ONTARIO
LABOUR RELATIONS BOARD

ANNUAL REPORT
1988-89

Ontario

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ONTARIO LABOUR RELATIONS BOARD

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The Honourable Gregory Sorbara
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
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Dear Minister:

It is my pleasure to provide to you the ninth Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1988 to March 31, 1989.

Sincerely,

Rosalie S. Abella
Chair

CHAIR'S MESSAGE

This message, like my first, is brief. The first relied on brevity because the newness of the position made verbosity presumptuous. This one is brief because the experience has left me with more to say than words can comfortably transmit. It has been an extraordinary voyage marked by nothing but positive feelings. From the beginning, I was struck by the Board's and the community's generosity and graciousness in welcoming an outsider. There has been a consistent willingness to offer constructive advice, and a remarkable willingness to be open to change. Much was tried in these five years to keep the Board responsive without harming its well-earned integrity and credibility, and much of that effort has enjoyed the elusive reward of acceptance. Clearly the process is ongoing and would never be complete during anyone's term. But to the extent that the Board remains the great institution it is, the credit goes entirely to the staff, Vice-Chairs, Board members, and labour relations community for their selfless and constant commitment to the best interests of the Ontario Labour Relations Board. It has been a privilege to have been part of the Board and its constituents for 5 years and I will always be grateful for the lessons they have taught me. Thank you for the enthusiastic assistance, for the friendship, and thank you especially for the joy of the experience.

I INTRODUCTION

This is the ninth 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, 1988 to March 31, 1989.

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

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

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

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

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a war time move by the Federal Government to centralize

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

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

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

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or 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.

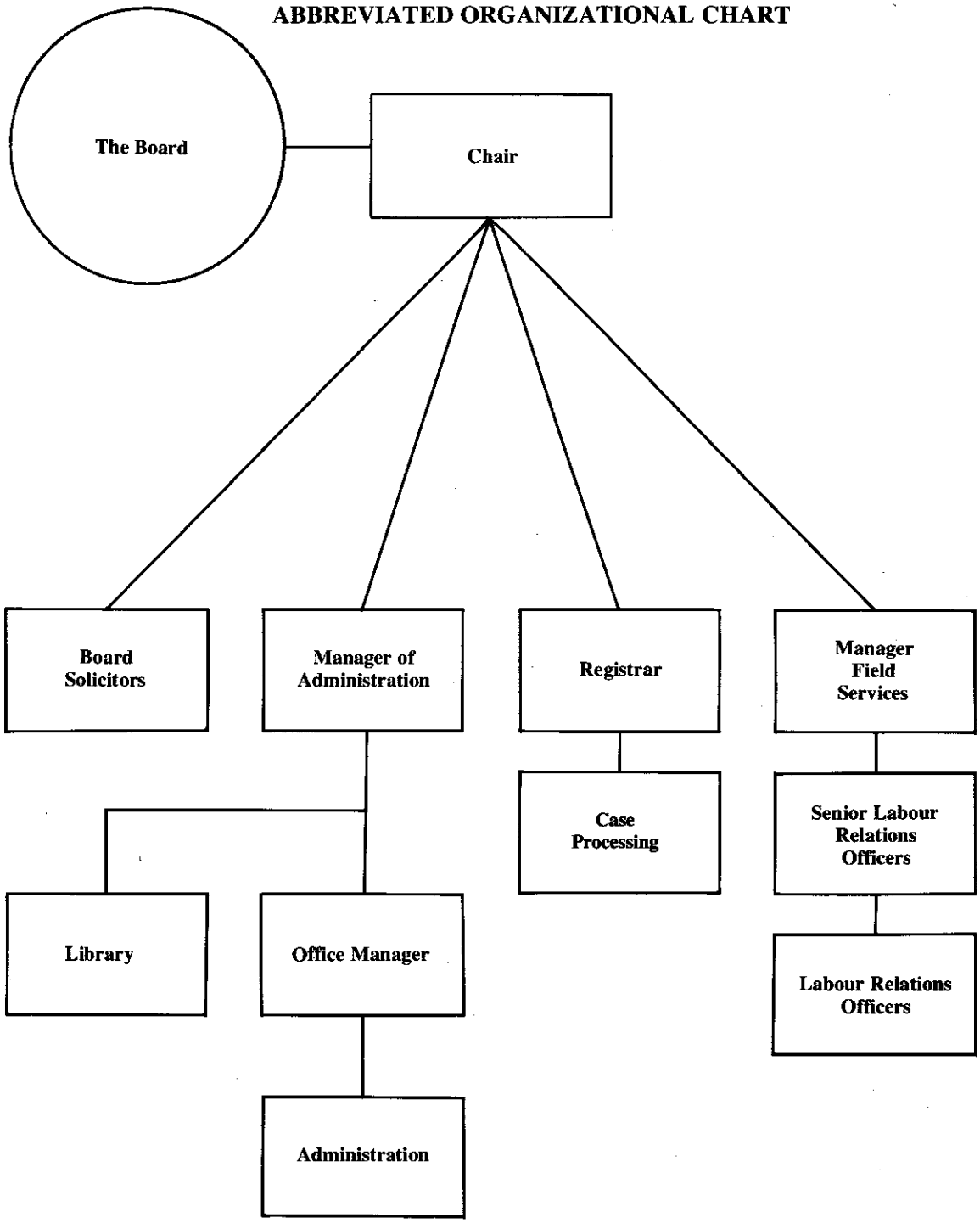
In June of 1984, the *Labour Relations Act, 1984*, S.O. 1984, c. 34 was enacted. This Act dealt with several areas. It gave the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited 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



