days delay nor any authorities or policy reasons to support a more restrictive interpretation of section 40a(4).

With regards to the contents of the collective agreement it was to impose, the Board noted that both parties had failed to adhere to the requirements of Practice Note 19. The union, in support of its position, tendered a collective agreement between the union and another company which the union representative testified was related to the respondent and whose business was similar.

The union asked that insofar as the Board was able to do so, the collective agreement it imposed should mirror the agreement the union had with the related employer. The Board agreed with the union's proposition with the exception that in the absence of the parties agreement on a contract's term of operation, it was bound by section 40a(18) to settle a first agreement that was

"effective for a period of two years from the date on which it is settled". Apart from that, however, the agreement the Board proceeded to set out was modelled substantially on the prior agreement as per the union's request.

The Board noted that but before the union's contentment with the conditions of the model agreement, the Board would not have necessarily imposed those terms nor would it have drafted the clauses in the way in which they were currently formulated. Therefore, the agreement should not be considered as a model of precedent for other situations nor should it be regarded as representative of what the Board considers should be included in a collective agreement. *Nepean Roof Truss Limited*, [1986] OLRB Rep. Sept. 1287.

Use of two-tier initiation fee as an organizing tool not misleading employees

The Board inquired into allegations that organizers for the union had told employees that while they currently could join the union for one dollar, it would later cost them ten dollars.

With regards to the practice of using a lower initiation fee as an organizing device the Board indicated its concern is that employees may join the union during the initial organizing campaign not because of any real desire to be represented by the union, but rather to avoid the risk of having to pay a higher initiation fee if the campaign is successful. The Board has made it clear that it does not prohibit the lowering of the amount of the initiation fee for the purposes of an organizing campaign but what it requires is that union organizers do not seek to mislead employees about the effect of the different initiation fees, and that employees who do not join the union during the organizing campaign be provided with a reasonable opportunity to join for the lower fee after it has been determined that the union will be certified.

To determine whether the employees had been unduly influenced the Board studied the actions of three individuals: the chief organizer, his principal assistant, and a third person. With regards to the activities of the chief organizer the Board found that he had not tried to use the regular ten-dollar initiation fee as a "selling point" in the campaign; indeed he had instructed most of his fellow organizers that they were not to do so. During his conversations with employees, he did not raise the fee differential himself, nor did he seek to mislead employees. However, he had indicated that it would cost ten dollars to join the union later without specifying that "later" meant after a collective agreement had been signed. This raised the question before the Board as to whether membership evidence he collected was unreliable as an employee might reasonably have joined the union simply as insurance against the risk of having to pay the full initiation fee if the union organizing campaign was successful. In the Board's view the membership evidence remained valid. The Board was influenced by the fact that the difference between the applicant's regular ten dollar initiation fee and the one dollar fee during the organizing campaign was considerably less than in other cases where a fee differential had been found to have impugned the validity of membership cards. Further, the Board found that at no point had the chief organizer indicated that it would be mandatory for employees who did not join the union during an organizing campaign to subsequently join the union at the ten dollar initiation fee.

The Board had no difficulty with the membership evidence collected by the chief organizer's assistant. The Board was confident that he had responded to any questions about the higher initiation fee by explaining that after the union was certified and had negotiated a collective agreement, and someone then wanted to join the union, the initiation fee would be ten dollars. The Board found nothing of concern in that response.

With regards to the membership evidence collected by the assisting employee, however, the Board was satisfied that on at least one occasion she had raised the matter of the ten dollar initiation fee in a context that left the impression that if employees did not pay a dollar now they would

be required to pay ten dollars later. Given this apparent attempt to actively use the nine-dollar differential as a sales tactic the Board found that it would be prudent to disregard the six cards obtained by her.

Even after setting aside those six cards the applicant's membership evidence exceeded more than fifty-five percent of the employees in the bargaining unit. A certificate issued to the applicant. *Trim Trends Canada Limited*, [1986] OLRB Rep. Sept. 1312.

Board directing settlement of first collective agreement by arbitration when small, inexperienced employer failed to make expeditious efforts to conclude a collective agreement

This case involved several unfair labour practice allegations under section 89 of the Act, an application under section 57 of the Act seeking decertification of the union and an application seeking a direction of settlement of a first collective agreement by arbitration. With respect to the application for decertification, the Board held that the cumulative effect of several events suggested that the termination petition was not a voluntary expression of the employees wishes. These events included a one dollar raise and benefit package given to the employees subsequent to certification, thereby resulting in an employee perception that the union was unable to represent them adequately; comments by the employer about the union; unilateral changes in working conditions; the separation of the workers into those supporting and those not supporting the union; and the circumstances of an earlier termination petition which the Board held to taint this, the second, termination petition. While mere opposition to a union would not pose a difficulty, clearly actual involvement by management in a petition, or communications that failure to sign a petition would carry negative employment consequences while rejection of the union would bring forth benefits, goes beyond mere opposition. Such conduct need not be contemporaneous with the organization, preparation or circulation of the petition, although it must reasonably be said to indicate to the employees that their support or non-support of the petition may influence their working conditions. Further, there does not have to be actual management influence as it is the perception of the employees which is at issue. As a general principle, a previous petition found not to be voluntary may "taint" a subsequent petition although the second petition need not necessarily be found to be so tainted itself. Thus, although the earlier termination application had been dismissed as untimely, nonetheless the Board was prepared to consider its impact in considering whether the signatures were voluntary with respect to the second petition. The Board had doubts whether the employees signing the second termination petition had rid their minds of the inferences they could draw from the way in which the petitioner had collected signatures for the first termination petition. Thus in all the circumstances, taking into account the lingering impact of the employer's conduct, the presence of the petitioner in the plant while on compensation, separation of union supporters and non-supporters and the effect of the first petition which the Board found not to be a voluntary expression of the employees wishes, the Board was satisfied that the second petition was not a voluntary expression of the employees' wishes and thus the termination application was dismissed.

With respect to the first contract issue, the Board noted that section 40a presumes that if parties are able to transcend this initial hurdle, then they may be able to develop a healthy collective bargaining relationship. The underlying theory is that imposing a collective agreement will leave the parties free to devote their energies to learning how to cooperate with each other, while at the same time giving employees an opportunity to learn about union representation in a calmer and more stable environment. In this case the Board held that bargaining broke down because of the failure of the employer to make expeditious efforts to conclude a collective agreement. It was noted that from the inception of a union presence at Mansour Mining, the employer was reluctant to recognize the union's role as the representative of his employees. Although this was less a result of ill-will than a lack of understanding, nonetheless the employer was held respon-

sible for failing even to read the union's drafted proposal, thereby leading to the breakdown of bargaining. As the Board found that the employer had not engaged in an expeditious effort to conclude a collective agreement, it commented only briefly on whether other criteria had been satisfied within the meaning of section 40a(2). The Board did not feel that section 40a(2)(b) was meant to include conduct such as Mansour's failure to read the proposals, but rather, referred to a "bargaining position". However, it was noted that such conduct would be relevant to section 40a(2)(c). The Board further held that while the unfair labour practices, the decertification application and the segregation of the employees all contributed to the climate at the workplace, and to that end may be relevant to the union's inability to build support among the new employees, nonetheless such factors did not explain why the process of collective bargaining was unsuccessful and therefore could not be said to constitute "any other reason" within the meaning of the section. The Board reaffirmed the finding in *Nepean Roof Truss Limited*, [1986] OLRB Rep. July 1005 that "section 40a contemplates a cause and effect oriented assessment". The Board was of the view that a collective agreement would permit the parties a new opportunity to establish a satisfactory working relationship by eliminating the confusion which had marked the union's presence. Thus the Board directed the settlement of the first collective agreement by arbitration.

With respect to the section 89 complaints, the Board continued to reserve in the hope that the parties could resolve the issues in the process of settling the first collective agreement. The Board remained seized of these complaints, however, with respect to liability and remedy in accordance with submissions made during the days of hearing on these matters. *Mansour Rockbolting Limited*, [1986] OLRB Rep. Oct. 1346.

Breach of fair representation duty resulting in Board awarding damages for loss of opportunity to have grievance arbitrated

In this complaint under section 89, the complainant alleged that the union had breached its duty of fair representation and its duty of fair referral. The Board recognized that the operation of a hiring hall is a complicated matter involving an element of discretion. In the circumstances of this case, the Board was satisfied that the union's conduct constituted a valid exercise of such discretion and did not involve any arbitrary, discriminatory or bad faith action. Thus, the complaint was dismissed insofar as it pertained to alleged contraventions of the duty of fair referral.

The central issue to be determined in the fair representation complaint was whether the union had acted in a manner that was arbitrary in the representation of the complainant. In this case the employer had refused to accept the complainant on its job site following a work stoppage which it felt was started by the complainant. The union did not give the complainant an opportunity to explain his role in the work stoppage or inform him of its decision not to process his grievance.

While several of the matters complained of by the complainant were held to fall within the realm of the discretion legitimately to be exercised by a union official, the Board nonetheless found a number of aspects about the representation by the respondent troublesome. The Board noted that a failure to make detailed notes of conversations with the complainant, members of management, or other persons, does not by itself warrant a finding that section 68 was breached. Likewise, the adoption of a conciliatory approach rather than an adversarial one was held to be a matter of judgment left within the discretion of the union. The Board felt that it would be an unwarranted and inappropriate extension of section 68 for the Board to "second guess" a business representative or other union official on such matters. However, the Board was troubled by the fact that the union representative did not advise the complainant of information he had obtained concerning the complainant's involvement in the work stoppage. In so doing, the union representative failed to give the complainant an opportunity to respond to the damaging information. As a result, the

union representative could not be in a position to advise the company or legal counsel of the complainant's version of the events in question. It was noted that as a general proposition, a union can be said to have breached section 68 if it fails to take reasonable steps to ascertain from the grievor, or to afford him or her an opportunity to discuss, his or her explanation of events and circumstances which, if not contradicted or satisfactorily explained, would lead the union to act against the grievor's interest with respect to the grievance. On this basis, the Board held that the union representative contravened section 68 of the Act by failing to take reasonable steps to afford the complainant an opportunity to state and discuss his version or explanation of his presence at the work stoppage, and to contradict the information that the representative had received from others. The Board further held that the union's failure to advise the complainant that his grievance had been rejected as untimely, and, more importantly, that the union had decided not to proceed any further with his grievance, also evidenced arbitrariness.

With respect to remedy, the complainant did not seek to have his grievance referred to arbitration but rather sought a declaration, a posting and compensation from the union. The Board held that the complainant was clearly entitled to a declaration that the respondent had contravened section 68 of the Act, as well as a posting to advise other members of the union of the Board's disposition of the case. However, the issue of whether the complainant was entitled to a compensation order against the union was more difficult. The normal remedy in this type of case is to direct the union to refer the grievance to arbitration but because this impacts on the employer, it can probably be awarded only in cases in which the employer has been notified of the proceedings and has had an opportunity to participate. No such notice was given in this case because the complainant did not name the employer in the complaint.

The Board noted that while it was possible that the grievance may not have been successful at arbitration, nonetheless the prospects of success were not so remote as to justify a conclusion that the complainant had suffered no loss whatsoever as a result of the respondent's contraventions of the Act. The Board noted that in the few unusual cases in which the Board finds a direction to arbitrate not to be an appropriate remedy, but rather decides to award compensation for a loss of opportunity, the uncertain prospects of the grievance's success at arbitration may be a factor significantly reducing the amount of compensation payable to a complainant. The Board made clear that a complainant would not be permitted to obtain a financial advantage merely by failing to name the employer as a respondent or as a person that may be affected by a complaint involving a refusal to process or arbitrate a grievance. The Board proposed to follow the established practice of dealing only with the question of liability and awarded damages for loss of opportunity to arbitrate, while remaining seized of the complaint for the purpose of quantifying the complainant's loss in the event that the parties are unable to agree on the matter. However, the Board found it appropriate in this case to provide the parties with some guidance concerning that matter. In suggesting a number of factors which should be considered in determining the value of the complainant's loss of opportunity, the Board concluded that the equivalent of approximately one week's pay would likely constitute proper compensation for the complainant's loss of opportunity in all the circumstances. *Angelo Ritrovato*, [1986] OLRB Rep. Oct. 1401.

Departmental bargaining unit not appropriate for collective bargaining in magazine industry

In this case the union sought certification solely for the employees in the editorial department of TV Guide magazine. The Board noted that there was no pre-existing acquiescence in, or pattern of, departmental bargaining and further noted that the Board's decision in *The Spectator*, [1981] OLRB Rep. Aug. 1177 indicated that it would no longer be receptive to the creation of fragmented departmental bargaining units unless the employees met the requirements for a "craft unit" under section 6(3) of the Act, or the proposed departmental unit was otherwise demonstrably "appropriate". The Board relied on the *Spectator* decision as establishing that even

in the newspaper industry, where departmental unionization had existed in the extreme, the Board would no longer routinely accept such bargaining units where they were not demonstrably appropriate.

On all the facts of this case, the Board held that the editorial department employees did not demonstrate a unique community of interest warranting a separate bargaining unit. There was no significant difference in the terms and conditions of employment from those of other TV Guide employees, which in fact are established in the same way and administered by the same personnel department in accordance with common employer policies. Further, there was no significant difference in the employees' work environment and no reason to infer any differences in their "job horizons" or collective bargaining aspirations. From a labour relations point of view, the Board held that the department was not an insular grouping within the company's organization, but rather was an integrated part of the respondent's operation, with the employees having regular and necessary contact with employees in other departments in order to meet the magazine's publishing objectives. The Board further noted that departmental bargaining units could lead to employment relations problems insofar as interdepartmental movement could cause possible friction to the extent that such movement would entail crossing a boundary separating quite different legal regimes. Further, one of the reasons the Board is reluctant to establish departmental bargaining units is the potential for disruption when the single department which is part of an integrated operation opts to engage in industrial conflict. The Board has always held that "spill over effects" are undesirable and should be avoided, if possible, by drafting more comprehensive bargaining units in the first instance.

Despite the union's argument that defining the "appropriate" bargaining unit too broadly may result in organizing difficulties, the Board held that on the evidence before it, it could not be said that departmental bargaining units were the key to establishing stable collective bargaining relationships. Although parts of the publishing industry remain unorganized, nonetheless newspapers have been organized in whole or in part for decades. Thus, although agreeing with the union that self-determination and ease of organization are legitimate factors to be considered in determining an appropriate bargaining unit, nonetheless in this case they were held not to be factors to be given predominant weight insofar as there was one department of an integrated multi-department enterprise with common terms and conditions of employment, geographic proximity, and employee interchange within the same building. The existing pattern of departmental bargaining units was almost exclusively based on the agreement of the parties. There was no such agreement here and no pre-established pattern of fragmented bargaining in the employer's business or in the magazine industry as a whole. The Board noted that as evidence indicates that craft unions and craft units are becoming increasingly obsolete, it would be unwise to give effect to organizing patterns which are becoming outdated and which are not the most appropriate model for organizing.

Thus, the Board held that the proposed editorial department bargaining unit was not appropriate for collective bargaining having regard to factors such as the nature of the work performed, the conditions of employment, skills of the employees, ease of administration, proximity to other departments and functional coherence and independence. It was held that the editorial department employees did not have a separate community of collective bargaining interest. Further, economic factors, the structure of managerial authority, nor the source of work dictated a separate bargaining unit. In the Board's view, a policy of granting departmental bargaining units was not necessary to facilitate organizing in the magazine industry. *TV Guide Inc.*, [1986] OLRB Rep. Oct. 1451.

Board denying stay of proceedings while Courts decide constitutional question of jurisdiction over labour relations in fisheries

The respondent in this case had sought a declaration in the Supreme Court of Ontario that the Board was acting outside its jurisdiction in hearing various certification applications on the basis that labour relations in fisheries are regulated by the Federal Government and not by provincial legislation. Pending an appeal of the Supreme Court's decision that an application for a declaration was premature, the respondent requested that the Board stay its proceedings. In considering this request the Board noted that the Ontario Court of Appeal in *R. v. Ontario Labour Relations Board, ex parte Taylor*, [1964] 1 O.R. 173 held that a tribunal is not required to "bring its proceedings to a halt" by virtue of being served with a notice of motion of *certiorari* or prohibition, but rather is entitled to carry its pending proceedings forward until such time as an order of the court prohibits its further activity or quashes an order already made by which it has assumed jurisdiction. The Board itself has consistently held that it will not stay proceedings while matters are before a court or in the face of a pending application. Further, in the instant case there had already been a decision of the Supreme Court of Ontario supporting the Board's jurisdiction to proceed in this matter until otherwise determined. Thus, having determined that it had the jurisdiction to proceed, it remained for the Board to determine whether it should do so in this case. While recognizing that the Board must take into account various competing interests, in all the circumstances of this case the Board declined to order a stay of proceedings.

With respect to the union's request that the Attorney General be added as a party and given notice of the proceedings, the Board noted that whether the Attorney General should be given notice of the proceedings or brought into the case as a party under Board Rule 79 raised two different questions. The Board was not persuaded that section 79 applied at all. Further, the Board felt that section 122 of the *Courts of Justice Act*, requiring notice to the Attorneys General of Ontario and Canada where the constitutional validity or constitutional applicability of legislation is involved, does not apply to the Board. The Board was of the view that it was a matter of the Board's discretion whether or not it required that notice be given. However, it was noted that principles of fairness do apply. The Board stated that *Canadian Charter of Rights and Freedoms* cases can be distinguished from division of power cases on the grounds that in the former, the Board is making a determination about the validity of legislation, while in the latter, it is determining the threshold question of its jurisdiction. In division of power cases there is no danger that the Board will strike down legislation or a particular provision in a statute. It is well established that the Board has the power to determine its own jurisdiction, subject to the Court's overturning such determination. Further, in this case the Attorneys General had been given notice of the Court proceedings and were, in fact, aware of the application before the Board, yet neither Attorney General had expressed an interest in appearing before the Board in any capacity. Thus in all the circumstances of the case the Board concluded that it was not necessary to give notice to the Attorneys General. *C.P. Fisheries Limited et al*, [1986] OLRB Rep. Nov. 1503.