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, 5 part-time Vice-Chairs and 41 Board Members, 21 full-time and 20 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.

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, police officers or full-time fire fighters, 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. 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 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. She 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 an increasing variety of 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, Deputy Registrar, Manager of Administration, Manager of Field Services and Solicitors 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 58, 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 manager. 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 a computer index to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date, etc. 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. The data base also provides a microfiche index to the decisions. This year the Board is making the index available to the public through Publications Ontario at 880 Bay Street for a cost of $17.82.

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 three 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 1064 assignments, of which 86.2 percent were settled by the efforts of the officers. The officers handled a total of 872 grievances in the construction industry of which 95.1 percent were settled. Of 525 certification applications dealt with under the waiver of hearings programme, the officers were successful in 399 or 76 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 the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, 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 1988-89, the Board consisted of the following members:

ROSALIE S. ABELLA *Chair*

Rosalie 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, Rosalie 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 to the present; Director, Canadian Institute for the Administration of Justice, 1983 to the present; Chairman, Report on Access to Legal Services by the Disabled, 1983; Director, The Institute on Public Policy, 1987 to the present; and Maxwell Boulton Visiting Professor at McGill University, 1988-89.

In 1983 Rosalie 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. On March 20, 1989 Rosalie Abella assumed office as Chair of the Ontario Law Reform Commission.

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.

MICHAEL BENDEL *Vice-Chair*

Mr. Bendel joined the Board as a part-time Vice-Chair in September 1987. He is a graduate of the University of Manchester, England (LL.B., 1966) and the University of Ottawa (LL.B., 1975). Mr. Bendel was a legal officer with the International Labour Office, Geneva, Switzerland, from 1966 to 1969. From 1969 to 1974, he was employed by the Professional Institute of the Public Service of Canada (Ottawa) in various capacities, including in-house counsel and negotiator. Following his call to the Bar of Ontario in 1977, he was appointed professor in the Common Law Section, Faculty of Law, University of Ottawa, where he taught various labour law and other law courses, at the undergraduate and graduate levels, until 1984. In 1984, Mr. Bendel was appointed Deputy Chairman of the Public Service Staff Relations Board (Ottawa), where he was responsible for the interest arbitration function under the *Public Service Staff Relations Act* and where he also acted as grievance arbitrator. Upon resigning from that Board in August 1987, he entered private practice as a labour arbitrator. In addition to his arbitration practice and his part-time Vice-Chair position, Mr. Bendel is currently a part-time member of the Public Service Staff Relations Board. He is the author of several articles on labour law subjects in law journals.

LOUISA M. DAVIE *Vice-Chair*

Ms. Davie was appointed a Vice-Chair of the Board in April 1988. She is a graduate of Wilfrid Laurier University, Waterloo, (B.A. 1977) and the University of Western Ontario (L.L.B. 1980). After her call to the Ontario Bar in 1982, Ms. Davie was a law clerk to the Chief Justice of the High Court of Justice. After her tenure as law clerk she practised labour and employment law with a Toronto law firm until her appointment to the Board. Ms. Davie is a part-time lecturer in the Masters of Business Administration Program, McMaster University, Hamilton, and also acts as an arbitrator.

NIMAL V. DISSANAYAKE *Vice-Chair*

A former Senior Solicitor of the Board, Mr. Dissanayake was appointed a part-time Vice-Chair of the Board in July, 1987. He holds the degrees of LL.B. and LL.M. from Queen's University, Kingston. Having served his period of law articles with the Board Mr. Dissanayake was called to the Ontario Bar in 1980. Prior to joining the Board as a solicitor he taught at the Faculty of Business, McMaster University, Hamilton, as Assistant Professor of Industrial Relations between 1978 and 1980. Since December 1987, he has served as a Vice-Chairman of the Grievance Settlement Board and is also engaged in adjudication as a private arbitrator and referee under the *Employment Standards Act*.

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. He is also an experienced arbitrator.

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, and also acts as an arbitrator.

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 the University of Toronto (PH.D., 1975, in Political Economy). After teaching political science for four years, Dr. Hughes entered Osgoode Hall Law School and 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*. She has researched, lectured and published in Canadian politics, feminist analysis, the Charter of Rights, pay equity and labour relations. Dr. Hughes was first appointed to the Board as a Vice-Chair in April, 1986.

BRIAN KELLER *Vice-Chair*

Mr. Keller joined the Board as a part-time Vice-Chair in September 1988. He is a graduate of Sir George Williams University (B.A., 1968) and the University of Ottawa (L.LL. 1971). From 1983 until August 1988 he was a Vice-Chairman of the Canada Labour Relations Board. Mr. Keller currently acts as a private arbitrator and mediator.

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 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.

KATHLEEN O'NEIL *Vice-Chair*

Ms. O'Neil, a graduate of the University of Toronto (B.A. 1972) and Osgoode Hall Law School (LL.B., 1977) was a Vice-Chair of the Workers' Compensation Appeals Tribunal prior to her appointment to the Board in January, 1988. She has worked as an arbitrator, has had a private practice in nursing and labour relations law, worked as staff lawyer to nurses' and teachers' associations, served as a member of the Ontario Crown Employees Grievance Settlement Board and chaired the justice committee of the National Action Committee on the Status of Women.

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.

IAN C.A. SPRINGATE *Vice-Chair*

Mr. Springate was originally appointed a Vice-Chair of the Board in May of 1976. He served as the Board's Alternate Chair from October 1984 to February 1987. 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 on a part-time basis as a special lecturer in industrial relations from 1973 to 1978. From February 1984 to January 1985, he served as Acting Chairman of the Crown Employees Grievance Settlement Board. He has also served as a Board of Inquiry under the *Human Rights Code* and as a Referee under the *Employment Standards Act*. Mr. Springate reverted to part-time Vice-Chair status with the Board in February 1987, and is now engaged primarily as an arbitrator.