Union refusal to proceed to arbitration and failure to advise complainants of five day time limit for filing grievances not a breach of duty of fair representation

In this case the complainants each alleged that the respondent trade union had failed in its duty of fair representation pursuant to section 68 of the Act by (1) failing to advise the complainants of the five-day time limit for filing grievances pursuant to the collective agreement and (2) by the ultimate decision taken by the union executive not to proceed to arbitration with the grievances. Each complainant was convicted in criminal court of possession of an illegal substance which they had stored at their workplace. Upon reviewing the evidence, the Board concluded that the union had not violated section 68 and in no respect had acted in a manner that was arbitrary, discriminatory or in bad faith in reaching a decision not to process the two grievances through to

arbitration. In fact, the Board concluded that the union had fairly represented both complainants in reaching its decision, and had properly considered all the relevant factors. The three main reasons put forward by the union justifying their decision not to arbitrate — (1) the seriousness of the criminal charges involved, (2) the slight chances of success at arbitration, and (3) the effect of arbitrating on the overall bargaining relationship with the employer — were all held by the Board to be proper factors to consider in reaching a decision. On the evidence it was clear that the union had considered all the submissions and arguments put to it, balanced the interests of the complainants along with the interest of the membership at large, and reasonably concluded that the grievances should not be taken to arbitration. Thus, the Board held that neither the decision not to arbitrate nor the process undergone to reach that decision constituted a violation of section 68 of the Act.

With respect to the union's failure to inform the complainants of their rights to file grievances and of the time limits for doing so, the Board stated that as the union had not placed any weight on the untimeliness of the grievances in reaching its decision not to arbitrate, any breach arising out of the failure to advise the complainants was effectively nullified with respect to that decision. However, the Board noted that it was still necessary to consider whether the union had breached section 68 insofar as its failure to inform the complainants of the time limitations may have harmed them by reducing the chances that the employer would reconsider the discharges. In considering this, however, the Board stated that the question was not one of whether there was an affirmative duty upon the union to advise the complainants, but rather whether a failure to do so could amount to a violation under section 68 of the Act. The Board noted that both complainants had a copy of the collective agreement. One complainant had been specifically advised that he should contact the union stewards with respect to any employment problems. As neither complainant had approached the union for assistance, the Board assumed that at the relevant times the complainants did not require nor want the assistance of the union. Thus, the respondent union could not be said to have violated section 68 in not advising the complainants of their right to file grievances and the timeliness requirements in respect thereof. The Board stated that to hold that a union violates section 68 by awaiting some indication from potential grievors that they wish to complain about their treatment would place an unreasonable burden upon a union. A union cannot be said to have acted arbitrarily or in bad faith by declining to actively seek out employees to advise them of their rights where such employees had not sought the union's help despite ample opportunity to do so. In fact, the Board went further to state that if any positive duty exists, it is the duty of employees who want union assistance to so request it. Thus, the Board decided that there had not been a violation of section 68 either in the failure of the union to advise the complainants of their rights or in the failure to take the grievance to arbitration. *Tony Medeiros*, [1986] OLRB Rep. Nov. 1541.

Board declining to give an affiliated bargaining agent the right to represent employees in trades other than those covered in the designation orders

In this construction industry certification application the applicant described its proposed bargaining unit as including plumbers and steamfitters. On community of interest grounds, the respondent asked that the bargaining unit be described so as to include "gas fitters". The applicant, while opposing the respondent's request that "gas fitters" be expressly referred to in the bargaining unit description, claimed gas fitting work for its members, on the basis that gas fitting was part of its members' trade. The Board was required to determine the appropriate bargaining unit and whether "gas fitters" should be referred to in the description.

The Board noted that findings of appropriate units, and consideration of either section 6(1) or what is now section 6(3) of the Act, must be made subject to a finding of the appropriate unit under section 144(1). As the ICI province-wide scale of collective bargaining is highly structured

and stratified, the usual factors relevant to a determination of the appropriate bargaining unit have only limited application. While the concept of "community of interest" may still apply, it is subject to the overriding principles and structure set up under section 144 and by the designation system. The Board felt that the proposition that employees other than those covered by the provincial agreement ought not to be included in the provincial bargaining scheme set up by section 144 was supported upon an examination of section 146 of the Act. The purpose of section 146 of the Act is to ensure that unions and their umbrella organizations covered by the scheme of provincial bargaining enter only those collective agreements with respect to the ICI sector which are provincial in scope. The designations explicitly state which trades the employee and affiliated bargaining agents are to represent in bargaining in this sector. In the Board's view the statutory scheme compelled the Board to find that, for purposes of province-wide bargaining in the ICI sector by affiliated bargaining agents, the only appropriate bargaining unit descriptions are referable to trades or crafts covered by the applicable designation orders. If an affiliated bargaining agent attempted to represent, in the province-wide ICI sector, employees not in trades it was designated to represent, it was held that it would not be representing them in its capacity as an affiliated bargaining agent bound by the provincial agreement. In the province-wide scheme in the ICI sector an affiliated bargaining agent can only represent employees in trades which the employee bargaining agency and the affiliated bargaining agent are designated to represent.

Further, the Board noted that section 139(1)(a) makes it clear that in a certification proceeding pursuant to section 144 of the Act it is the Minister, and not the Board, who designates employee bargaining agents and who must "describe those provincial units" of affiliated bargaining agents. The Act gives the Minister the power to describe the appropriate provincial unit with respect to the province-wide scheme set out under various sections of the Act. If particular trades or crafts are not given to employee bargaining agencies or their affiliated bargaining agents by the Minister's designation order, then for the purposes of an application pursuant to section 144(1) of the Act, the Board cannot describe the bargaining unit including such trades as it cannot determine an appropriate bargaining unit which includes trades or crafts other than as encompassed in the designation orders. If employee bargaining agencies or affiliated bargaining agents in the province-wide scheme want to represent trades or employees performing skills other than those that have been assigned in a designation order, they can resort to section 139(5) which creates the mechanism for amending the designation orders. Thus, the Board ultimately decided that it could not describe a bargaining unit in this sector so as to give an affiliated bargaining agent the right to represent employees in trades other than those covered in the designation orders in question. However, the trade need not be specifically referred to in the designation and description of the provincial unit, as long as it can be demonstrated that the trade or work not expressly designated is part of a trade which is explicitly assigned. In this case, reference to the designation order made clear that gas fitting was not covered therein. Thus the Board could not include "gas fitters" in the appropriate bargaining unit as found pursuant to section 144(1) of the Act.

The Board went on to state that if it was wrong in this view, then the Board would nonetheless exercise its discretion to conclude that it would be inappropriate to describe a bargaining unit including employees not covered by the provincial agreement. "Gas fitters" are not employees to whom the ICI agreement in question applies. The Board held that in its view the word "pipe fitter" in the provincial agreement did not encompass "gas fitters". Thus the Board could exercise its discretion to exclude "gas fitters" from the appropriate bargaining unit insofar as to do otherwise would be to include employees not covered by the province-wide scheme. The Board stated that if the statutory language did not actually preclude inclusion of trades or skills not covered by the designation or the provincial agreements, then nonetheless the structure and intent of that scheme must be said to suggest that the appropriate description encompass designated trades and employees covered by their provincial agreements.

With respect to the argument that "gas fitting" constitutes a separate trade or craft, the Board noted that aside from its holding not to include employees in an ICI bargaining unit who would not be covered by the province-wide scheme of bargaining, as a factual matter the Board was also not satisfied that the evidence established that "gas fitting" was a craft or trade within the meaning of section 6(3) at any rate. In fact, the evidence suggested the opposite. Given this finding, the Board felt that it was unnecessary to further determine the question of whether gas fitting work formed part of the plumbing and steam fitting trade insofar as such a finding was unncessary in order to determine which employees fell within the described unit. *Superior Plumbing and Heating Co. Ltd.*, [1986] OLRB Rep. Nov. 1589.

Pervasive pattern of unfair labour practices relevant in directing settlement of first collective agreement

The union was certified by the Board in November of 1984. During the certification drive and the collective bargaining period, the company consistently violated the freeze provisions of the Act. Amongst these violations were a failure to adhere to prior shift bid policy, withholding pay increases for regular and probationary employees, and ending the practice of supplying uniforms. The employer violated sections 64, 66 and 70 of the Act by changing its disciplinary policy, issuing written warnings for trivial matters, introducing a warning record system, and by withholding profit sharing bonuses. In so doing, the Board was satisfied that the employer sought to discriminate against its employees and penalized them for having exercised their right under the Act to join a trade union.

Negotiations were marked by positions put forward by the company that were of great concern to the union. Among these were a very broad management rights clause, which gave the company an unfettered power to contract out bargaining unit work, and a "just cause" clause that specified discharge asthe penalty for refusing to work overtime or for engaging in a set of broadly defined offences. The company also sought the division of the labour force such that certain employees employed less than forty hours a week would not receive benefits. During negotiations employees had their positions eliminated and were forced to bump to other categories of employment. Testimony accepted by the Board also indicated that the company was aware that the language it proposed innegotiations was of the type that no "self-respecting" union could accept. Following an unsuccessful period of conciliation and mediation, the company presented a final offer which incorporated very little of the language proposed by the union, and demonstrated no willingness on the part of the company to compromise on any of the key issues of concern to the union. The union voted unanimously to reject the company's final offer but did not strike. In May of 1985 the company locked out the union membership and continued to operate with the use of non-union employees.

With regards to the union's complaint under section 15 the Board had to determine whether the employer had merely been engaging in "hard bargaining" or whether the employer had been contravening the Act by means of "surface bargaining". The Board found that when all the provisions tabled by the respondent were viewed against the background of the pervasive pattern of unfair labour practices in which the respondent engaged prior to and during the course of bargaining with the union, and in light of the statements made by members of management, it became clear that the respondent was not bargaining in good faith and making every reasonable effort to make a collective agreement.

With regards to the lock-out, the Board was satisfied that at least part of the respondent's motivation for the lock-out was a desire to punish employees for having joined a union and to dissuade them from continuing to exercise their rights.

With regards to its prior oral direction that a first collective agreement be arbitrated under section 40a the Board stated that the provision obliges the Board to direct a settlement of a first collective agreement where the process of collective bargaining has been unsuccessful because of one or more of the conditions or circumstances listed in subsections (a) to (d). In this case the Board found the respondent did not have reasonable justification for the uncompromising nature of the bargaining positions which it adopted. By engaging in "surface bargaining", the company failed to make reasonable or expeditious efforts to conclude an agreement. Thus the Board was satisfied that the conditions or circumstances specified in subsections 40a(2)(b) and (c) were present, and that they, together with the pervasive pattern of unfair labour practices caused the process of collective bargaining to fail. With respect to subsection 40a(2)(d), the Board stated that the pervasive pattern of unfair labour practices which included contraventions of sections 15, 64, 66, 70 and 79, is another reason the Board considers relevant. Thus the circumstances of this case also fell within the ambit of that subsection.

In regards to remedy, the Board determined that it was not necessary to issue a cease and desist direction in respect of the unlawful lock-out because by virtue of subsection 40(a)(13) issuance of the direction to arbitration of a first collective agreement obligated the respondent to terminate the lock-out and reinstate the employees. However, the employees were entitled to be compensated for wages and benefits lost as a result of the lock-out and the union was entitled to compensation for reasonable expenses it incurred. Employees were also entitled to compensation for losses they suffered during the statutory freeze period as a consequence of the respondent's breach of the section. Discipline imposed in an effort to thwart unionization was ordered rescinded, and suspended or demoted employees were reinstated with compensation for lost wages and benefits. *Burlington Northern Air Freight (Canada) Ltd.*, [1986] OLRB Rep. Dec. 1628.

Concept of final offer selection not applicable under section 40a

This first contract arbitration was referred to the Board on the agreement of the applicant and respondent. The Board noted that there were no statutory guidelines in the Act which required it to have regard to a given standard of comparison to determine the content of a collective agreement. However, it adopted the language set forth in *Burlington Northern Air Freight (Canada) Ltd.*, [1986] OLRB Rep. Oct. 1327 and in *London Drugs Ltd.*, [1974] Can. L.R.B.R. 140 which indicated that collective agreements awarded under section 40a of the Act should not be used to achieve major breakthroughs in collective bargaining but should be sufficiently attractive to bargaining unit members such that they would give serious consideration before deciding to terminate the bargaining rights of the union.

In setting forth the collective agreement the Board rejected the premise that the process envisaged under section 40a was to be based on the concept of a final offer selection. Nor did the Board feel that an arbitrated agreement ought to reflect the relative strengths of the bargaining positions of the parties as it was the very imbalance of the bargaining positions of the parties which was a factor in their inability to conclude a collective agreement themselves. Further, the Board felt that any endorsement of the concept of the relative bargaining positions of the parties would encourage extreme positions to be taken by those parties which perceive themselves to be in a stronger position.

The Board endeavoured to provide an agreement which would prove to be practical and fair and which would provide a basis for a collective bargaining relationship which would extend beyond the expiry of the first collective agreement. In this regard the Board ruled that there should be a check-off as required by the Act but was unwilling to impose a union shop provision. The Board felt it would be unfair in circumstances where the union did not enjoy a preponderance of support to confer a closed shop provision on employees affected by the collective agreement. With

regards to the no strikes or lock-out clause, the Board rejected the respondent's language that sought to have the applicant union bear the responsibility for anticipated slow-downs and/or strikes in the future. In the Board's view this was negative thinking by the respondent and it also failed to take into account that the trade union is frequently not responsible for the conduct of employees. The Board therefore put forth a simple article which stated that there should be no strikes and no lock-outs during the collective agreement.

The effect of the wage proposals made by the respondent was the red circling of a number of employees with the result that they would not receive an increase in pay over the lifetime of the collective agreement. In the Board's view no trade union should be required to accept a collective agreement which discriminates against employees on a totally subjective criteria adopted by the employer. The Board gave the employees an increase in their hourly rate of four percent in the first year and three percent in the second. The respondent argued that it was unable to pay these rates. The Board stated that it would require specific evidence to that effect and in this case the respondent's evidence was neither clear nor impressive. In conclusion the Board noted that collective bargaining is an ongoing process and reminded the parties that under section 52(5) of the Act there was nothing to prevent them from revising by mutual consent any article in this collective agreement. *Egan Visual Inc.*, [1986] OLRB Rep. Dec. 1687.

Labour relations of fishing boat crews on the great lakes falling within provincial jurisdiction

In these certification applications the majority of the respondents challenged the Board's jurisdiction to hear these applications on the basis that labour relations in fisheries is a matter within the jurisdiction of Parliament.

The challenge was raised under two heads of the *Constitution Act 1867*: section 91(10) Navigation and Shipping and section 91(12) Sea Coast and Inland Fisheries. The Board stated that it is no longer in question that labour relations is a matter coming within provincial jurisdiction under the provincial power over property and civil rights under section 92(13) of the *Constitution Act*. Employment relations are regulated by the province; however, there are exceptions to that general rule, in which case Parliament will enjoy jurisdiction. The Board in particular was guided by Mr. Justice Beetz in *Four B. Manufacturing Limited v. United Garment Workers of America and Ontario Labour Relations Board*, [1980] 1 S.C.R. 130 who characterized the test for the exception in which Parliament has jurisdiction over labour relations as comprising "in the main, labour relations and undertakings, services and businesses which, having regard to the functional test of the nature of their operations and their normal activities, can be characterized as federal undertakings, services or businesses".

With regards to "Navigation and Shipping", the Board considered *Reference re the Industrial Relations and Disputes Investigation Act*, [1955] S.C.R. 529 and *Agence Maritime Inc. v. Canada Labour Relations Board et al* (1969), 12 D.L.R. (3d) 722 in which it was strongly suggested that the federal power over navigation and shipping had a limited geographic scope, dealt with the essential aspects of navigation and shipping and was essentially connected with the transportation of cargo by ship. In the case before the Board, the fishing boats operated only in the province of Ontario and were therefore inter-provincial undertakings. The federal power over navigation and shipping was found not to apply. Accordingly the Board found it unnecessary to determine whether fishing boats as such fall within this head of the federal power although the Board did note that there was nothing before it to link federal competence over labour relations in the commercial fishing industry with the federal power over navigation and shipping nor was there anything to suggest that commercial fishing was essential to navigation and shipping.

In determining whether the federal power over Sea Coast and Inland Fisheries gave Parliament jurisdiction over labour relations between fishing boat owners and crews the Board first sought to determine the nature and scope of this head of power. The Board indicated that the scope of the fisheries power is limited to that necessary or incidental to the preservation of fish as a natural resource, and that there was nothing in section 91(12) directed towards regulation or control of rights and obligations as between employees and employers who engage in the business of exploiting the resource. The Board was satisfied on the basis of the authorities that while federal power under section 91(12) has not been finally determined or delineated, it has generally and consistently been considered to extend to the preservation of fisheries as a natural resource. The question for the Board was whether the control of labour relations of fishing boat crews fell within, or was integral to, that mandate. The Board concluded that it was not. The work done by fishermen was not shown to be an "integral part" or "essential to" the conserving, preserving or improving of the resource; nor did labour relations between the crew and the boat owners appear to be an integral part of, or necessarily incidental to, the preservation of the fish resource. The Ontario *Labour Relations Act* does not purport to affect that preservation and conservation of fisheries and its application to the employment relations between owners and crews does not affect the Federal Government's ability to fulfill its mandate with respect to protecting fisheries as a resource. The Board found no evidence to show that the regulation of employment of fishing crews was an essential part of fisheries. Accordingly, the Board found it had jurisdiction to hear these applications for certification. *Great Lakes Fishermen and Allied Workers' Union*, [1986] OLRB Rep. Dec. 1691.

Bargaining rights given under the *Quebec Labour Code* do not have extra-territorial effect

Prior to October of 1985 the respondent operated a rubber recycling plant in Quebec outside of Montreal. The applicant union was/is a party to a collective agreement with the respondent pertaining to the former Quebec plant site. The applicant and the respondent had maintained a collective bargaining relationship since 1979 and during the summer immediately preceding the company's move to Cornwall, Ontario, they had been engaged in negotiations to renew their existing agreement. In October 1985 the company notified the employees that they were being terminated and that the company's operations would move to Ontario. The Quebec employees were not offered positions in the new Cornwall plant at that time.

The applicant/complainant sought extensive relief for the alleged unfair labour practices, including reinstatement for the Montreal employees, monetary compensation, and a direction that the Quebec agreement applied to the new Cornwall plant, or, in the alternative, certification.

On the evidence, the Board found that the respondent's Quebec plant was "plagued with difficulties" and faced various imminent financial burdens. These financial troubles were known to the union through the union's representation on the company's production committee. Under these onerous financial burdens, the respondent decided to move its operations to Ontario and sell its Quebec plant. The subsequent negotiations and sale were kept entirely confidential.

After being let go, the Quebec employees signed letters indicating their willingness to work at the Cornwall location and gave approval to their union to approach the employer in this regard. The respondent arranged for interviews of the Quebec employees in February of 1986. However, as these interviews commenced, union officials interrupted the proceedings and demanded that all Quebec employees be rehired as a group and that interviews should only take place collectively. The respondent refused and, as a result, the new plant was staffed by drawing on the local workforce. At the time this decision was given, a certification application by the R.W.D.S.U. was pending. The new Cornwall plant had none of the design flaws present at the Quebec plant and

modern equipment permitted a more efficiently produced, better quality product and an expanded product line.

With respect to the assertion that the Quebec collective agreement, as a matter of law, covered the Cornwall location or that, in the alternative, the bargaining rights of the union extended to that location, the Board said that certification of a trade union is a provincial matter, except for those enterprises regarded as falling within the federal sphere. The Board was not prepared to give "extra-territorial" effect to the bargaining rights of a trade union as a matter of law. To grant such extra-territoriality, in the Board's view, would have been contrary to the provincial authority over labour relations as reflected in the various provincial labour relations statutes governing certification. The Board found that the bargaining rights of the applicant/complainant could apply to the Cornwall location only if the collective agreement itself covered that site. The question depended upon the scope clause of the Quebec collective agreement. Because both parties clearly intended by the nature of the scope clause that the collective agreement would cover only Quebec, the Board found that it did not extend to the Cornwall operation and that the union did not possess bargaining rights there as a matter of law.

With regards to the allegation that the company's relocation was motivated by anti-union animus, the Board stated that where a company closes its operations and/or relocates thereby vitiating the collective bargaining relationship, the Board must carefully scrutinize the reasons proffered by the firm. On the evidence the Board found that the firm's Quebec operation was not profitable and that future prospects were bleak. Further, the union was fully apprised of those financial difficulties. The Board found that the documentary evidence tendered in support of the economic rationale for the company's decision was considerable and that the decision was not tainted by anti-union motive. The Board ruled it had no authority to determine whether the respondent's conduct outside Ontario constituted an unfair labour practice.

With regards to whether or not the company's non-disclosure of its impending move during negotiations constituted bad faith bargaining and/or whether relief should be ordered was also not an issue this Board had jurisdiction to decide. What was before the Board was whether that same non-disclosure could be regarded as evincing an anti-union animus in the sense of the company's motive for moving. The Board had already found it did not.

The Board found that the applicant held no bargaining rights in respect of the respondent's Cornwall location under the Quebec collective agreement. Nor was the employer's process of hiring temporary and maintenance and production workers at its plant contrary to sections 64 and 67 of the Act because the employment conditions were different at Cornwall and because a number of Quebec employees had indicated they were not interested in relocating and because the employer did attempt to interview former Quebec employees only to be thwarted by the union. The natural suspicion that the Board attributes to a company that seeks to interview or require new applications from former employees when a plant relocates was unfounded. The Board directed that the applicant's certification with respect to section 8 be dismissed and that the pending certification application by the intervener proceed. *SerVaas Rubber Company Inc.*, [1986] OLRB Rep. Dec. 1780.

Employer's position taken in bargaining that striking employees would only be called back to work in order of seniority as vacancies arose discriminating against striking employees

Employees of the respondent commenced a lawful strike in April of 1983. Shortly thereafter the respondent hired new employees and continued operations. The strike had continued as of the last days of the hearing in this matter (February 1986) for almost three years. The complainant alleged that the respondent violated sections 15, 64 and 66 of the Act by taking the position in

bargaining that the striking employees would only be recalled to work in order of seniority as vacancies arose and by then subsequently withdrawing its outstanding monetary proposal to the complainant when its offer was not accepted.

The portion of the complaint alleging that the respondent violated sections 64 and 66 made section 89(5), the reverse onus section, applicable. Counsel for the respondent submitted that that section was of no force or effect because it was contrary to section 15(1) of the Charter, the equality provision. The respondent submitted that the equal protection and benefit of the law provided for in section 15 had been abrogated by section 89(5) since it imposes the obligation on employers to prove that they did not engage in conduct contrary to the Act while any person who is not an employer can require the complaining party to prove its case. In divining the purpose of section 15 the Board stated that the enumerated classifications that are prima facie discriminatory within the meaning of section 15 of the Charter are classifications or distinctions that are based principally on characteristics that relate to physical, cultural, and spiritual attributes to human beings. The distinction in section 89(5) between individuals that arises because an individual is an employer does not in any way limit or affect human dignity or worth nor is it based on the kind of human attributes that section 15 protects. The Board was satisfied that the distinction created by section 89(5) of the Act creates for employers as a class within our society is not discriminatory and is therefore not a distinction to which section 15 of the Charter has any application. The Board therefore expressly declined to comment on whether section 1 of the Charter provides the justification for section 89(5) of the Act.

In assessing whether the respondent violated section 15, the duty to bargain in good faith, the Board stated that it was principally concerned with the process of collective bargaining and not the content except where the content patently demonstrates a desire to avoid a collective agreement. Further, in examining the conduct of the parties, the Board declined to set its own standard as to what a fair or just settlement might be and then measure a party's conduct against that standard. Such an approach is inappropriate because collective bargaining involves the exercise of power by a party acting out of self-interest. The Board noted that the Act does not guarantee employees who engage in a legal strike the absolute right to return to work at the conclusion of the strike. Therefore, merely because the respondent sought to have striking employees return as vacancies arose does not in itself establish a violation of section 15. The Board stated that unless it found that the respondent's position with respect to the return to work of the striking employees contravened the Act, the complainant would have failed to establish a violation of section 15.

In this case, the Board was not persuaded that the employer's refusal to agree to a return to work protocol that might cause the displacement of some or all of the strike replacement employees was not contrary to sections 64 and 66 of the Act. Both groups of employees were in the bargaining unit and, in the Board's opinion, the preference that the respondent exhibited towards maintaining the active employment of persons it had hired after the strike commenced, taken together with the respondent's adoption of a moral obligation to retain those employees could reasonably be viewed as discriminating against the striking employees by reason of the exercise of their rights under the *Labour Relations Act* to engage in a legal strike. The same discriminatory conduct was, in the Board's view, also a violation of section 64 as it impaired the complainant union's ability to represent the employees.

Additionally, since the Board determined that the respondent's position with respect to a recall policy was contrary to section 66, that finding also established the respondent's improper motive for its bargaining position with respect to the recall of the striking employees. Thus, the Board found that the respondent's position on that issue also violated section 15 of the Act. In the Board's words: "[I]t is the antithesis of good faith to maintain a position in bargaining on the only issue that prevents the settlement of a strike that is contrary to section 66 of the Act."

The Board directed that the parties meet within twenty-one days of the release of the decision and that the respondent provide the complainant with a complete proposal for a collective agreement containing a return to work protocol that did not discriminate between employees hired after the commencement of the strike and the striking employees. Further, compensation was ordered for both the union and the employees from the date of the bad faith bargaining at the end of 1984. *Shaw-Almex Industries Limited*, [1986] OLRB Rep. Dec. 1800.

Conduct of City's sanitation workers constituting strike rather than bona fide refusal to work because of safety concerns

In May of 1982, City sanitation workers refused to wear their new fluorescent safety vests. The City told them that if they did not, they could not work at all and threatened suspensions. The employees commenced a work stoppage which continued for several days. The respondent City claimed that the employees were engaged in an unlawful strike while the union contended that they were exercising their rights under the *Occupational Health and Safety Act* as the vests were unsafe.

In the course of the hearings the Board found that the brightly coloured vests were instituted by the Director of the City Sanitation Department based upon his personal whim. Little study went into the instituting of what was to become a mandatory piece of safety equipment. No tests were done nor were union members or their committee representatives consulted on the question of what design of vest might be most suitable or if vests were required at all. Further, the Board found that the Director of the City Sanitation Department was motivated more by his concerns for "management rights" than with any aspect of employee safety. The employees reacted to the introduction of this piece of compulsory safety equipment with resistance and complaints. The vests were considered hot, uncomfortable, unnecessary, and tended to get snagged and caught on things. In particular, there was an allegation that the vest material would not rip or give should it be caught in moving machinery. Most of the early employee complaints had to do with the comfort, necessity or suitability of the vest, rather than any overt safety concerns and the Board felt these complaints were probably influenced by the manner in which the vests were introduced. These complaints were not well received and the City was suspicious that objections were being manufactured. Complaints that did surface at the health and safety committee level went nowhere. In the Board's view, what resulted was a "festering labour relations problem". Several grievances were filed on behalf of employees who had received written warnings about their failure to wear their vests. The grievances all complained that the vests constituted hazards to health and safety because of their extreme physical discomfort (heat). Arbitration, however, resulted in the dismissal of the first of these grievances and the rest were withdrawn. The Board noted that at this point there was no effort by the union to file a policy grievance, launch a complaint under section 24 of the O.H.S.A. or otherwise involve the Ministry of Labour.The Board asked rhetorically why these obvious steps were not taken. In the Board's view, the union's actions indicated that it did not truly regard the vests as a "safety hazard" but rather as an acceptable if second best solution to the problem of employee visibility; the vests would be worn until some suitable alternative was implemented.

On May 19, 1982 the City issued new brightly coloured orange work overalls which the union regarded as the alternative visibility solution. As a consequence, the employees were unwilling to wear both the new overalls and the vests, something on which the respondent insisted. It was the order to wear both the vest and the new uniforms which the Board found on the evidence precipitated the work stoppage. The Board found that the true frustration felt by the employees did not justify a strike or convert the employees' annoyance or protest into a bona fide concern about their personal safety. In finding that the sanitation workers were not engaged in an activity protected by sections 23 or 24 of the O.H.S.A. and that they were therefore engaging in a strike designed to

protest the employer's failure to allow them to remove the vests, the Board was greatly influenced by the fact that the employees had worn their vests for months without incident and in most cases without complaint. In the Board's view, the work stoppage was therefore intended to put pressure on the City to withdraw the apparel which the union no longer considered necessary.

The Board found that it did not need to make a specific declaration about whether, or the extent to which, certain union officials may have counselled, procured, encouraged or supported that unlawful strike or make any other remedial direction other than the finding of an illegal strike alone. In the Board's opinion and subject to section 92 which gives the Board a discretion in this regard, no further declarations were forthcoming. *The Corporation of the City of Toronto*, [1986] OLRB Rep. Dec. 1834.

Implementation of Sunday hours during the freeze a breach of the Act

The union had been in negotiations with the predecessor employer and amongst the conditions agreed to was a Monday to Saturday work week. The predecessor employer sold the grocery store business to the respondent who admitted successorship and agreed to continue bargaining. The successor employer did not agree with the six-day work week and requested the union's consent to open on Sundays. The union refused to consent. Nonetheless, the respondent proceeded with Sunday openings, staffing those hours on an entirely voluntary basis. No employee lost time or wages or was forced to work on Sundays as a result of this change in scheduling. The parties agreed that the store had never been open on Sundays before and that the Sunday openings commenced during the freeze period. The union complained that the successor employer had violated section 79 of the Act by instituting Sunday working hours.

The Board found that the respondent had instituted Sunday openings in response to business pressure brought on by the Sunday openings of local competitors. The Board stated that it was not called upon to assess the situation in terms of the *Retail Business Holidays Act* nor was it necessary to either condone or condemn the propriety of Sunday openings. The issue before the Board was whether the respondent's introduction of Sunday openings violated the freeze provision in the absence of union consent or was it, by virtue of its impact on the union or employees, outside the grasp of the section's purpose?

The purpose of the freeze provision is to preserve a defined and understood status quo during that period with the overall objective of facilitating a stable environment within which the parties can concentrate on meaningful collective bargaining. The development by the Board of flexible interpretative tools such as the "reasonable expectations" and "business as usual" tests are evolutionary illustrations of a longstanding practice of construing the section in a way which acknowledges the sanctity of its purpose, recognizes the limits of its ability to be categorical and authorizes a singular determination in every case based on existing jurisprudence but dependent on the factual variables before the panel.

In this case the union did not suggest that the employer's pre-existing pattern of management excluded the right or duty to arrange shifts based on need for services, but argued that opening on Sundays was not "business as usual". The Board agreed and ruled that by opening on Sundays, the respondent employer was adding a day uniquely protected by its legal and social history as a non-working day. By virtue of this uniqueness, and without passing judgment on the morality or legality of Sunday openings, the Board found that a change had unilaterally occurred which was technically beyond the ambit of the respondent's scheduling rights. The Board was of the view, however, that this was not an appropriate case in which to grant any remedial relief. *Anderson's City Farm Valu-Mart*, [1987] OLRB Rep. Jan. 1.

Board suggests that the examination of a representative period for the purpose of deciding which employees are to be included in the bargaining unit for the purpose of the count in a construction industry certification application be discontinued

In this application for certification the Board reviewed the tests it has employed in order to determine whether a person should be included in the bargaining unit for the purpose of the count in the construction industry. The Board stated that a person must be at work for the respondent employer on the date that the application is made in order to be included in the bargaining unit for the purpose of "the count". Further, the employee must have spent a majority of his time, on the date of application, doing bargaining unit work. Where an employee was doing the work of one trade or craft on the date of application but prior thereto had been engaged in doing the work of several trades or crafts at the same wage rates, the Board has long been willing to examine a period of time prior to the date of application that is representative for the purposes of ascertaining what work the employee spends the majority of his or her time doing and so determine whether or not that employee should be included in the bargaining unit. The length of this representative period has varied on a case by case basis. However, the Board commented that recourse to a "representative period" has made the certification process in the construction industry less consistent, certain, and expeditious than it might be, and that the use of any such period is inconsistent with the requirement that a person be both employed by the respondent and at work on the date of the application. In the Board's view, the very nature of a "representative period" is such that its length will vary according to the circumstances of a particular application and creates uncertainty. Further, the examination of a representative period overlooks the fact that once a trade union has been certified as bargaining agent for a bargaining unit of employees of an employer in the construction industry, any collective agreement to which the employer becomes bound, whether a provincial agreement or not, will apply to persons doing the work covered by that agreement. Consequently, whether or not an employee is covered by a particular collective agreement and represented by a particular bargaining agent depends on the work that he/she is doing at the time and is in no way dependent on the work that he/she performs during any previous period.

The Board therefore suggested that the use of a "representative period" be eliminated and that the Board restrict itself to the following criteria: (a) whether the person was employed by the respondent and at work on the date of the application; and (b) if so, the work that the person spent the majority of his/her time doing on the date of application or (c) where there is no conclusive evidence with respect to the work that the employee performed on the date of application, any other relevant factors, including the primary reasons for hire. *E & E Seegmiller Limited*, [1987] OLRB Rep. Jan. 41.

Ministry of Community and Social Services' unwillingness to increase funds available for wages to employer not constituting grounds for first contract arbitration

In this case the union claimed that bargaining had been stifled by the constraints imposed by the Ministry of Community and Social Services on the funds available to the employer for wage increases, warranting the exercise of the Board's discretion under section 40(a)(2)(d) to order settlement of a first collective agreement by arbitration. The respondent cared for juveniles placed in its custody by the courts under the provisions of the *Young Offenders Act*. Comsoc controlled and supervised the respondent and provided all its funding. For the fiscal year 1985-1986 Comsoc had funded a budget for the respondent which envisaged wage increases of no more than four percent. A similar amount was allocated for fiscal year 86-87, and was anticipated for fiscal year 87-88. If the union's monetary objectives were to be achieved, Comsoc would have to come up with more money. The union submitted that the collective bargaining impasse resulted entirely from Comsoc's unwillingness to fund the program at a level which would permit wages and benefits equivalent to or approaching those already paid to civil servants working in Government-run

juvenile detention homes. Comsoc had also developed a strike plan involving the transfer of residents to other facilities in the event of a work stoppage. In this respect the union portrayed Comsoc as a potential strike breaker with unlimited resources which effectively sterilized the process of collective bargaining and immunized the employer from the pressure of a strike.

In reviewing the course of collective bargaining the Board found that even though a strike vote had been taken, no strike was called and that subsequent to the parties meeting with a mediator, the employer had initiated at least three further bargaining sessions. The Board noted that to some extent its hearings in this application in fact interrupted an ongoing bargaining process. The Board further questioned the extent to which the union could realistically expect to achieve "cadillac language" in a first collective agreement. The Board stated that while equity or fairness might suggest that the respondent employees should be paid in the same manner as their civil service counterparts, that was not necessarily a realistic collective bargaining stance.

The respondent's final wage proposal was not out of line with what was currently being negotiated elsewhere. Nor was it obvious to the Board that the result of sincere bargaining on the respondent's part would inevitably be a salary or benefit package approaching that currently prevailing for the huge civil service bargaining unit — OPSEU.

The Board dismissed the application for a direction for contract arbitration. In its view it was too early in the process to say that the bargaining process had been unsuccessful at all. The employer had made reasonable efforts to conclude a collective agreement, it had not taken a rigid stance at the bargaining table designed to show employees that they could not benefit from collective bargaining, nor engaged in unfair labour practices. The Board concluded that the employer had tried insofar as its budget permitted to accommodate the union's concerns.

With regards to the union's assertion of impotence, the Board stated that it was not evident that a strike would have had no impact. Moreover, section 40a neither requires, nor rules out, resort to a strike or lock-out — the traditional levers in a collective bargaining process which recognizes the realities of economic power and is designed to elicit compromise, concessions and accommodation. As the Board could not say that collective bargaining had been unsuccessful because the parties had not yet arrived at an impasse, the application was dismissed. *Juvenile Detention (Niagara) Inc.*, [1987] OLRB Rep. Jan. 66.