INGE M. STAMP *Vice-Chair*

Mrs. Stamp joined the Labour Relations Board in August, 1982 as a full-time Board Member representing management. In September of 1987, she was appointed a Vice-Chair. Mrs. Stamp comes to the Board with many years experience in construction industry labour relations. She also represented the Industrial Contractors Association of Canada during province-wide negotiations as a member of several employer bargaining agencies.

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*

Susan Tacon was appointed to the Board as a Vice-Chair, in July 1984. Her educational background includes a B.A. degree (1970) in Political Science from York University and LL.B. (1976) and LL.M. (1978) degrees from Osgoode Hall Law School specializing in the labour relations area. Ms. Tacon taught a seminar in collective bargaining and grievance arbitration at Osgoode Hall Law School for several years and also lectured there in legal research and writing. She has several publications to her credit including a book and articles in law journals and is an experienced arbitrator.

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 and the Urban Alliance and Race Relations Award in 1988.

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).

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. In January 1988 he was appointed a full-time member of the Board. 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 was later appointed Vice-President, Inco Ltd. and retired in 1985. 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.

KAREN S. DAVIES

Ms. Karen S. Davies was appointed a full-time Board member representing labour in July 1988. She has been a member of the Canadian Auto Workers for many years and has held numerous positions within the union. In 1981 she was elected Chairperson of the Technical Office and Professional Employees bargaining unit. She was responsible for matters such as negotiations, grievances, and arbitrations. Ms. Davies was elected President of Local 673 in 1987, representing technical, office and professional employees of Boeing Canada Ltd., McDonnell Douglas Canada Ltd., Spar Aerospace and Green Shield Prepaid Services. Ms. Davies has also been active in various labour organizations such as the Ontario Federation of Labour and the Labour Community Services of Metropolitan Toronto.

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.

W. NEIL FRASER

Prior to being appointed a full-time Board Member representing management on January 1, 1988, Mr. Fraser was executive director of the Canadian, Ontario and Metro Toronto Masonry Contractors Associations. He served as employer spokesman in province-wide collective bargaining for the Bricklayer and Mason Tender Agreements. He represented the masonry industry on a number of technical committees for building code and technical standards. He is a past president, Toronto Chapter Institute of Association Executives, and biographee since 1982 in Who's Who in America.

WILLIAM GIBSON

Prior to being appointed a full-time Board Member representing management in November 1987, Mr. Gibson was Vice-President Industrial Relations for Robert-McAlpine Ltd., a position he had held since 1976. From 1946 to 1976 Mr. Gibson held various other administrative positions in the McAlpine group of companies. He has been Chairman or President of many major Contractors Associations, through which he has been actively involved in the negotiation and administration of collective agreements at the local, provincial and national levels. He was a part-time Board Member representing management from 1978-1984.

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 office and appointed District Representative directing the Union's organizing efforts in Ontario. In June 1988 he was appointed a full-time member of the 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.

MAXINE A. JONES

A community college teacher of English and Political Science, Ms. Jones was appointed a part-time Board Member representing labour in April 1987. Ms. Jones holds Bachelor degrees in Journalism and Political Science, a graduate degree in the latter, and has completed all but her dissertation for her doctorate. Her union experience is extensive and includes being the most senior member of the Ontario Public Service Union's Provincial Board. In addition, she has extensive grievance arbitration experience in her home city, Windsor. Also in Windsor, Ms. Jones is a member of a number of community agency boards, including the Windsor Occupational Safety and Health Board, and has served in several City Council appointed positions.

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, 1962-1980; 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.

JOHN KURCHAK

In February 1989 Mr. Kurchak was appointed a part-time Board Member representing labour. A member of the Sheet Metal Workers' International Association for many years, he held the positions of business agent and business manager for Local 285. Mr. Kurchak was also a business representative on the Toronto-Central Building and Construction Trades Council for five years. He has been a member of the Conservation, Energy and Pollution Control Committee of the Ontario Federation of Labour.