Termination votes ordered at Eatons' stores

This case dealt with ten applications under section 57 of the Act in which the applicant(s) sought a declaration that the respondent union no longer represented unionized employees at five separate Eatons store locations. A common basis for the union's opposition to each of these applications was the allegation that wage increases Eatons gave to employees at its non-unionized stores, while it continued to pay unionized employees at the rates specified in the collective agreements, sent a signal to bargaining unit employees that continued union representation would have adverse economic consequences for them. The union argued that it was this message that prompted the petitions which circulated thereafter and should lead the Board to find that the petitions were not voluntary. The introduction of this wage increase issue led the Board to hearing evidence about the historic patterns and timing of wage increases at Eatons stores before any of them were organized. The Board responded to the union's atmosphere argument by indicating that the wage increases at Eatons unorganized stores did not have as their real purpose the origination of a termination application at its unionized stores, nor would knowledge of those wage increases have prevented employees from making up their own minds about continued representation by this union.

In a majority of these cases, the union also attempted to impugn the termination petitions because they involved one or more section heads in their origination and circulation. Section heads are bargaining unit employees and are not members of management. The union argued that since section heads frequently acted as conduits to and from management, employees would perceive them to be acting as agents of management when soliciting petition signatures and when making statements about the advantages of terminating the union's bargaining rights. The Board indicated that what was required was an analysis of all the surrounding circumstances and an assessment of whether other employees would likely have viewed the particular lead hand employee in question as acting on behalf of, or with the support of, management, or whether the section head would likely have been perceived as a bargaining unit employee seeking only to further his own self-interest. On the facts the Board concluded that the mere knowledge that an originator or circulator of a petition was a section head would not likely have led a bargaining unit employee to conclude that the petition was being circulated for or with the support of Eatons.

All the petitions were found to be voluntary and the Board ordered representation votes in each of the units. *T. Eaton Company Limited*, [1987] OLRB Rep. Jan. 141.

A virtually province-wide unit of editorial employees at community newspapers found to be appropriate

The respondent operated a chain of community newspapers. Both parties agreed that a unit composed of editorial employees was appropriate, but they were in dispute as to the appropriate geographic scope. The applicant sought a virtual province-wide bargaining unit, while the respondent contended that the bargaining unit description should adhere to the Board's general policy of restricting bargaining units to municipal-wide bases.

In finding that the appropriate bargaining unit was the more comprehensive version sought by the applicant, the Board summarized the principles which guided it in its determination of the appropriate geographical unit. Generally the Board has applied the concepts of community of interest and municipal-wide units. The Board emphasized, though, that community of interest is not an "all or nothing phenomena". Rather, the question for the Board is: "Is there a sufficient community of interest amongst those employees for whom certification is sought that the resulting unit is viable for collective bargaining purposes?". Thus, the investigation of community of interest goes to the issue of viability.

The Board's practice of describing the geographic scope of bargaining units in terms of the municipality in which an employer's operation is located must be understood as the Board's mechanism for expeditious resolution of that issue and an effort to strike a rough balance between stable bargaining structures and individual freedom of choice. On the instant facts, in the Board's view, there was much more than "sufficient" community of interest amongst the various editorial employees. The Board cited such factors as: the community newspapers were identified as a group by virtue of their common colour scheme on their banners; the editorial page opinions, although established at the local level, adhered to the corporate policy of providing community news under a copyright held by Harlequin; administrative matters such as payroll and financial accountability were highly centralized; and employees were subject to the same corporate policies with regards to benefits and working conditions. The Board also noted that the promotion route for employees was the publishing organization as a whole rather than simply the individual paper.

The Board ruled that the geographic disparity of location did not outweigh the factors of commonality, particularly because employees on different papers were in frequent contact with one another and because many of the papers clustered around Metropolitan Toronto were not geographically distant from one another.

The Board also stated that it must assess whether the broad bargaining unit configuration would create labour relations difficulties for the employer and that it must be sensitive to the pattern of distribution and the level of employee support for the applicant. The Board was satisfied that employee support in this case was not so skewed as to raise concern that the applicant had tailored its proposed unit to sweep in employee groupings which did not support the applicant and could themselves constitute an appropriate bargaining unit. Support for the applicant was substantial across various locations and there was no concern that the unit sought had been in any way "gerrymandered" by the applicant. *Harlequin Enterprises Limited*, [1987] OLRB Rep. Feb. 226.

Constitutional jurisdiction over the labour relations of employees providing security services to the Federal Government falling within federal jurisdiction

The respondent objected to this application for certification of a bargaining unit of security guards on the ground that the Board lacked the jurisdiction to deal with the application because the activities of the respondent fell within federal jurisdiction. The respondent provided security services to departments and agencies of the Federal Government such as Revenue Canada, Transport Canada, Public Works Canada, etc. The respondent also provided passenger screening services to the Department of National Defence at its Canada Forces Base in Ottawa and security services at a government complex in Hull, Quebec. With the exception of the pre-board passenger screening, all of the respondent's services at Federal Government sites in Ottawa-Carleton were provided pursuant to a detailed, written "standing offer agreement" in the form of a contract prepared by Supply and Services Canada. This contract mandated formal classroom training for security personnel and set out conditions which constituted "cause for immediate removal" of security guards from federal sites. The Federal Government monitored the quality of the security services and administered examinations to all of the respondent's employees working on Federal Government sites.

There was no dispute between the parties as to the legal principles to be applied and resolved in the jurisdictional issue. The Board noted that the regulation of contracts of employment, hours of work, minimum wage, and other aspects of employment law including labour relations, are generally matters of "Property and Civil Rights in the Province", within the meaning of section 92(13) of the *Constitution Act*, and, accordingly, are generally within the jurisdiction of the provincial legislatures. However, the Board noted that federal labour law applies to employees of employers who are engaged in enterprises that are within the federal jurisdiction, such as those set forth in section 91 and in parts (a), (b), and (c) of section 92(10) of the *Constitution Act*. In finding that the labour relations of the security guards employed by the respondent fell under the *Canada Labour Code*, the Board indicated that its approach would be the one put forth by Paul Weiler as Chairman of the British Columbia Labour Relations Board in *Arrow Transfer Company Ltd.*, 74 CLLC ¶16,130 in which he stressed that the courts have looked at the particular subsidiary operation engaged in by the employees whose collective bargaining is in question to reach a judgment about the relationship of that operation to the basic federal undertaking. Generally the courts and labour boards have characterized the part the particular operation may play in the overall enterprise as having to be a "vital", "essential", "integral", "important" or "intimate" roll in the undertaking if it is to fall within the jurisdiction of Parliament.

The Board also noted an unreported decision of the Canada Labour Relations Board in which the Canada Board found that it had constitutional jurisdiction over security employees of Burns International Security Services Limited working at the Gander International Airport in Gander, Newfoundland, and certified the International Association of Machinists and Aerospace Workers as their bargaining agent. The Ontario Board agreed with that conclusion, and held the same to be true of the respondent's employees who provided passenger security services for the

Department of National Defence at its Canada Forces Base in Ottawa. In the Board's opinion, the pre-board passenger screening security services clearly had a vital, essential, integral, important and intimate role in aeronautics which is a well established area of federal jurisdiction.

The Board also concluded that constitutional jurisdiction over labour relations between employers and employees who provide security guard services on an ongoing basis to departments and agencies of the Federal Government also fall within the ambit of federal jurisdiction. The tasks security personnel perform for the Federal Government including the evacuation of buildings in fire/bomb threat situations, the arrest of persons committing criminal offences, the guarding of sensitive and restricted areas, and the operation of control rooms in normal and emergency situations, play a vital, essential, integral, important, and intimate role in the operation of those departments and agencies and are necessarily incidental to such operations, which fall within various heads of the federal power under section 91 of the *Constitution Act*. The application was therefore dismissed. *National Protective Service Company Limited*, [1987] OLRB Rep. Feb. 245.

Actions of O.F.L. in pro-choice abortion activities too remote to found a religious objection to paying dues to O.P.S.E.U.

This case involved an application under section 53 of the *Colleges Collective Bargaining Act* for exemption on the grounds of religious conviction or belief from the union security provisions in a collective agreement entered into between the respondent trade union and the respondent employer. The primary thrust of this application was that the complainant should be granted relief under section 53 in view of the fact that in September of 1984 the Ontario Federation of Labour (OFL), of which OPSEU is an affiliate, donated $3,000.00 to the Ontario Coalition of Abortion Clinics, a pro-choice organization which advocates free-standing abortion clinics. The Board found that the concept of remoteness was applicable in the circumstances of this case. The OFL's actions to which the complainant objected were its donation to the O.C.A.C., the pro-choice activities of Mr. Pilkie and the OFL's women's committee, and the passage of a pro-choice resolution at the OFL convention in November of 1984. It held that OPSEU, the complainant's union, was not in a position to prevent the OFL, its officials or the majority of its delegates to the 1984 O.F.L. convention from engaging in any of these pro-choice actions. OPSEU had only one representative on the OFL's twenty-three person women's committee. However, there was nothing in the evidence which suggested that a different result would have been obtained if someone from OPSEU had been in attendance and had voted against the payment. It was clear from the evidence that as one of many affiliates of the OFL, OPSEU was not in a position to dictate the activities in which the OFL, its officials and its committees would or would not engage. As passage of the resolution to which the complainant objected was a matter beyond the control of OPSEU, the Board was not satisfied that the applicant because of his religious convictions or beliefs objected to paying dues or contributions to OPSEU. *Paul H. Tremblay*, [1987] OLRB Rep. Feb. 284.

Sub-contract of reforestation work found to be a transfer of an "undertaking" within meaning of *Successor Rights (Crown Transfers) Act*

The applicant union sought a declaration that there had been a transfer of an undertaking from the Crown to KBM Forestry Consultants Inc. in the form of a sub-contract wherein KBM agreed to perform certain harvesting work previously carried out by employees represented by the union. The union thus sought a declaration that KBM was bound by the collective agreement entered into between the union and the Crown.

The Board noted that the *Successor Rights (Crown Transfers) Act* was enacted to fill the gap insofar as the sale of business provisions of the *Labour Relations Act*, section 63, did not apply to the Crown. The wording of the new statute, however, was different from that found under the

parallel section 63 to reflect the nature of the wide range of activities engaged in by the Government. Thus, although section 63 jurisprudence is applicable to applications under the *Successor Rights (Crown Transfers) Act*, cases under the latter statute must be considered in the context of the wording of that Act. The Board has held that its interpretation of section 2 of the *Successor Rights (Crown Transfers) Act* is not limited by its interpretation of section 63 of the *Labour Relations Act*, but rather must be given a broad interpretation which takes into account the extensive definition of "undertaking".

Underlying the legislation is the principle that gains achieved by a union with respect to jobs integral to a particular government program are not to be lost upon transfer of such programs to a private entity. It was noted that the transfer of work alone does not meet the requirements of section 63, but rather, there must be a sale of business or part thereof as defined in relation to economic organization, including physical assets, operating personnel and goodwill. By contrast, under the *Successor Rights (Crown Transfers) Act* that which may be transferred or conveyed includes "projects" or "programs" or "work". In this case the Board was satisfied that a "program" or "project" was the most relevant form of undertaking listed in section 2. The Crown was involved in a reforestation project or program wherein it was necessary to harvest seedlings which would later be replanted. A portion of this harvesting, previously done by the Ministry, was now carried out by KBM. The Ministry had transferred that part of the project to the consulting company while retaining an interest in ensuring that the work performed therein was performed in a manner consistent with the standards established by the Ministry for the reforestation program. The Board held that these facts brought it squarely within section 2 of the *Successor Rights (Crown Transfers) Act* — the fact that KBM may have provided its own major equipment and, for the most part, its own work force did not mean the contract between it and the Crown did not fall within the framework established by section 2 of the *Successor Rights (Crown Transfers) Act*. In fact, it was not surprising that the Crown would contract work to an established company already possessing the expertise, equipment and significant personnel required. The Board was satisfied that there had been a continuation of the work and that the union OPSEU was the bargaining agent for employees performing that work and that the Crown and OPSEU were parties to a collective agreement applying to that work. Thus, the Board declared that there had been a transfer from the Crown to KBM and that that company was bound by the collective agreement entered into by the Crown and OPSEU. *KBM Forestry Consultants Inc.*, [1987] OLRB Rep. Mar. 399.

Contracting out of cleaning services not constituting a sale of business

This application under section 63 of the Act, the sale of business provision, arose upon the contracting out of cleaning services by the respondent to the intervener. The respondent was in the business of producing and marketing life and health insurance and annuities. The respondent acquired land on which was built the first of two twin towers to house the Canadian head office of the respondent's business. Through its own employees, the respondent provided maintenance and cleaning services for its own offices and those of its tenants. Upon acquiring land on which was built the second of the twin towers, the respondent invited tenders from various office cleaning service companies to assume this function for all of the occupants of this second tower. Based on the tender submitted by the intervener, it was awarded a two-year contract. Because of the satisfactory maintenance and cleaning services provided by the intervener, it was invited in 1986 to submit a bid to provide the same services at the first twin tower. Thus, the intervener commenced to provide cleaning services for the respondent and its tenants in October 1986 for a twenty-month period. At no time was the intervener involved in discussions with the respondent in respect of the transferring, acquiring or hiring of any of the employees of the respondent. All staffing was done by the intervener in the same manner as for any other job site, i.e., through the personnel department of the intervener and advertising in local newspapers.

The intervener assumed full control, maintaining an on-site supervisor on the premises to direct its workforce and take any disciplinary action that was called for in respect of these employees. As a result of the takeover of the cleaning services at the first twin tower, the respondent terminated the services of forty-eight part-time employees, as well as ten full-time employees. A collective agreement was in force between the applicant and respondent covering building maintenance and cleaning operations. Former cleaning employees of the respondent were allowed to apply for employment with the intervener under the same terms and conditions available to all applicants. There was no relationship between the respondent and the intervener insofar as there were no common owners, directors or staff. The intervener had carried on an independent cleaning service business since 1967. In order for the applicant to establish its entitlement to a declaration that the respondent sold part of its business to the intervener, it had to persuade the Board that the respondent's leasing of premises to tenants at the first twin tower was "part of its business". The Board referred to the case of *The Corporation of the City of Stratford*, [1985] OLRB Rep. June 923 wherein it was concluded that as the contractor had exercised fundamental control over the working lives and working environment of the employees and as the contractor had been a pre-existing entity with its own management structure, capital assets, employees, entrepreneurial initiatives and business skills, there could not be said to have been a transfer of a part of the City's business to the contractor although there undoubtedly had been a transfer of work. The City had merely transferred to the contractors work which it no longer wished to perform. Thus, drawing an analogy between that fact situation and the case at hand, the Board found that the contracting out arrangement was nothing less than a bona fide or true contracting out arrangement of the cleaning services in question. Thus there could not be said to have been a sale of business within the meaning of section 63 of the Act. *Metropolitan Life Insurance Company*, [1987] OLRB Rep. Mar. 413.

Nurses a craft only when confined to historical bargaining unit description of "employed in a nursing capacity"

In this application for certification the Ontario Nurses' Association asked the Board to alter its normal bargaining unit description of "all registered and graduate nurses employed in a nursing capacity" by deleting the qualifying words "employed in a nursing capacity". The Board was asked to apply the provisions of section 6(3) of the Act which allows for separate craft units. While the Board was sympathetic with the problem facing the union insofar as the incidence of litigation regarding the definition of "employed in a nursing capacity" had been relatively high, nonetheless, the Board was of the opinion that the provisions of section 6(3) of the Act were simply not available to the union in the circumstances. The Board stated that section 6(3) was available solely on the basis of collective bargaining history — an applicant trade union is entitled to demand the unit that collective bargaining history has itself established. While the Board was satisfied that the group of employees in question fell within section 6(3) to the extent that they were "employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts", nonetheless that was held to assist the union onlyto the extent of its own traditional bargaining unit. As the union was requesting the Board to alter its normal bargaining unit description of "all registered and graduate nurses employed in a nursing capacity" by deleting the qualifying words "employed in a nursing capacity", it faced the problem that the "skills" by virtue of which the union's members had always been set apart in their own bargaining unit had, in fact, been defined by reference to nurses "employed in a nursing capacity".

The Board referred to the case of *Kidd Creek Mines Limited*, [1984] OLRB Rep. Mar. 481 wherein it was stated that the statutory language of section 6(3) indicates that it was carefully

drafted to preserve the status quo. The section is a recognition of historical organizing patterns, rather than any general endorsement of craft bargaining units. Thus, section 6(3) is available only if the group of employees whom the union seeks to represent already commonly bargains separately and apart from other employees, and only if the applicant trade union has traditionally represented employees with those skills. It was noted that these conditions effectively preclude the development of new craft unions and further, limit the extension of craft bargaining patterns beyond their traditional boundaries. On this basis, the Board held that the applicant's argument on the basis of section 6(3) of the Act could not assist it in eliminating the words "employed in a nursing capacity" from the description of the bargaining unit. Thus, the Board concluded that those words would be adopted by the Board in the case before it. *Porcupine General Hospital*, [1987] OLRB Rep. Mar. 423.

VI COURT ACTIVITY

During the year under review, the courts dealt with ten applications for judicial review. Of these, nine were dismissed. In the other case the majority of the Divisional Court agreed with the applicant that the Board exceeded its jurisdiction by ordering a remedy which was not authorized by the *Labour Relations Act*, and an application by one of the co-respondents for leave to appeal was dismissed.

In five of the nine applications for judicial review which were dismissed by the Divisional Court, the applicants sought leave to appeal to the Court of Appeal. Two of these leave applications are still pending, two have been dismissed, and one was granted and that appeal is pending.

Three applications for judicial review were withdrawn, discontinued or abandoned by the applicants in the year under review.

An application to stay Board proceedings pending a judicial review application was dismissed. In a leave to appeal application, a stay was ordered on consent of the parties.

An application by a respondent in Board proceedings for a declaration under the Rules of Civil Procedure respecting the Board's jurisdiction was dismissed as premature.

The Board stated a case to the Divisional Court respecting the failure by parties to a Board proceeding to comply with Board orders, which resulted in fines being imposed on those parties by the Court.

The Board this year appealed two Divisional Court decisions from 1985 to the Court of Appeal. In one case, the Board was successful and the other party then obtained leave to appeal to the Supreme Court of Canada. In the other case, the Board was unsuccessful and is seeking leave to appeal to the Supreme Court of Canada.

Fourteen other applications for judicial review are pending as at year end.

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

Amalgamated Transit Union, L. 113
Supreme Court of Ontario, Divisional Court,
June 23, 1986; Unreported

The TTC brought an application for a declaration of illegal strike respecting the refusal by bus drivers, encouraged by the union, to cross the picket lines of striking Eaton's employees. The *Toronto Transit Commission Act* prohibited strikes, and the TTC, which had had a policy for 30 years of accommodating drivers who wished to avoid picket lines, had recently advised the union that it would no longer do so. The Board found that, despite the past policy of the TTC, the refusal to do assigned work in concert amounted to a strike, and issued a declaration of illegal strike and a cease and desist order against the employees and the union.

The union sought judicial review on the grounds that the Board had erred and exceeded its jurisdiction by interpreting the *Labour Relations Act* and the *Toronto Transit Commission Act* in a

patently unreasonable manner, and by making an order which contravened the latter and was inconsistent with the rights of employees under the former.

The Divisional Court dismissed the application for judicial review on June 23, 1986.

Arlington Crane Service Ltd.
Supreme Court of Ontario, Divisional Court,
October 31, 1986; 2 A.C.W.S. (3d) 243
Ontario Court of Appeal,
February 16, 1987; Unreported

The union had referred to the Board a construction industry grievance respecting Arlington Crane's hiring of non-union workers. Before the hearing commenced, Arlington Crane brought an application for judicial review seeking to quash a summons issued by the Board and to prohibit the Board from proceeding further with the arbitration, and a declaration that various sections of the *Labour Relations Act* respecting offences, grievance arbitrations and the structure of the Board were of no effect, on the grounds that the sections of the Act violated several sections of the *Canadian Charter of Rights and Freedoms*.

The Board refused a request from Arlington Crane that the Board hearing be adjourned pending the judicial review, and proceeded to find Arlington Crane bound by the provincial agreement and in breach of its hiring provisions. Arlington Crane was ordered to pay lost wages and cease and desist from violating the collective agreement.

Arlington Crane then amended its judicial review application to seek further an order that the Board decision be quashed and an interim order prohibiting the Board from assessing damages prior to the disposition of the judicial review application.

An application by the trade union, which had not been named as a respondent, to be added as a party was granted by the Court.

The judicial review application was heard and dismissed by the Court on October 31, 1986. The Court's decision dated December 8, 1986 held that the Board had not violated any *Charter* rights possessed by either Arlington Crane or the summonsed witness.

The *Charter* challenge to various sections of the *Labour Relations Act* was not pursued at the judicial review hearing, and is currently the subject of a separate action to which the Board is not a party.

Arlington Crane brought an application for leave to appeal the Divisional Court's decision, which was dismissed by the Court of Appeal on February 16, 1987.

Board of Education for the City of York,
Ottawa Board of Education
Supreme Court of Ontario, Divisional Court,
January 27, 1987; 58 O.R. (2d) 375

These two separate certification applications were dismissed in separate Board decisions, which were then judicially reviewed together. In each case, the issue was whether a group of teachers outside the regular school programme came within the definition of "teacher" set out in the *School Boards and Teachers Collective Negotiations Act* ("Bill 100"), so that by section 2(f) of the *Labour Relations Act* the latter did not apply to them and therefore the applications had to be dismissed.

The Ottawa application involved teachers in the continuing education night school programme. The majority of the Board held that the language of Bill 100 was sufficiently broad to embrace various teaching arrangements, including this one, so that the teachers were excluded from the application of the *Labour Relations Act* and therefore the certification application was dismissed.

The York application involved teachers employed to teach credit courses at the secondary school level to residents of Humewood House, a residence for troubled teenagers. A board of arbitration had found them to be not covered by a collective agreement entered into under Bill 100 and therefore the parties agreed that the teachers were not covered by that legislation. The Board, however, noting that the agreement of the parties and the arbitration decision could not confer upon it jurisdiction where it had none, considered the issue and held that these teachers came within the Bill 100 definition because they were qualified as teachers and employed to teach. The Board concluded that these employees were excluded from the application of the *Labour Relations Act* and accordingly the application was dismissed.

Each Board of Education sought judicial review of the decision affecting it. They alleged that the Board had erred in law in finding that the teachers came within Bill 100 and were excluded from the *Labour Relations Act*. The York Board set out as an additional ground for review a denial of freedom of association under the Charter, in that the decision had the effect of forcing the teachers to be represented by the Ontario Secondary School Teachers Federation, the union specified in Bill 100.

The two cases were heard together on May 6 to 8, 1986, and the Divisional Court issued its decision on January 27, 1987. The Court noted that the standard of review to be applied, given that the Board was not interpreting its constituent statute, was correctness, and the Court held that the Board came to the correct conclusion in each case and therefore both applications for judicial review were dismissed.

Both Ottawa and York have brought applications for leave to appeal the Divisional Court decision on the grounds that the Court erred in concluding that Bill 100 applied to these two groups of teachers. These applications are scheduled to be heard May 11, 1987.

Border Cities Wire & Iron Ltd.
Supreme Court of Ontario, Divisional Court,
September 5, 1986; Unreported

The union had referred a construction industry grievance to the Board respecting a failure by the employer to make payments to various union funds as required under the provincial agreement. A receiver-manager, which had been appointed under a debenture, had carried on Border Cities' business and honoured the provincial agreement to which Border Cities was a party; however, three months of payments owing from before the appointment remained outstanding. The Board held that the receiver-manager wasbound by the collective agreement while the business continued, and therefore ordered that it pay the monies owing.

A request for reconsideration on the grounds that the receiver-manager had failed to attend the hearing was denied.

Border Cities and the receiver-manager sought judicial review of the Board's decision on the grounds that the Board had erred and exceeded its jurisdiction by granting priority to the union notwithstanding the debenture to the bank and by ignoring its own conflicting jurisprudence.

The Divisional Court dismissed the application for judicial review on September 5, 1986.

Brantwood Manor Nursing Homes Ltd.
Supreme Court of Ontario, Divisional Court,
June 3, 1986; Unreported
Ontario Court of Appeal,
September 15, 1986; Unreported

The union had complained of Brantwood Manor's laying off union employees and contracting its work out to two other companies, and had applied for declarations that Brantwood and each of the other two companies constituted one employer, bound by Brantwood's collective agreement with the union.

The Board found Brantwood Manor to have failed to bargain in good faith and interfered with the union and the rights of employees by refusing to recognize or bargain with the union's bargaining committee as it was composed. The Board also issued the two declarations of one employer, and in each case found violations of the collective agreement in assigning work to employees outside the bargaining unit and failing to abide by the union security and recognition agreements. The Board ordered reinstatement and compensation for the breaches of the collective agreement.

Brantwood sought judicial review of the Board's decision on the grounds that the Board had erred in interpreting and applying section 1(4) and exceeded its jurisdiction in finding the companies to be in breach of the collective agreement when there was no allegation of such breach before it. Brantwood also sought a stay of the Board's decision, which was granted by the Court in March 1986.

The application for judicial review was dismissed by the Divisional Court in its decision dated June 3, 1986. The Court found the Board's interpretation of section 1(4) to be reasonable and held that the common law right to contract out had not been overridden, as there was no true contracting out given Brantwood's degree of control over the other two companies. The Court also rejected an argument made by one of the companies, Med+Experts Inc., that it had not considered itself at risk of being found in breach of the collective agreement, noting that the issue of non-union hiring was before the Board in the context of unfair labour practices, and that the other companies should have known from the nature of the proceedings that any consequences to Brantwood might extend to them. The Court concluded that the other company had an adequate opportunity to address the issue of breach of the collective agreement, and was therefore not denied natural justice.

Brantwood Manor and Med+Expert sought leave to appeal the Divisional Court decision.

A motion to stay the Board's proceedings was settled between the parties, so that the Board consented to a court order dated August 21, 1986 effectively staying the Board decision.

On September 15, 1986, leave to appeal was granted by the Court of Appeal, and the appeal has been perfected.

Terrence Broome
Supreme Court of Ontario, Weekly Court,
February 26, 1987; Unreported

The Carpenters union sought a declaration that the businesses of Terrence Broome and his father, William Broome, were related to three Broome family companies already found by the Board to be one employer. The Board found that Terrence Broome was effectively continuing his bankrupt brother's business and that William Broome was involved in directing it, and concluded

that there was really one family business, carried on by different family members only nominally. The Board therefore declared Terrence and William Broome to be one employer together with the three other companies, and all bound by the provincial agreement.

Subsequently, the union referred a construction industry grievance to the Board alleging that Terrence Broome was hiring non-union workers. The Board found Terrence Broome to have breached the hiring provisions of the provincial agreement and awarded damages in excess of $45,000 to the union in trust for the members who had been denied an opportunity to work.

Terrence Broome sought from the Weekly Court leave to make an expedited application for judicial review of both Board decisions to that Court and a stay of the decisions. The primary grounds for judicial review were that the Board had discriminated against him because of his status as a member of the Broome family and his association with family members, thereby violating the equality and freedom of association provisions of the *Charter*.

On February 26, 1987 the Weekly Court found that the applicant did not have a strong *prima facie* case in the main application, and therefore dismissed the stay.

The applications for leave and for the judicial review itself are scheduled to be heard by the Weekly Court on April 13, 1987.

Colautti Construction Ltd.
Supreme Court of Ontario, Divisional Court,
November 20, 1986; 86 CLLC ¶14,065; 2 A.C.W.S. (3d) 127

The operating engineers were seeking certification for Colautti Construction, and an employees association had intervened, seeking certification of itself. At the hearing, the employees association had as evidence receipts for dues paid, but no applications for membership. The association sought to call oral evidence to prove that applications had been received at the same time as the money was paid and receipts were issued. The Board, noting that oral evidence could only be used to substantiate ambiguous documents and not to establish membership, held that the association had not established representation rights and therefore had no status in the proceedings. The Board then declined a request that it refuse to hear the union's application on the grounds that it should be barred, as it had been filed before a prior application had been dismissed.

Colautti brought an application for judicial review, requesting that the Board's decision be quashed and the Board be prohibited from continuing with the union's application or that the Court order the Board to hear the certification application of the employees association. The grounds were breaches of natural justice and errors of law in refusing to bar the union's application and in excluding the membership evidence of the association.

The Board subsequently issued its decision certifying the union, having denied a request for a stay pending the judicial review. Colautti then amended its application to seek review also of the latter Board decision, and further requested a stay, and the employees association brought its own application for judicial review.

The stay application was dismissed by the Divisional Court in November, 1985.

The applications for judicial review, heard and reserved on May 14 to 16, 1986, were dismissed in the Divisional Court's majority decision dated November 20, 1986. The Court ruled that the failure to allow oral evidence was neither a denial of natural justice nor an error of law going to the Board's jurisdiction, nor was the failure to bar the union's application patently unreasonable. The dissenting judge would have found the denial of status to be a patently unreasonable interpretation of the *Labour Relations Act*.

Consolidated Bathurst Packaging Ltd.
Ontario Court of Appeal,
September 4, 1986; 56 O.R. (2d) 513; 31 D.L.R. (4th) 444; 21 Admin. L.R. 180; 86 CLLC ¶14,048; 39 A.C.W.S. (2d) 415
Supreme Court of Canada,
March 26, 1987; Unreported

The Board had issued a decision wherein it found that Consolidated Bathurst had violated section 15 of the *Labour Relations Act* by failing to bargain in good faith.

Consolidated Bathurst sought reconsideration by the Board of its decision on the ground that the Board had violated the principles of natural justice in that the panel which had heard the complaint had discussed a draft decision with the other members of the Board at a Full Board meeting. When the reconsideration was denied, Consolidated Bathurst applied for judicial review on the same ground.

The majority of the Divisional Court held in May 1985 that the Board's actions violated the fundamental principle that "he who hears must decide". The Court expressed concern that persons at the Full Board meeting who had not heard the case might have participated in the decision or at least have been seen to have done so. It therefore quashed the decision with costs against the Board and remitted the matter to the Board for its reconsideration.

Dissenting from the majority, one judge held that it was appropriate and even desirable for such discussions to take place as long as no one participated in the final decision except the panel who had heard the case. He would have dismissed the application.

The Board and the union sought and obtained leave to appeal in June, 1985.

In its judgement dated September 4, 1986 the Court of Appeal, adopting the reasoning of the dissenting judge of the Divisional Court, noted that it was important that Board panels consider the effect of their decisions upon the labour relations community, and that as part of their research on that issue, they ought to consult with other expert Board members. The Court held that such consultations are appropriate provided that if any new evidence was put forward or new ideas were raised, the parties would be recalled and allowed to give further submissions and provided that the final decision was made by only the panel which had heard the case. The Court of Appeal therefore overturned the Divisional Court majority decision and dismissed the judicial review application.

Consolidated Bathurst brought an application for leave to appeal to the Supreme Court of Canada, which was heard on December 8, 1986 and granted on March 26, 1987. This appeal is pending.

Great Lakes Fishermen and Allied Workers' Union
Supreme Court of Ontario, Weekly Court,
September 5, 1986; 56 O.R. (2d) 781; 31 D.L.R. (4th) 765; 1 A.C.W.S. (3d) 214

The union had filed numerous applications for certification with pre-hearing votes of fishermen on boats, and the Board had directed the votes.

Nine of the employers named in the certification applications then applied to Weekly Court for a determination of the constitutional validity of the Board's considering the certification application and its decision directing a vote and for a declaration that fishermen on boats came within the federal legislative jurisdiction. The applicants claimed that their businesses were part of "sea coast and inland fisheries" and therefore came within the federal legislative authority granted in

the *British North America Act*. The provincial government had no authority, they claimed, to legislate with respect to the industrial relations of persons engaged in an undertaking within the federal authority, particularly where the federal legislature had occupied the field by enacting the *Fisheries Act* and the *Canada Labour Code*.

On September 5, 1986, the Weekly Court dismissed the application as premature, since the Board itself had not yet heard evidence and ruled on the constitutional issue. The Court would not interfere with the expertise of the Board to establish its own jurisdiction, even with respect to constitutional issues.

The nine employers are bringing an appeal to the Court of Appeal to have the Weekly Court order set aside and a declaration made that their businesses are federal undertakings. The grounds are that the Court erred in finding the application to be premature, that there might be disputed facts upon which evidence must be led, and that no declaration can be granted where judicial review is available. This appeal is pending.

Meanwhile, the Board proceeded to consider the constitutional issue which the employers had also raised in their replies to the certification applications. In its decision dated December 9, 1986 the Board found that the businesses, being intra-provincial and not integral to Parliament's regulation of federal undertakings, were within the Board's jurisdiction and the certification applications should therefore proceed.

The Ombudsman of Ontario
Ontario Court of Appeal,
December 17, 1986; 2 A.C.W.S. (3d) 271

The Board had refused requests by the Ombudsman for information respecting the merits of Board decisions on the ground that the Ombudsman had authority to investigate only administrative activities of the Board.

The Ombudsman sought a declaration from the Divisional Court that it had jurisdiction to investigate all activities of the Board, including the exercise of its quasi-judicial functions.

The Divisional Court granted the declaration on September 5, 1985, citing the Court of Appeal decision in *Re Ombudsman of Ontario and Health Disciplines Board of Ontario, et al.*, where it was determined that section 15 of the *Ombudsman Act* gave the Ombudsman the authority to investigate the merits of quasi-judicial decisions. The Court noted that the Ombudsman could not overrule Board decisions, but merely expose them to political scrutiny.

The Board sought and obtained in March, 1986 leave to appeal the Divisional Court decision to the Court of Appeal.

On December 17, 1986 the Court of Appeal upheld the Divisional Court decision, confirming that the *Health Disciplines Board* case had decided the issue, and dismissed the appeal with costs against the Board. In response to the Board's arguments that different considerations had to apply in the labour relations context, the Court stated that in the face of the clear wording of the *Ombudsman Act*, only the legislature, and not the courts, could exempt particular tribunals from investigation of the merits of their decisions. The Court did confirm that Board members and employees would not be obliged to provide information to the Ombudsman if doing so would breach any of the non-disclosure provisions of the *Labour Relations Act*.

The Board's application for leave to appeal the Court of Appeal decision to the Supreme Court of Canada is scheduled to be heard May 5, 1987.

Plaza Fiberglas Manufacturing Ltd.
Supreme Court of Ontario, Divisional Court,
April 17, 1986; 86 CLLC ¶14,031; 37 A.C.W.S. (2d) 68

The union had applied for certification and a single employer declaration respecting Plaza Fiberglas and another company and complained of intimidation by the employer. When the employer refused to post notices to the employees of these proceedings, the Board authorized a Labour Relations Officer to enter and post the notices. Plaza Fiberglas then refused to allow the Labour Relations Officer on the premises, and when he finally gained entry with the assistance of a Sheriff's Officer, the notice had not been posted.

When the matter came on for hearing, Plaza Fiberglas raised a preliminary objection that the Board had lost jurisdiction to deal with these matters, as its actions gave the appearance of a reasonable apprehension of bias in favour of the union. The Board in its decision rejected these objections and directed the employer to make filings and to post, and authorized two Labour Relations Officers to check that the postings were made and maintained.

Plaza Fiberglas and the other company brought an application for judicial review seeking to quash the Board's decision and prohibit it from proceeding further. An application for a stay of the Board's order was dismissed and the main application was withdrawn as part of a settlement in which both companies consented to the section 1(4) declaration and the certification.

Meanwhile, the union requested that the Board state a case to Divisional Court respecting the employer's failure to comply with the Board's directions, and the Board decided to consent to state the case, seeking that Plaza Fiberglas and the related company be punished as though they had been in contempt of court.