JAMES LEAR

Prior to his appointment in October 1988 as a part-time Board member, Jim Lear was a Corporate Manager with the George Wimpey Canada Group, responsible for salaried personnel employment practices and benefits, insurances, construction equipment transport acquisitions and disposals, and all administrative systems and procedures throughtout the Canadian divisions and construction projects of the company. He is a past president of the Construction Safety Association of Ontario, and a former member of the Policy Review Board of Workers Compensation Board of Ontario.

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.

WILLIAM JOHN (JACK) MCCARRON

Apprenticed in the plumbing trade commencing in 1947, Mr. McCarron currently holds a certificate of Qualification Plumber, Certificate of Qualification Steamfitter and Master Plumber License. He worked for English & Mould Mechanical Contractor for fourteen years, eight years as Contracts Manager and Vice-President. He is currently working for the Mechanical Contractors Association of Toronto as its Labour Relations Director, a post held for fifteen years. He is a member of many construction management organizations and also has been the chairman of provincial bargaining for the Mechanical Contractors Association of Ontario since 1980. He has

been re-elected for the 1990 round of bargaining. Mr. McCarron was appointed a part-time Board member representing management in February 1989.

CAROLINE M. (CURRIE) MCDONALD

Ms. McDonald was appointed a full-time Board Member representing labour in July, 1988. Ms. McDonald came to the Board with many years in the labour relations field, primarily with the Retail, Wholesale Department Store Union. Most recently she was the union's business agent for Eastern Ontario, through which she was responsible for the handling of grievances, arbitrations, contract negotiations and labour disputes. Ms. McDonald was Organizer Co-ordinator of the Department Store Organizing Campaigns, where she was responsible for labour relations matters relevant to organizing in Ontario. Ms. McDonald has been active in the Ontario Federation of Labour and the Metropolitan Toronto and Eastern Ontario Labour Council.

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.

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 was elected President of Local 6500 in 1976 and re-elected 1979 and 1981. In 1981 Mr. Patterson ran and was elected Director, District 6 of the United Steelworkers of America. He served in that position until March 1986. 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. He was a member of the Ontario Labour Management Study Group.

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 having 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 and a full-time Board Member in May 1988. 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 on retiring in 1984 was corporate manager of labour relations. 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 to 1976, he was a representative with the International Chemical Workers Union and served as Secretary-Treasurer of the Canadian Chemical Workers Union from 1976 to 1980. When the Energy and Chemical Workers Union was founded in 1980, Mr. Rogers became its Ontario Co-ordinator and remained in the position until 1988. He is a former Vice-President of the Ontario Federation of Labour. Mr. Rogers is currently employed as Director of Regional Sectoral Services with the Workers Health and Safety Centre.

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.

MARY ROZENBERG

Ms. Rozenberg was appointed a full-time Board Member representing management in May 1988. She joins the Board with an extensive background in the labour relations field which includes advising senior levels of management on labour relations matters; negotiating collective agreements; the interpretation, application and administration of various collective agreements; the research, preparation and presentation of grievances at arbitration; and designing, implementing and teaching labour relations programs in grievance handling, arbitration, discipline, attendance, management and labour relations for supervisors.

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.

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.

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.

JANET TRIM

Appointed a part-time Board Member representing management in May, 1987, Ms. Trim comes to the Board with many years of experience in construction labour relations. Representing the General Contractors, she has been a member of negotiating committees formed to bargain provincial collective agreements. She had also served for several years as a management trustee on a Welfare and Pension Trust Fund.

STEVE WESLAK

Mr. Steve Weslak was appointed a part-time Board Member representing labour in September, 1988. A member of the International Brotherhood of Electrical Workers for over 40 years, he has served on various boards and committees. He was a member of the Executive Board of Local 353 for 12 years, and served for 3 years as the Board's Chairman. In 1965 Mr. Weslak was hired as an organizer for the IBEW, and he later served as Assistant Business Manager and then as Financial Secretary before his retirement in 1981. He also served on a provincial apprenticeship advisory board for 4 years.

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 is a graduate of Clarkson University (BBA '50) and Columbia University (MS '54).

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.

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

Employees regularly working both at the construction site and in the shop falling within the construction bargaining unit

This was a section 144(1) application for certification relating to the industrial, commercial and institutional sector of the construction industry. The Operating Engineers Union challenged the inclusion of certain employees in the bargaining unit, on the grounds they were not employed in the bargaining unit on the date of application. Those two employees worked in a shop. On the day of application one employee was working on the construction site but theother was working in the shop. The Board, citing *J & M Chartrand Realty Limited*, [1978] OLRB Rep. May 423, wrote that generally employees engaged in repair work come within the applicant's bargaining unit if they are working at a construction site and not within a shop. However, the Board observed that the *J & M Chartrand* decision had made no reference to section 117(b), which defines "employee" (for purposes of the construction industry) to include one "engaged in whole or in part in offsite work but who is commonly associated in his work or bargaining with onsite employees". The Board noted that both employees were primarily engaged in the repair and maintenance of the construction equipment operated by the other employees in the bargaining unit. Both were often dispatched to construction sites to perform repair work on the equipment. As well, it did not appear that the respondent operated a repair shop employing others besides the mechanics who were regularly and routinely dispatched to the construction sites. The Board concluded that both employees were commonly associated in their work with onsite employees, and thus both were also employees in the bargaining unit. *Bill Brownlee Excavating Limited*, [1988] OLRB Rep. Apr. 364.

Applicant in pre-hearing representation vote application entitled upon timely request to obtain and keep copy of employee lists filed by employer

In this application for certification the Board directed the taking of a pre-hearing representation vote and responded to the union's request that it be permitted to keep a copy of the employee list filed by the employer. By the time the matter came on for hearing, the parties had agreed on the list for the purpose of the count and on the voters list and there were no longer any issues outstanding requiring the union's access to the employee list. In the circumstances, the Board refused to accede to the union's request. Instead, it directed that a copy of the voters list be sent to the applicant. The Board indicated, however, that in the normal course of events it would have directed that the union be permitted to keep a copy of the employee list. In this regard, the Board went on to review its approach to the question of a union's access to employee lists.

The respondent's position was that to permit the union to review the list other than in the presence of a Labour Relations Officer would reflect a "new Board policy" hitherto unrevealed. The Board countered this assertion by referring to two cases, *Airline Limousine*, [1985] OLRB Rep. Jan. 1 and *Metropolitan Separate School Board*, [1986] OLRB Rep. Dec. 1733, where the Board required disclosure of the list to the union without the presence of an Officer. The Board agreed with the analysis in those cases that principles of natural justice and considerations relating to the efficiency of the certification process can lead the Board to require disclosure of the list to the union without the presence of an Officer. The Board observed that the employee list is a pleading containing facts which may be disputed by the union. As each party has a right to information relevant to the issues in dispute or potentially in dispute, the union is entitled to receive

and to keep a copy of the employee list provided it requests it in a timely fashion. The Board noted further that both the public and the parties have an interest in the speedy statement and resolution of matters in dispute in a certification application. Thus, in pre-hearing representation vote applications, the applicant who requests a copy of the employee list should be provided with one at the outset of the pre-hearing meeting with the Officer and be permitted to determine on its own time whether it wishes to make challenges to the list.

While the Board will always have the jurisdiction to determine whether, on the facts of a particular case, the employee lists should not be given to the union, it will be the exceptional case, if any, in which they should not be given where a timely request is made. *Kitchener-Waterloo Hospital*, [1988] OLRB Rep. April 406.