The Divisional Court in its decision dated April 17, 1986 found that the employer's course of action was intended to delay and frustrate the certification process. While a substantial fine was appropriate as a general deterrent, there were mitigating factors, including the acknowledgement of guilt, albeit at the last minute, and a term of the settlement (referred to above) wherein the union agreed to seek no greater penalty than a fine of $10,000 with respect to the stated case. The Court ordered Plaza Fiberglas and the related company to pay $4,000 each to the Supreme Court of Ontario.

Ports International Ltd.
Supreme Court of Ontario, Divisional Court,
April 24, 1986; 54 O.R. (2d) 650; 27 D.L.R. (4th) 247; 86 CLLC ¶14,036; 36 A.C.W.S. (2d) 432
Ontario Court of Appeal,
June 23, 1986; Unreported

In this certification application a petition was filed which had been originated by "working supervisors", some of whom had pressured employees to sign the petition. The Board found that it was not satisfied that the petition was voluntary, and therefore did not take it into account and certified the union on the basis of the membership evidence.

Applications for judicial review were brought by both the petitioners and Ports on numerous grounds, including: denial of natural justice by depriving the petitioners of the opportunity to oppose the application; errors of law, including failing to determine whether the petitioners actually signed voluntarily and finding a special relationship between the originators of the petition and management absent any evidence; and violations of the freedoms of association and of expression and the equality provisions of the *Charter*.

Ports then brought an application for a stay of the Board's decision, which the Divisional Court dismissed as disclosing no strong *prima facie* case.

The two applications for judicial review were heard together, and on April 24, 1986 the Divisional Court issued its decision dismissing both applications. The Court held that the Board was entitled to conclude that there might be a perception of management involvement without any actual evidence of perception, and that therefore failing to invite submissions on the issue of actual perception was not a denial of natural justice. None of the *Charter* arguments succeeded. The Court ruled that the right to freedom of expression does not protect against all adverse effects of expressing oneself, and the effect here was prescribed by law in any event, and that freedom of association was protected, not violated, by the Board's ensuring that the petition was voluntary, and that there had been no denial of equal treatment.

Both Ports and the petitioners sought leave to appeal the Divisional Court decision, and were denied leave by the Court of Appeal on June 23, 1986.

Michael Ross
Supreme Court of Ontario, Divisional Court,
April 16, 1986; Unreported

Michael Ross filed a complaint of bad faith representation against the union respecting its failure to represent him in a grievance of his discharge. The Board refused to hear evidence or argument on a number of particulars, either because of delay or because they did not come within section 68, and also refused Ross's request for an adjournment to retain counsel since he had had ample opportunity to do so already. The Board found that there was no evidence that the union's decision not to proceed to arbitration respecting the grievance was arbitrary, discriminatory or motivated by bad faith, and therefore dismissed the complaint.

Ross applied for judicial review, seeking that the decision be set aside and that either an arbitration be ordered or the matter be remitted to the Board. Ross alleged that the Board had erred in interpreting and applying section 68 and that its decision was patently unreasonable.

The application for judicial review was dismissed by the Divisional Court on April 16, 1986. The Court held that the union was not necessarily discriminating and therefore the Board's decision was not patently unreasonable.

Shortly thereafter, Ross filed a notice of motion for leave to appeal the Divisional Court decision to the Court of Appeal. This application is pending.

Windsor Western Hospital
Supreme Court of Ontario, Divisional Court,
August 5, 1986; 56 O.R. (2d) 297; 30 D.L.R. (4th) 573; 22 Admin. L.R. 126; 86 CLLC ¶14,051
Ontario Court of Appeal
February 16, 1987; Unreported

The Board had issued a decision finding that because a complainant employee had been forced to resign at a meeting with her employer in which she had had no representation from her union, the employer and union had both violated the *Labour Relations Act*. A grievance brought by the union prior to the Board hearing had been dismissed with no hearing on the merits because the arbitrators had determined that the resignation had been voluntary and that therefore they had no jurisdiction to hear the grievance. The Board, in considering the effect of the dismissal of the grievance, determined that under its section 89 remedial powers it could override a final and binding arbitration award, although it should not do so lightly. It held that as the Board was aware

of violations which the arbitrators had not considered, it was not bound by the arbitration award. By way of remedy to the violations the Board directed that the parties recommence an arbitration on the merits as to whether the employer had just cause for termination of the complainant.

Windsor Western Hospital sought judicial review of the Board decision on the ground that the Board should not have overruled the arbitration award.

The majority of the Divisional Court in its judgment of August 5, 1986 held that the broad remedial powers given under section 89 did not authorize the Board to override an arbitration award which was final and binding not only under the terms of the collective agreement, but also under section 44 of the *Labour Relations Act*. It concluded that the Board therefore had no jurisdiction to order recommencement of a grievance arbitration which had been previously dismissed. The majority ordered that the decision of the Board be set aside except with respect to the complaint against the union. Therefore, while the finding of a violation against the union was upheld, the entire remedy was set aside, as was apparently the finding of a violation against the employer.

In a dissenting opinion, one judge agreed that the Board could not order a recommencement of the arbitration; however, he would have found that the Board's remedy did not in fact amount to a recommencement of the arbitration, despite the use of such terminology by the Board. He would have found that the Board was merely directing the trial of an issue with respect to just cause so that it would have the information which it would require in order to determine the appropriate remedy. He would therefore have dismissed the judicial review application.

The employee brought an application seeking leave to appeal to the Court of Appeal, which was heard and dismissed on February 16, 1987.

VII CASELOAD

In fiscal year 1986-87, the Board received a total of 3,577 applications and complaints, an increase of 11 percent over the intake of 3,236 cases in 1985-86. 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 and complaints of contravention of the Act each increased by less than one percent over last year, and referrals of grievances under construction industry collective agreements increased by 16 percent. The total of all other types of cases increased by 34 percent. (Tables 1 and 2).

In addition to the cases received, 1,009 were carried over from the previous year, for a total caseload of 4,586 in 1986-87. Of the total caseload, 3,371, or 74 percent, were disposed of during the year; proceedings in 313 were adjourned sine die* (without a fixed date for further action) at the request of the parties; and 902 were pending in various stages of processing at March 31, 1987.

The total number of cases processed during the year produced an average workload of 306 cases for the Board's full-time chair and vice-chair, and the total disposition represented an average output of 225 cases.

Labour Relations Officer Activity

In 1986-87, the Board's labour relations officers were assigned a total of 2,186 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 48 percent of the Board's total caseload, and included 601 certification applications, 39 cases concerning the status of individuals as employees under the Act, 705 complaints of alleged contraventions of the Act, 762 grievances under construction industry collective agreements, and 79 complaints under the Occupational Health and Safety Act. (Table 3).

The labour relations officers completed activity in 1,782 of the assignments, obtaining settlements in 1,589, or 89 percent. They referred 193 cases to the Board for decisions; proceedings were adjourned sine die in 205 cases; and settlement efforts were continuing in the remaining 199 cases at March 31, 1987.

Labour relations officers were also successful in having hearings waived by the parties in 327, or 80 percent, of 411 certification applications assigned for this purpose.

Representation Votes

In 1986-87, the Board's returning officers conducted a total of 262 representation votes among employees in one or more bargaining units. Of these votes, 252 were concluded in cases that were disposed of during the year, and in 10 a final decision closing the case had not been rendered by the Board by March 31, 1987. Of the 262 votes concluded, 196 involved certification applications, 64 were held in applications for termination of existing bargaining rights, and 2 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, 154 involved a single union on the ballot; 41 involved two unions, and one involved three unions. Of the two-union and three-union votes, 98 percent entailed attempts to replace incumbent bargaining agents.

A total of 17,432 employees were eligible to vote in the 262 elections that were concluded, of whom 13,248, or 76 percent, cast ballots. Of those who participated, 49 percent voted in favour of union representation. In the 196 certification elections, 73 percent of the eligible voters cast ballots, with 54 percent of those who participated voting for union representation. In the 154 elections that involved a single union, 68 percent of the eligible voters cast ballots, of whom 52 percent voted for union representation. In the two-union elections 85 percent of the eligible voters cast ballots, with 59 percent of the participants voting for union representation. In the election involving three unions, 97 percent of the eligible voters cast ballots for union representation.

In the 64 votes in applications for termination of bargaining rights, 92 percent of the eligible voters cast ballots, with only 27 percent of those who participated voting for the incumbent unions. Of the 216 employees who cast ballots in the elections held in successor employer cases, 118 or 55 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 21 requests dealt with by the Board during the fiscal year, votes were conducted in 15 situations, settlements were reached in 4 cases before a vote was taken, and 2 cases were withdrawn.

In the 15 votes held, employees accepted the employer's offer in 5 cases by 143 votes in favour to 38 against, and rejected the offer in 10 cases by 300 votes against to 125 in favour.

Hearings

The Board held a total of 1,476 hearings and continuation of hearings in 1,667, or 36 percent of the 4,586 cases processed during the fiscal year. This was an increase of 170 sittings from the number held in 1985-86. Seventy-eight of the hearings were conducted by vice-chair sitting alone, compared with 79 in 1985-86.

Processing Time

Table 7 provides statistics on the time taken by the Board to process the 3,371 cases disposed of in 1986-87. 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 50 days was taken to proceed from filing to disposition for the 3,371 cases that were completed in 1986-87, compared with 43 days in 1985-86. Certification applications were processed in a median of 36 days, compared with 29 in 1985-86; complaints of contravention of the Act took 71 days, compared with 57 in 1985-86; and referrals of construction industry grievances

required 15 days, the same as in 1985-86. The median time for the total of all other cases increased to 106 days from 64 in 1985-86.

More than 63 percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 76 percent for certification applications, 56 percent for complaints of contraventions of the Act, 83 percent for referrals of construction industry grievances, and 40 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 790 from 411 in 1985-86.

Certification of Bargaining Agents

In 1986-87, the Board received 1,034 applications for certification of trade unions as bargaining agents of employees, an increase of 9 cases over 1985-86. (Tables 1 and 2).

The applications were filed by 132 trade unions, including 69 employee associations. Fourteen of the unions, each with more than 20 applications, accounted for 74 percent of the total filings: Labourers (156 cases), Carpenters (57 cases), Public Employees (CUPE) (80 cases), Food and Commercial Workers (56 cases), Service Employees International (54 cases), International Operating Engineers (72 cases), Teamsters (36 cases), United Steelworkers (61 cases), Canadian Auto Workers (44 cases), Hotel Employees (22 cases), Ontario Public Service (37 cases), Ontario Nurses Association (37 cases), Textile Processors (23 cases) and Plumbers (25 cases). In contrast, 73 percent of the unions filed fewer than 5 applications each, with the majority making just one application. These unions together accounted for 9 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 73 percent of the applications received, concentrated in construction (287 cases), health and welfare services (147 cases), accommodation and food services (57 cases), retail trade (38 cases), education and related services (49 cases), wholesale trade (25 cases), and transportation (31 cases). These seven groups comprised 85 percent of the total non-manufacturing applications. Of the 285 applications involving establishments in manufacturing industries, 70 percent were in eight groups: food and beverage (55 cases), metal fabricating (32 cases), rubber and plastic products (24 cases), non-metallic minerals (16 cases), transportation equipment (17 cases), machinery (24 cases), furniture and fixtures (16 cases) and other manufacturing (16 cases).

In addition to the applications received, 261 cases were carried over from last year, making a total certification caseload of 1,295 in 1986-87. Of the total caseload, 1,006 were disposed of, proceedings were adjourned in 15 cases, and 274 cases were pending at March 31, 1987. Of the 1,006 dispositions, certification was granted in 655 cases including 49 in which interim certificates were issued under section 6(2) of the Act, and 11 that were certified under section 8; 200 cases were dismissed; proceedings were terminated in 6 cases; and 145 cases were withdrawn. The certified cases represented 65 percent of the total dispositions.

Of the 861 applications that were either certified, dismissed or terminated, final decisions in 178 cases were based on the results of representation votes. of the 188 votes conducted, 147 involved a single union on the ballot; 40 were held between two unions; and one involved three unions. Applicants won in 98 of the votes and lost in the other 90. (Table 6).

A total of 15,268 employees were eligible to vote in the 188 elections, of whom 11,025 or 72 percent cast ballots. In the 98 votes that were won and resulted in certification, 5,222 or 61 percent of the 8,584 employees eligible to vote cast ballots, and of these voters 4,203 or 81 percent favoured union representation. In the 90 elections that were lost and resulted in dismissals, 5,803

or 87 percent of the 6,684 eligible employees participated, and of these only 35 percent voted for union representation.

Size and Composition of Bargaining Units: Small units continued to be the predominant pattern of union organizing efforts through the certification process in 1986-87. The average size of the bargaining units in the 655 applications that were certified was 36 employees, compared with 33 in 1985-86. Units in construction certifications averaged 8 employees, compared with 7 in 1985-86; and in non-construction certifications they averaged 44 employees, compared with 38 in 1985-86. Seventy-four percent of the total certifications involved units of fewer than 40 employees, and about 37 percent applied to units of fewer than 10 employees. The total number of employees covered by the 655 certified cases increased to 23,536 from 22,937 in 1985-86. (Table 10).

Of the employees covered by the applications certified, 8,166 or 35 percent, were in bargaining units that comprised full-time employees or in units that excluded employees working 24 hours or less a week. Units composed of employees working 24 hours or less a week accounted for 7,024 employees, found mostly in education and health and welfare services and represented mainly by teachers unions and the Ontario Nurses Association. Full-time and part-time employees were represented in units covering 8,346 employees, including units that did not specifically exclude employees working 24 hours or less a week. (Tables 12 and 13).

More than 60 percent of the employees, 14,367, were employed in production, service and related occupations; and 1,002 were in office, clerical and technical occupations, mainly health and welfare services. Professional employees, found mostly in education and health and welfare services, accounted for 5,257 employees; a small number, 415 employees, were in sales classifications in retail trade; and 2,495 were in units that included employees in two or more classifications. (Tables 14 and 15).

Disposition Time: A median time of 29 calendar days was required to complete the 655 certified cases from receipt to disposition. For non-construction certifications the median time was 29 days, and for construction certifications the median time was 22 days. (Table 11).

Seventy-nine percent of the 655 certified cases were disposed of in 84 days (3 months) or less, 72 percent took 56 days (2 months) or less, 40 percent required 28 days (one month) or less, and 18 percent were processed in 21 days (3 weeks) or less. Eighty cases required longer than 168 days (6 months) to process, compared with 79 in 1985-86.

Termination of Bargaining Rights

In 1986-87, the Board received 171 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions. In addition, 64 cases were carried over from 1985-86.

Of the total cases processed, bargaining rights were terminated in 100 cases, 50 cases were dismissed, 27 were withdrawn, 3 cases were adjourned sine die, proceedings were terminated in 3 cases, and 41 cases were pending on March 31, 1987.

Unions lost the right to represent 2,973 employees in the 100 cases in which termination was granted, but retained bargaining rights for 2,123 employees in the 77 cases that were either dismissed or withdrawn.

Of the 150 cases that were either granted or dismissed, dispositions in 63 were based on the results of representation votes. A total of 2,614 employees were eligible to vote in the 63 elections that were held, of whom 2,407 or 92 percent cast ballots. Of those who cast ballots, 650 voted for continued representation by unions and 1,757 voted against. (Table 6).

Declaration of Successor Trade Union

In 1986-87, the Board dealt with 12 applications for declarations under section 62 of the Act, on the bargaining rights of successor trade unions resulting from a merger or transfer of jurisdiction, compared to 40 in 1985-86.

Affirmative declarations were issued by the Board in 6 cases, 1 case was withdrawn, 1 case was dismissed and 4 cases were pending at March 31, 1987.

Declaration of Successor or Common Employer

In 1986-87, the Board dealt with 430 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 20 cases, 291 cases were either settled or withdrawn by the parties, 15 cases were dismissed, proceedings were terminated or adjourned sine die in 28 cases, and 76 cases were pending at March 31, 1987.

Accreditation of Employer Organizations

Five 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. Two cases were granted, affecting 128 firms employing 723 workers; and three cases were pending at March 31, 1987.

Declaration and Direction of Unlawful Strike

In 1986-87, the Board dealt with two applications seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. One case was settled, and proceedings were adjourned sine die in one case.

Nineteen applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 5 cases, 1 case was dismissed, 5 were withdrawn or settled, proceedings were terminated or adjourned sine die in 7 cases, and 1 case was pending at March 31, 1987.

Forty applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. A direction was issued in 1 case, 3 cases were dismissed, 20 were withdrawn or settled, proceedings were terminated or adjourned sine die in 12 cases, and 4 were pending at March 31, 1987.

Declaration and Direction of Unlawful Lock-out

Three applications were processed in 1986-87, seeking declarations under section 93 of the Act against alleged unlawful lock-out by construction employers. Proceedings were terminated in 2 cases and one was pending at March 31, 1987.

Ten applications were also processed in seeking directions under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. Directions were issued in 2 cases, 4 cases were dismissed, 3 cases were settled and proceedings were adjourned sine die in one case.

Consent to Prosecute

In 1986-87, the Board dealt with 11 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 11 applications processed, which included three carried over from the previous year, 8 were disposed of, one was adjourned sine die and two were pending at March 31, 1987. Of the cases disposed of, one case was granted, three cases were dismissed and four were settled or withdrawn.

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 1986-87, the Board received 862 complaints under this section, an increase of 7 cases over the 855 filed in 1985-86. 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, 305 cases were carried over from 1985-86. Of the 1,167 total processed, 891 was disposed of, proceedings were adjourned sine die in 53 cases, and 223 cases were pending at March 31, 1987.

In 702 or 79 percent of the 891 dispositions, voluntary settlements and withdrawals of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 51 cases, 119 cases were dismissed, and proceedings were terminated in the remaining 19 cases.

In the cases settled by labour relations officers and those in which Board awards were made, compensation amounting to about $7,759,839* was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 51 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay compensation to 97 employees for wages and benefits lost in a specified period, and 68 of these employees were also ordered reinstated.

In addition, employers in 18 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 11 other cases.

Construction Industry Grievances

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

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* Includes a $7,000,000 endorsement by the Board as settlement for 263 cases involving sections 63 1(4) and 89.

In 1986-87, the Board received 865 cases under this section, an increase of 16 percent from the 745 filed in 1985-86. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and and hiring arrangements in the collective agreement.