All examinations of an individual's duties and responsibilities to be comprehensive

In this application under section 106(2) for a determination as to whether a certain individual was an employee within the meaning of the Act, the applicant employer argued that the Board practice of restricting its inquiry in certain circumstances to "changes" in the duties and responsibilities of the individual in dispute was not permitted. The respondent trade union took the view that the practice should continue because once a person's status has been determined the applicant bore a substantial onus to show that the circumstances had changed sufficiently to warrant a different conclusion as to employee status.

The Board reviewed its jurisprudence on the scope of the examination. In respect of applications during the term of the collective agreement, the examinations are normally restricted to 'changes' in duties and responsibilities since the commencement of the collective agreement unless the position is a new one or unless the applicant raised the matter in negotiations. In these instances, the examination will not be so restricted. An examination, however, will also be restricted to "changes" in respect of applications brought during the first set of negotiations following the parties' agreement as to the status of the individuals now in dispute. These rules involved the application of estoppel principles to restrict subsequent litigation of an individual's status. The Board held that a preferable rule is to order a full duties and responsibilities examination where the Board is satisfied that a "question" has arisen as to the status of an individual. The majority explained that section 106(2) permits an application during negotiations *and* during the currency of a collective agreement and appears to make no distinction between those time periods with respect to the treatment of an application. Another reason was that the parties are not to be deprived, through recourse to an equitable principle, from coming to the Board for an adjudication on the merits in respect of a matter specifically and exclusively within the Board's statutory authority. It was reaffirmed, however, that the question of changes does continue to be a factor, in that the status quo and any changes thereto are matters of evidence.

The Board set out new rules for preparing an application. The applicant must indicate the name of the individual(s) in dispute and also the basis for the application. That is, the applicant must state the nature of the position, including duties and responsibilities (to the extent known, where the applicant is a trade union), the historical dimension to the position (if any) including any Board determinations and parties' agreements and how the mischief against which sections 1(3)(b) or 12 are directed has arisen or has ceased. The respondent must outline fully any grounds it asserts as to why the Board should not entertain evidence as to the duties and responsibilities of the person(s) in dispute. Where the individual's status has not been previously determined by the Board in a certification or earlier 106(2) application or by specific agreement of the parties, an examination will generally be directed. Where the Board has previously determined the status of a person in a certification application or prior section 106(2) application or where the parties have reached a specific agreement as to the person's status, the Board will not permit evidence as to the

person's duties and responsibilities to be adduced before a Board Officer unless the Board is satisfied, on the face of the application, that it appears the mischief against which section 1(3)(b) or section 12 is directed has arisen or has ceased. Where the Board is not so satisfied, the application may be dismissed without a hearing. *The Windsor Star*, [1988] OLRB Rep. April 427.

Layoffs eliminating unit but part of large scale re-organization held not to be an unfair labour practice

This case involved layoffs which effectively eliminated the bargaining units represented by the complainant, the Ontario Nurses' Association (ONA). ONA represented 5 to 6 nurses at a retirement lodge. ONA asserted that the employer had breached its duty to bargain in good faith, because it had not notified the union in advance, and had not bargained about the decision to lay off employees. The union further asserted that the layoff was an unfair labour practice, motivated in whole or in part by the fact that those nurses had opted to join ONA and engage in collective bargaining. ONA maintained that the layoff also constituted an unlawful lockout. Finally, ONA argued that the employer had contravened the "statutory freeze" of employment conditions. ONA relied on sections 3, 15, 64, 66, 70, 72, 75, 76, and 79. After protracted negotiations first collective agreements for the two bargaining units had been signed. The layoffs followed within weeks. However, the layoffs were but a small part of major changes in the operations of a large company, which employed several hundred workers. The company had launched a series of initiatives to implement a "wellness concept", that is, to create a private residential setting, de-emphasizing those aspects of the environment which had an institutional or hospital connotation, or involved the symbols of sickness. An additional reason for the layoffs was a sharp drop in operating income. This economising eventually resulted in the layoff of all 70 nurses in all 13 retirement lodges, together with a realignment of functions and a reduction of staff or hours for many other employees in the division. The Board found that there was no evidence that such action was aimed at undermining ONA's bargaining rights in London and that it was highly improbable that Central Park Lodges would eliminate 70 nursing positions in 13 lodges, and alter the duties or hours of work of dozens of other employees, in order to camouflage an anti-union attack on 5 or 6 nurses. For these reasons the Board concluded the company's decision was not motivated in whole or in part by anti-union considerations. The Board rejected the claim of an unlawful lockout for the same reasons and because the employer had showed no signs of attempting to exact concessions from the union.