In addition to the cases received, 126 were carried over from 1985-86. Of the total 991 processed, 664 were disposed of, proceedings were adjourned sine die in 184 cases, and 143 cases were pending at March 31, 1987.

In 589 or 89 percent of the 664 dispositions, voluntary settlements and withdrawals of the grievance were obtained by labour relations officers, awards were made by the Board in 45 cases, 15 cases were dismissed, and proceedings were terminated in the remaining 15 cases. (Table 4).

Payments totalling about $1,319,044 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

Right of Access

In 1986-87, the Board dealt with fourteen applications in which the union sought access to the employer's property under section 11 of the Act. Access was granted in one case and the other 13 cases were pending at March 31, 1987.

Religious Exemption

Twenty 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, 12 cases were dismissed and one case was withdrawn.

Early Termination of Collective Agreements

Sixteen applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 12 cases, one case was settled and three were pending at March 31, 1987.

Union Financial Statements

Seven 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. Two cases were dismissed, one case was settled and proceedings were terminated in four cases.

Jurisdictional Disputes

Forty-six complaints were dealt with under section 91 of the Act, involving union work jurisdiction. Two cases were dismissed, seven cases were settled or withdrawn, proceedings were terminated or adjourned sine die in nine cases, and 28 cases were pending at March 31, 1987.

Determination of Employee Status

The Board dealt with 110 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-eight cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by

the Board in 10 cases, in which 19 of the 30 persons in dispute were found to be employees under the Act. Seven cases were dismissed, proceedings were terminated or adjourned sine die in 8 cases, and 47 cases were pending at March 31, 1987.

Referrals by Minister of Labour

In 1986-87, the Board dealt with 5 cases referred by the Minister under section 107 of the Act for opinions or 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. Proceedings were terminated in 2 cases, one case was settled and 2 cases were pending at March 31, 1987.

One case was referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and employer agencies in a bargaining relationship in the industrial, commercial and institutional sector of the construction industry. The case was pending at March 31, 1987.

Trusteeship Reports

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

First Agreement Arbitration

On May 26, 1986, section 40a was added to the *Labour Relations Act* to enable first collective agreements to be settled by arbitration. The process involves two stages: the parties must first apply to the Board for a direction to arbitrate; then if the direction is granted, they may choose to have the settlement arbitrated by the Board or privately by a board of arbitration.

Up to the end of the fiscal year, the Board received 34 applications for directions to settle first agreements by arbitration. Directions were issued in 4 cases, 4 cases were dismissed, 18 cases were settled or withdrawn, proceedings were terminated or adjourned sine die in 4 cases, and 4 cases were pending at March 31, 1987. (Table 1).

Of the 4 cases in which directions were issued, the Board was requested to arbitrate a settlement of the first agreement in 3 cases. The arbitrations were completed and collective agreements awarded in all 3 cases by March 31, 1987. (Table 1).

Occupational Health and Safety Act

In 1986-87, the Board received 85 complaints under section 24 of the Occupational Health and Safety Act alleging wrongful discipline or discharge of employees for acting in compliance with this Act. Twenty-five cases were carried over from 1985-86.

Of the total 110 cases processed, 56 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Eight cases were granted and 10 were dismissed by the Board, proceedings were terminated or adjourned sine die in 4 cases, and the remaining 32 were pending at March 31, 1987.

Colleges Collective Bargaining Act

Ten complaints were dealt with under section 78 of the *Colleges Collective Bargaining Act*, alleging contraventions of the Act. Two cases were settled and 3 were dismissed by the Board, proceedings were adjourned sine die in two cases and 5 were pending at March 31, 1987.

One application was dealt with under section 82 for a decision on the status of individuals as employees under the Act. The case was settled.

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 Reports*: A monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

A Guide to the Labour Relations Act: A booklet explaining in layman'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 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 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 Reports 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 1986-87, the Board employed a total of 119 persons on a full-time basis. The Board has two types of employees. The Chair, Alternate Chair, Vice-Chairs 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 $6,850,500.

X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1986-87.

Table 1

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1986-87

Type of Case	Caseload			Disposed of, Fiscal Year 1986-87							
	Total	Pending April 1, 86	Received Fiscal Year 1986-87	Total	Granted*	Dismissed	Termi-nated	With-drawn	Settled	Sine Die	Pending March 31, 1987
Total	**4,586**	**1,009**	**3,577**	**3,371**	**933**	**448**	**68**	**693**	**1,229**	**313**	**902**
Certification of Bargaining Agents	1,295	261	1,034	1,006	655	200	6	145	—	15	274
Declaration of Termination of Bargaining Rights	235	64	171	191	100	50	3	27	11	3	41
Declaration of Successor Trade Union	12	1	11	8	6	1	—	1	—	—	4
Declaration of Successor Employer or Common Employer Status	430	143	287	329	20	15	3	35	256	25	76
Accreditation	5	2	3	2	2	—	—	—	—	—	3
Declaration of Unlawful Strike	2	—	2	1	—	—	—	—	1	1	—
Declaration of Unlawful Lockout	3	1	2	2	—	—	2	—	—	—	1
Direction respecting Unlawful Strike	59	4	55	40	6	4	5	11	14	14	5
Direction respecting Unlawful Lockout	10	2	8	9	2	4	—	—	3	1	—
Consent to Prosecute	11	3	8	8	1	3	—	1	3	1	2
Contravention of Act	1,167	305	862	891	51	119	19	219	483	53	223
Right of Access	14	—	14	1	1	—	—	—	—	—	13
Exemption from Union Security Provision in Collective Agreement	20	3	17	20	7	12	—	1	—	—	—
Early Termination of Collective Agreement	16	5	11	13	12	—	—	—	1	—	3
Trade Union Financial Statement	7	4	3	7	—	2	4	—	1	—	—
Jurisdictional Dispute	46	23	23	12	—	2	3	6	1	6	28

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1986-87

	Caseload			Disposed of, Fiscal Year 1986-87							
Type of Case	Total	Pending April 1, 86	Received Fiscal Year 1986-87	Total	Granted*	Dismissed	Termi-nated	With-drawn	Settled	Sine Die	Pending March 31, 1987
Total	**4,586**	**1,009**	**3,577**	**3,371**	**933**	**448**	**68**	**693**	**1,229**	**313**	**902**
Referral on Employee Status	110	36	74	58	10	7	3	10	28	5	47
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	5	—	5	3	—	—	2	—	1	—	2
Referral of Construction Industry Grievance	991	126	865	664	45	15	15	220	369	184	143
Referral from Minister on Construction Bargaining Agency	1	1	—	—	—	—	—	—	—	—	1
Complaint under Occupational Health and Safety Act	110	25	85	75	8	10	1	13	43	3	32
First Agreement Arbitration Direction	34	—	34	28	4	4	2	4	14	2	4
First Agreement Arbitration Proceedings	3	—	3	3	3	—	—	—	—	—	—

* 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 1982-83 to 1986-87

	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
Type of Case	**Total**	**1982-83**	**1983-84**	**1984-85**	**1985-86**	**1986-87**	**Total**	**1982-83**	**1983-84**	**1984-85**	**1985-86**	**1986-87**
Total	**16,219**	**2,762**	**3,135**	**3,509**	**3,236**	**3,577**	**14,391**	**2,445**	**2,797**	**2,866**	**2,912**	**3,371**
Certification of bargaining agents	4,836	758	871	1,148	1,025	1,034	4,609	767	817	985	1,034	1,006
Declaration of termination of bargaining rights	720	115	124	155	155	171	704	120	119	139	135	191
Declaration of successor trade union or employer	525	47	22	193	88	175	476	51	19	131	85	190
Declaration of common employer status	559	41	174	104	117	123	435	31	118	58	81	147
Accreditation	8	1	1	3	—	3	7	3	—	1	1	2
Declaration of unlawful strike or lockout	22	3	7	2	6	4	19	2	3	6	5	3
Directions respecting unlawful strike or lockout	293	76	63	39	52	63	224	61	47	31	36	49
Consent to prosecute	63	18	15	11	11	8	56	17	12	11	8	8
Contravention of Act	4,233	724	872	920	855	862	3,839	674	787	729	758	891
Referral of construction industry grievance	4,016	831	824	751	745	865	3,207	577	732	620	614	664
Miscellaneous	907	148	162	183	182	232	784	142	143	155	155	189
First Agreement Arbitration Direction	34	—	—	—	—	34	28	—	—	—	—	28
First Agreement Arbitration Proceedings	3	—	—	—	—	3	3	—	—	—	—	3

Table 3

**Labour Relations Officer Activity in Cases Processed*
Fiscal Year 1986-87**

Type of Case	Total Cases Assigned	Cases in Which Activity Completed					
		Settled			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
Total	**2,186**	**1,782**	**1,589**	**89.2**	**193**	**205**	**199**
Certification	601	593	561	94.6	32	3	5
Interim certificate	40	34	34	100.0	—	3	3
Pre-hearing application	95	93	71	76.3	22	—	2
Other application	466	466	456	97.9	10	—	—
Contravention of Act	705	525	438	83.4	87	31	149
Construction industry grievance	762	582	522	89.7	60	163	17
Employee status	39	33	24	72.7	9	5	1
Occupational Health and Safety Act	79	49	44	89.8	5	3	27

* 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 1986-87**

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
Total	**1,688**	**1,385**	**82.0**
Contravention of Act	891	702	78.7
Construction industry grievance	664	589	88.7
Employee status	58	38	65.5
Occupational Health and Safety Act	75	56	74.6

* 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 1986-87

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
Total	**262**	**17,432**	**13,248**	**6,542**
Certification	196	14,581	10,627	5,775
Pre-hearing cases				
One union	69	6,105	3,567	1,975
Two unions	28	3,751	3,177	1,836
Three unions	1	61	59	59
Construction cases				
One union	5	62	55	12
Two unions	3	29	29	27
Regular cases				
One union	80	4,233	3,451	1,660
Two unions	10	340	289	206
Termination of Bargaining Rights	64	2,612	2,405	649
Successor Employer	2	239	216	118

* 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 1986-87

	Number of Votes			Eligible Votes			All Ballots Cast			Ballots Cast in Favour of Unions		
					In Votes			In Votes			In Votes	
Type of Case	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
Total	**252**	**103**	**149**	**17,913**	**8,746**	**9,167**	**13,462**	**5,372**	**8,090**	**6,894**	**4,299**	**2,595**
Certification	188	98	90	15,268	8,584	6,684	11,025	5,222	5,803	6,220	4,203	2,017
Pre-hearing cases												
One union	57	39	18	6,689	4,198	2,491	4,005	1,932	2,073	2,311	1,605	706
Two unions	27	20	7	3,444	2,108	1,336	2,890	1,700	1,190	1,768	1,419	349
Three unions	1	1	—	61	61	—	59	59	—	34	34	—
Construction cases												
One union	5	—	5	80	—	80	71	—	71	13	—	13
Two unions	3	2	1	29	25	4	29	25	4	16	14	2
Regular cases												
One union	85	27	58	4,625	1,948	2,677	3,682	1,308	2,374	1,896	990	906
Two unions	10	9	1	340	244	96	289	198	91	182	141	41
Termination of Bargaining Rights	63	4	59	2,614	131	2,483	2,407	120	2,287	650	72	578
Successor Employer	1	1	—	31	31	—	30	30	—	24	24	—

* 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 1986-87

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	**3,371**	**100.0**	**1,006**	**100.0**	**891**	**100.0**	**664**	**100.0**	**810**	**100.0**
Under 8 days	60	1.8	11	1.1	8	0.9	13	2.0	28	3.5
8-14 days	352	12.2	61	7.2	50	6.5	220	35.1	21	6.0
15-21 days	369	23.2	123	19.4	58	13.0	169	60.5	19	8.4
22-28 days	363	33.9	193	38.6	82	22.2	53	68.5	35	12.7
29-35 days	212	40.2	114	49.9	46	27.4	28	72.7	24	15.7
36-42 days	139	44.3	57	55.6	40	31.9	16	75.2	26	18.9
43-49 days	146	48.7	61	61.6	33	35.6	17	77.7	35	23.2
50-56 days	127	52.4	54	67.0	35	39.5	13	79.7	25	26.3
57-63 days	94	55.2	25	69.5	38	43.8	9	81.0	22	29.0
64-70 days	118	58.7	26	72.1	49	49.3	7	82.1	36	33.5
71-77 days	79	61.1	18	73.9	34	53.1	5	82.8	22	36.2
78-84 days	73	63.2	18	75.6	22	55.6	3	83.3	30	39.9
85-91 days	52	64.8	12	76.8	20	57.8	2	83.6	18	42.1
92-98 days	45	66.1	11	77.9	16	59.6	1	83.7	17	44.2
99-105 days	58	67.8	14	79.3	18	61.6	6	84.6	20	46.7
106-126 days	113	71.2	28	82.1	36	65.7	12	86.4	37	51.2
127-147 days	99	74.1	21	84.2	21	68.0	19	89.3	38	55.9
148-168 days	82	76.6	13	85.5	33	71.7	15	91.6	21	58.5
Over 168 days	790	100.0	146	100.0	252	100.0	56	100.0	336	100.0

Table 8

Union Distribution of Certification Applications Received and Disposed of Fiscal Year 1986-87

Union	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
All Unions	**1,034**	**1,006**	**655**	**206**	**145**
CLC* Affiliates	**476**	**480**	**322**	**97**	**61**
Aluminum Brick and Glass Workers	1	1	1	—	—
Auto Workers	11	17	8	7	2
Bakery and Tobacco Workers	1	3	2	1	—
Brewery and Soft Drink Workers	4	4	4	—	—
Canadian Auto Workers	44	35	29	3	3
Canadian Paperworkers	9	9	7	2	—
Canadian Public Employees (CUPE)	80	76	57	13	6
Clothing and Textile Workers	4	6	3	1	2
Communications-Electrical Wkrs.	3	3	1	1	1
Electrical Workers (IPBEW)	3	4	3	1	—
Electrical Workers (UE)	4	2	1	1	—
Energy and Chemical Workers	17	20	12	7	1
Food and Commercial Workers	56	54	35	12	7
Glass, Pottery & Plastic Wkrs.	—	1	1	—	—
Graphic Communications Union	4	5	3	2	—
Hotel Employees	22	24	13	7	4
Ladies Garment Workers	4	2	—	—	2
Machinists	6	4	1	1	2
Molders	1	1	—	1	—
Newspaper Guild	3	5	4	1	—
Office and Professional Employees	5	4	3	—	1
Ontario Public Service Employees	37	34	22	9	3
Postal Workers	3	3	3	—	—
Railway, Transport and General Workers	3	7	3	3	1
Retail Wholesale Employees	20	22	14	7	1
Rubber Workers	3	2	2	—	—
Service Employees International	54	54	33	7	14
Theatrical Stage Employees	2	1	1	—	—
Transit Union (Intl.)	1	2	1	—	1
Typographical Union	3	4	4	—	—
United Garment Workers	1	2	1	1	—
United Steelworkers	61	64	46	8	10
United Textile Workers	1	—	—	—	—
Woodworkers	5	5	4	1	—

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

Table 8 (Cont'd)

Non-CLC Affiliates	558	526	333	109	84
Allied Health Professionals	1	1	1	—	—
Asbestos Workers	—	1	1	—	—
Boilermakers	3	3	2	1	—
Bricklayers International	6	7	7	—	—
Carpenters	57	43	25	10	8
Canadian Educational Workers	—	1	—	1	—
Canadian Operating Engineers	1	2	1	1	—
Christian Labour Association	12	18	11	4	3
Electrical Workers (IBEW)	7	16	11	2	3
Food and Service Workers	—	2	2	—	—
Headwear Workers	2	1	—	1	—
Independent Local Union	69	53	30	13	10
International Operating Engineers	72	70	43	11	16
Labourers	156	117	77	19	21
Merchandizing Employees	1	1	—	—	1
Occasional Teachers Association	1	1	1	—	—
Ontario English Catholic Teachers	—	1	—	1	—
Ontario Nurses Association	37	31	24	4	3
Ontario Public School Teachers	4	12	11	1	—
Ontario Secondary School Teachers	5	12	6	5	1
Painters	16	15	10	2	3
Plant Guard Workers	8	8	4	2	2
Plasterers	1	2	—	2	—
Plumbers	25	29	16	10	3
Sheet Metal Workers	9	7	3	3	1
Structural Iron Workers	6	7	2	3	2
Teamsters	36	37	29	7	1
Textile Processors	23	27	15	6	2
Multi-union	—	1	1	—	—

Table 9

Industry Distribution of Certification Applications Received and Disposed of Fiscal Year 1986-87

Industry	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
All Industries	**1,034**	**1,006**	**655**	**206**	**145**
Manufacturing	**285**	**280**	**193**	**59**	**28**
Food, beverages	55	40	28	10	2
Tobacco products	1	—	—	—	—
Rubber, plastic products	24	25	20	3	2
Leather industries	1	3	2	1	—
Textile mill products	5	5	5	—	—
Knitting mills	—	—	—	—	—
Clothing industries	4	5	3	—	2
Wood products	9	8	5	1	2
Furniture, fixtures	16	18	12	4	2
Paper, allied products	10	10	8	—	2
Printing, publishing	14	15	11	4	—
Primary metal industries	9	7	5	1	1
Metal fabricating industries	32	36	28	6	2
Machinery, except electrical	24	28	20	7	1
Transportation equipment	17	16	7	4	5
Electrical products	15	17	10	5	2
Non-metallic mineral products	16	10	6	2	2
Petroleum, coal products	4	4	4	—	—
Chemical, chemical products	13	18	10	6	2
Miscellaneous manufacturing	16	15	9	5	1
Non-Manufacturing	**749**	**726**	**462**	**147**	**117**
Agriculture	—	—	—	—	—
Forestry	—	—	—	—	—
Fishing, trapping	8	8	—	6	2
Mining, quarrying	3	5	3	1	1
Transportation	31	30	11	4	15
Storage	2	2	2	—	—
Communications	2	2	—	—	2
Electric, gas, water	10	6	5	1	—
Wholesale trade	25	31	19	10	2
Retail trade	38	36	23	9	4
Finance, insurance	2	2	1	1	—
Real Estate	14	13	9	1	3
Education, related services	49	70	45	17	8
Health, welfare services	147	143	104	23	16
Religious organizations	—	—	—	—	—
Recreational services	4	5	3	2	—
Management services	6	8	5	3	—
Personal services	7	9	6	2	1
Accommodation, food services	57	53	28	16	9
Other services	30	29	22	—	7

Table 9 (Cont'd)

Federal government	—	—	—	—	—
Provincial government	—	—	—	—	—
Local government	27	26	17	4	5
Other government	—	—	—	—	—
Construction	287	248	159	47	42

* Includes cases that were terminated.

Table 10

Employees Covered by Certification Applications Granted
Fiscal Year 1986-87

	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	**655**	**23,536**	**154**	**1,109**	**501**	**22,427**
2-9 employees	242	1,133	118	440	124	693
10-19 employees	134	1,857	23	289	111	1,568
20-39 employees	111	3,111	12	320	99	2,791
40-99 employees	107	6,485	1	60	106	6,425
100-199 employees	40	5,257	—	—	40	5,257
200-499 employees	19	4,569	—	—	19	4,569
500 employees or more	2	1,124	—	—	2	1,124

* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 719 bargaining units were certified in the 655 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 159 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 1986-87

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	**655**	**100.0**	**500**	**100.0**	**155**	**100.0**
Under 8 days	—	—	—	—	—	—
8-14 days	33	5.0	—	—	33	21.3
15-21 days	82	17.6	50	10.0	32	41.9
22-28 days	144	39.5	125	35.0	19	54.2
29-35 days	94	53.9	80	51.0	14	63.2
36-42 days	47	61.1	41	59.2	6	67.1
43-49 days	37	66.7	32	65.6	5	70.3
50-56 days	32	71.6	22	70.0	10	76.8
57-63 days	15	73.9	13	72.6	2	78.1
64-70 days	10	75.4	8	74.2	2	79.4
71-77 days	12	77.3	11	76.4	1	80.0
78-84 days	12	79.1	10	78.4	2	81.3
85-91 days	9	80.5	8	80.0	1	81.9
92-98 days	6	81.4	6	81.2	—	—
99-105 days	13	83.4	11	83.4	2	83.2
106-126 days	15	85.6	10	85.4	5	86.5
127-147 days	10	87.2	10	87.4	—	—
148-168 days	4	87.8	2	87.8	2	87.7
169 days and over	80	100.0	61	100.0	19	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 1986-87

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	**719**	**23,536**	**213**	**8,166**	**140**	**7,024**	**39**	**1,962**	**327**	**6,384**
Manufacturing	**201**	**9,200**	**80**	**3,866**	**14**	**265**	**26**	**1,363**	**81**	**3,706**
Food, beverages	29	1,992	9	869	1	10	3	98	16	1,015
Rubber, plastics	5	472	2	194	—	—	1	18	2	260
Leather	2	120	—	—	—	—	1	110	1	10
Textile	5	309	3	244	—	—	—	—	2	65
Clothing	3	287	1	9	—	—	—	—	2	278
Wood	5	151	4	119	—	—	—	—	1	32
Furniture, fixtures	12	541	5	230	—	—	2	117	5	194
Paper	8	321	5	234	—	—	1	53	2	34
Printing, publishing	12	468	5	110	4	100	—	—	3	198
Primary metals	5	111	2	36	—	—	—	—	3	75
Fabricating metals	28	741	15	393	1	34	—	—	12	314
Machinery	20	1,030	2	53	—	—	11	594	7	383
Transportation equipment	7	681	3	307	—	—	1	232	3	142
Electrical products	11	229	3	137	1	4	1	7	6	81
Non-metallic minerals	7	195	1	23	—	—	—	—	6	172
Petroleum, coal	7	48	3	19	4	29	—	—	—	—
Chemicals	11	396	5	197	—	—	3	68	3	131
Other manufacturing	24	1,108	12	692	3	28	2	66	7	322
Non-Manufacturing	**518**	**14,336**	**133**	**4,300**	**126**	**6,759**	**13**	**599**	**246**	**2,678**
Mining, quarrying	3	150	—	—	—	—	1	126	2	24
Transportation	12	471	6	315	2	28	1	73	3	55
Storage	2	40	1	14	—	—	1	26	—	—
Electric, gas, water	6	101	3	40	1	2	—	—	2	59
Wholesale trade	21	480	13	239	2	12	2	35	4	194
Retail trade	30	675	16	478	11	162	—	—	3	35
Finance, insurance carriers	1	25	—	—	—	—	—	—	1	25
Real estate, insurance agencies	9	35	2	10	1	2	—	—	6	23
Education, related services	46	4,997	3	269	34	4,340	1	144	8	244
Health, welfare services	136	4,083	46	1,541	57	1,862	4	112	29	568
Recreational services	3	25	1	5	—	—	—	—	2	20
Management services	6	98	3	37	1	2	1	57	1	2
Personal services	5	185	4	123	—	—	—	—	1	62
Accommodation, food services	36	1,267	16	877	14	326	2	26	4	38
Other services	23	249	7	134	2	16	—	—	14	99
Local government	19	336	12	218	1	7	—	—	6	111
Construction	160	1,119	—	—	—	—	—	—	160	1,119

Table 13

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1986-87

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	**719**	**23,536**	**213**	**8,166**	**140**	**7,024**	**39**	**1,962**	**327**	**6,384**
CLC	**363**	**13,973**	**148**	**6,045**	**81**	**2,017**	**32**	**1,649**	**102**	**4,262**
Aluminum Brick and Glass Workers	1	36	1	36	—	—	—	—	—	—
Bakery and Tobacco Workers	2	218	2	218	—	—	—	—	—	—
Brewery and Soft Drink Workers	5	91	4	62	1	29	—	—	—	—
Canadian Auto Workers	28	2,398	11	900	2	15	3	283	12	1,200
Canadian Paperworkers	7	396	5	134	—	—	—	—	2	262
Canadian Public Employees (CUPE)	68	2,158	25	648	21	978	2	93	20	439
Clothing and Textile Workers	3	130	1	10	—	—	—	—	2	120
Communications-Electrical Workers	2	10	1	8	1	2	—	—	—	—
Electrical Workers (IPBEW)	3	42	—	—	—	—	—	—	3	42
Electrical Workers (UE)	1	4	—	—	—	—	—	—	1	4
Energy and Chemical Workers	18	301	7	154	6	39	3	68	2	40
Food and Commercial Workers	41	1,418	18	875	14	248	1	31	8	264
Glass, Pottery and Plastic Workers	1	42	1	42	—	—	—	—	—	—
Graphic Communication Union	4	201	3	195	1	6	—	—	—	—
Hotel Employees	15	316	6	155	6	129	2	26	1	6
Machinists	1	56	1	56	—	—	—	—	—	—
Newspaper Guild	3	188	—	—	1	15	—	—	2	173
Office and Professional Empls	3	102	1	20	—	—	1	57	1	25
Ontario Public Service Empls	27	691	9	339	11	203	—	—	7	149
Postal Workers	3	53	2	41	—	—	—	—	1	12
Railway, Transport and General Workers	3	444	3	444	—	—	—	—	—	—
Retail Wholesale Employees	13	283	3	95	2	43	1	34	7	111
Rubber Workers	2	90	—	—	—	—	1	53	1	37
Service Employees International	42	1,164	16	588	14	307	3	133	9	136
Theatrical Stage Employees	1	11	—	—	—	—	—	—	1	11
Transit Union (Intl)	1	58	1	58	—	—	—	—	—	—
Typographical Union	5	100	3	77	1	3	1	20	—	—
United Auto Workers	8	509	4	223	—	—	—	—	4	286
United Garment Workers	1	9	1	9	—	—	—	—	—	—
United Steelworkers	47	2,277	15	481	—	—	14	851	18	945
Woodworkers	4	177	4	177	—	—	—	—	—	—

Table 13 (Cont'd)

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1986-87

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	**356**	**9,563**	**65**	**2,121**	**59**	**5,007**	**7**	**313**	**225**	**2,122**
Air Line Pilots	—	—	—	—	—	—	—	—	—	—
Allied Health Professionals	1	12	—	—	1	12	—	—	—	—
Asbestos Workers	1	3	—	—	—	—	—	—	1	3
Boilermakers	2	28	—	—	—	—	—	—	2	28
Bricklayers International	7	47	—	—	—	—	—	—	7	47
Carpenters	25	340	2	57	1	34	—	—	22	249
Canadian Operating Engineers	1	5	—	—	—	—	—	—	1	5
Christian Labour Association	16	368	6	191	6	154	—	—	4	23
Electrical Workers (IBEW)	8	106	2	53	—	—	—	—	6	53
Food and Service Workers	3	29	1	11	1	8	—	—	1	10
Independent Local Union	34	1,836	4	304	10	976	1	144	19	412
International Operating Engineers	44	284	3	41	2	9	—	—	39	234
Labourers	80	719	6	106	—	—	—	—	74	613
Occasional Teachers Association	1	247	—	—	1	247	—	—	—	—
Ontario Nurses Association	34	678	12	238	16	409	1	7	5	24
Ontario Public School Teachers	11	2,519	—	—	11	2,519	—	—	—	—
Ontario Secondary School Teachers	8	622	—	—	8	622	—	—	—	—
Painters	10	62	—	—	—	—	—	—	10	62
Plant Guard Workers	4	46	2	38	1	2	—	—	1	6
Plumbers	16	134	—	—	—	—	—	—	16	134
Sheet Metal Workers	3	10	—	—	—	—	—	—	3	10
Structural Iron Workers	2	6	—	—	—	—	—	—	2	6
Teamsters	30	584	15	303	1	15	5	162	9	104
Textile Processors	15	878	12	779	—	—	—	—	3	99

Table 14

Occupational Groups in Bargaining Units Certified by Industry
Fiscal Year 1986-87

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	**719**	**23,536**	**537**	**14,367**	**36**	**1,002**	**73**	**5,257**	**17**	**415**	**56**	**2,495**
Manufacturing	**201**	**9,200**	**187**	**7,999**	**5**	**50**	**1**	**143**	**—**	**—**	**8**	**1,008**
Food, beverage	29	1,992	29	1,992	—	—	—	—	—	—	—	—
Rubber, plastics	5	472	5	472	—	—	—	—	—	—	—	—
Leather	2	120	1	110	1	10	—	—	—	—	—	—
Textile	5	309	5	309	—	—	—	—	—	—	—	—
Clothing	3	287	3	287	—	—	—	—	—	—	—	—
Wood	5	151	5	151	—	—	—	—	—	—	—	—
Furniture, fixtures	12	541	12	541	—	—	—	—	—	—	—	—
Paper	8	321	7	307	1	14	—	—	—	—	—	—
Printing, publishing	12	468	8	274	2	21	1	143	—	—	1	30
Primary metals	5	111	4	94	—	—	—	—	—	—	1	17
Fabricated metals	28	741	27	736	—	—	—	—	—	—	1	5
Machinery	20	1,030	19	880	—	—	—	—	—	—	1	150
Transportation equipment	7	681	7	681	—	—	—	—	—	—	—	—
Electrical products	11	229	10	224	1	5	—	—	—	—	—	—
Non-metallic minerals	7	195	7	195	—	—	—	—	—	—	—	—
Petroleum, coal	7	48	7	48	—	—	—	—	—	—	—	—
Chemicals	11	396	10	334	—	—	—	—	—	—	1	62
Other manufacturing	24	1,108	21	364	—	—	—	—	—	—	3	744
Non-Manufacturing	**518**	**14,336**	**350**	**6,368**	**31**	**952**	**72**	**5,114**	**17**	**415**	**48**	**1,487**
Mining, quarrying	3	150	3	150	—	—	—	—	—	—	—	—
Transportation	12	471	11	391	1	73	—	—	—	—	—	—
Storage	2	40	2	40	—	—	—	—	—	—	—	—
Electric, gas, water	6	101	5	89	1	12	—	—	—	—	—	—
Wholesale trade	21	480	20	472	1	8	—	—	—	—	—	—
Retail trade	30	675	6	206	1	3	—	—	17	415	6	51
Finance, insurance carriers	1	25	—	—	1	25	—	—	—	—	—	—
Real estate, insurance agencies	9	35	9	35	—	—	—	—	—	—	—	—
Education, related services	46	4,997	8	316	4	215	30	4,344	—	—	4	122
Health, welfare services	136	4,083	50	1,579	16	516	41	767	—	—	29	1,221
Recreational services	3	25	3	25	—	—	—	—	—	—	—	—
Management services	6	98	4	26	2	72	—	—	—	—	—	—
Personal services	5	185	5	185	—	—	—	—	—	—	—	—
Accommodation, food services	36	1,267	34	1,255	—	—	—	—	—	—	2	12
Other services	23	249	16	182	3	23	1	3	—	—	3	41
Local government	19	336	14	291	1	5	—	—	—	—	4	40
Construction	160	1,119	160	1,119	—	—	—	—	—	—	—	—

Table 15

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1986-87

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	**719**	**23,536**	**537**	**14,367**	**36**	**1,002**	**73**	**5,257**	**17**	**415**	**56**	**2,495**
CLC	**363**	**13,973**	**258**	**10,120**	**31**	**831**	**7**	**221**	**16**	**408**	**51**	**2,393**
Aluminum Brick and Glass Workers	1	36	1	36	—	—	—	—	—	—	—	—
Bakery and Tobacco Workers	2	218	2	218	—	—	—	—	—	—	—	—
Brewery and Soft Drink Workers	5	91	5	91	—	—	—	—	—	—	—	—
Canadian Auto Workers	28	2,398	24	1,504	—	—	—	—	—	—	4	894
Canadian Paperworkers	7	396	6	382	1	14	—	—	—	—	—	—
Canadian Public Employees (CUPE)	68	2,158	33	859	9	261	2	59	2	47	22	932
Clothing and Textile Workers	3	130	3	130	—	—	—	—	—	—	—	—
Communications-Electrical Workers	2	10	2	10	—	—	—	—	—	—	—	—
Electrical Workers (IPBEW)	3	42	3	42	—	—	—	—	—	—	—	—
Electrical Workers (UE)	1	4	1	4	—	—	—	—	—	—	—	—
Energy and Chemical Workers	18	301	18	301	—	—	—	—	—	—	—	—
Food and Commercial Workers	41	1,418	25	1,157	—	—	1	4	9	213	6	44
Glass, Pottery and Plastic Workers	1	42	1	42	—	—	—	—	—	—	—	—
Graphic Communication Union	4	201	4	201	—	—	—	—	—	—	—	—
Hotel Employees	15	316	15	316	—	—	—	—	—	—	—	—
Machinists	1	56	1	56	—	—	—	—	—	—	—	—
Newspaper Guild	3	188	—	—	1	15	1	143	—	—	1	30
Office and Professional Empls	3	102	—	—	2	82	—	—	—	—	1	20
Ontario Public Service Empls	27	691	6	198	6	122	2	12	—	—	13	359
Postal Workers	3	53	3	53	—	—	—	—	—	—	—	—
Railway, Transport and General Workers	3	444	3	444	—	—	—	—	—	—	—	—
Retail Wholesale Employees	13	283	7	141	1	3	—	—	4	77	1	62
Rubber Workers	2	90	2	90	—	—	—	—	—	—	—	—
Service Employees International	42	1,164	31	753	8	307	1	3	1	71	1	30
Theatrical Stage Employees	1	11	1	11	—	—	—	—	—	—	—	—
Transit Union (Intl)	1	58	1	58	—	—	—	—	—	—	—	—
Typographical Union	5	100	5	100	—	—	—	—	—	—	—	—
United Auto Workers	8	509	6	492	2	17	—	—	—	—	—	—
United Garment Workers	1	9	1	9	—	—	—	—	—	—	—	—
United Steelworkers	47	2,277	44	2,245	1	10	—	—	—	—	2	22
Woodworkers	4	177	4	177	—	—	—	—	—	—	—	—

Table 15 (Cont'd)

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1986-87

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	**356**	**9,563**	**279**	**4,247**	**5**	**171**	**66**	**5,036**	**1**	**7**	**5**	**102**
Air Line Pilots	—	—	—	—	—	—	—	—	—	—	—	—
Allied Health Professionals	1	12	—	—	—	—	—	—	—	—	1	12
Asbestos Workers	1	3	1	3	—	—	—	—	—	—	—	—
Boilermakers	2	28	2	28	—	—	—	—	—	—	—	—
Bricklayers International	7	47	7	47	—	—	—	—	—	—	—	—
Carpenters	25	340	25	340	—	—	—	—	—	—	—	—
Canadian Operating Engineers	1	5	1	5	—	—	—	—	—	—	—	—
Christian Labour Association	16	368	13	292	—	—	1	5	—	—	2	71
Electrical Workers (IBEW)	8	106	8	106	—	—	—	—	—	—	—	—
Food and Service Workers	3	29	—	—	—	—	1	10	—	—	2	19
Independent Local Union	34	1,836	21	728	3	153	10	955	—	—	—	—
International Operating Engineers	44	284	43	277	—	—	—	—	1	7	—	—
Labourers	80	719	80	719	—	—	—	—	—	—	—	—
Occasional Teachers Association	1	247	—	—	—	—	1	247	—	—	—	—
Ontario Nurses Association	34	678	—	—	—	—	34	678	—	—	—	—
Ontario Public School Teachers	11	2,519	—	—	—	—	11	2,519	—	—	—	—
Ontario Secondary School Teachers	8	622	—	—	—	—	8	622	—	—	—	—
Painters	10	62	10	62	—	—	—	—	—	—	—	—
Plant Guard Workers	4	46	4	46	—	—	—	—	—	—	—	—
Plumbers	16	134	16	134	—	—	—	—	—	—	—	—
Sheet Metal Workers	3	10	3	10	—	—	—	—	—	—	—	—
Structural Iron Workers	2	6	2	6	—	—	—	—	—	—	—	—
Teamsters	30	584	28	566	2	18	—	—	—	—	—	—
Textile Processors	15	878	15	878	—	—	—	—	—	—	—	—

Ontario Labour Relations Board,
400 University Avenue,
Toronto, Ontario

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