Concerning the allegation of a breach of the duty to bargain in good faith, the Board noted that although staff changes to implement the "wellness concept" were being considered by management during the bargaining period, the two contracts had been signed in advance of the decision to lay off the nurses. Therefore there was no violation of section 15, nor of the section 79 "statutory freeze". An additional reason for dismissal of the section 15 complaint was the finding that the staff reorganization plan was not a reaction to the collective bargaining situation of the ONA nurses. *Central Park Lodges*, [1988] OLRB Rep. May 454.

Board has jurisdiction and duty to consider Charter issues because it is a "court of competent jurisdiction"

In this certification case, there were two major issues: one was whether the employees were persons employed in agriculture, who under section 2(b) are excluded from the *Labour Relations Act*. The second question was whether the Board had jurisdiction to entertain a Charter challenge to section 2(b).

The Board found the workers were agricultural. They worked in a hatchery and were responsible for monitoring the development of embryonic chickens and otherwise caring for the eggs

during incubation and for certain aspects of the hatched chickens. The union argued that the factory-like conditions - set shifts, year-round employment, benefits and disciplinary provisions similar to those in a factory and the technological sophistication - made the nature of the employees' work non-agricultural. The Board accepted these facts but held that it was the nature of the activities and not the way they were performed that was relevant.

The Charter issues were twofold. One, was the Board a "court of competent jurisdiction" within the meaning of section 24 of the *Canadian Charter of Rights and Freedoms*, and, therefore, competent to hear Charter challenges and grant remedies for a violation of the Charter? In the Board's view the Ontario Court of Appeal regarded as still undecided the issue of whether administrative tribunals can be "courts of competent jurisdiction". The Board reviewed several Board and court decisions and deduced that the cases which find that a particular adjudicative body has jurisdiction under subsection 24(1) of the Charter and those which do not so find can be distinguished on the basis of the powers of the particular forum in issue and of the nature of the remedy requested. Turning next to the Ontario Labour Relations Board in particular, the Board noted that the combined effect of section 106 (which confers on the Board jurisdiction to determine all questions of law that arise in any matter before it) and section 108 (the privitive clause) is to give the Board exclusive jurisdiction to deal with all matters arising under the Act. Thus where Charter issues arise and the remedy requested is one which the Board can already grant, "considerations of convenience, economy and time" indicate that the Board has jurisdiction to and should entertain those Charter issues. The Board saw the issue as being whether, when the applicant has challenged the exemption under the Charter, the Board is required to dismiss the application and the applicant compelled to make an application to the Supreme Court of Ontario for a declaration that the exemption contravenes the Charter. If the applicant were successful, it would then have to return to the Board and request that the Board hear the application for certification, because the Court cannot grant certification, the remedy actually sought by the union. The Board noted that such was the case in *Moore v. The Queen in Right of B.C.*, (1988) 50 D.L.R. (4th) 29. There the B.C. Court of appeal held that a declaration by a court would be "unwarranted interference ... in a labour relations matter". It was argued that the Board does not have jurisdiction because it would not have jurisdiction over the persons or subject matter of the application if it were to find that the employees who are the subject of the certification application were employed in agriculture. In the Board's view, since the applicant was not the workers but rather the union, the application was properly before the Board.

The second question was whether the Board was permitted or required to apply the Charter on the basis of section 52 of the Charter, which declares that any law inconsistent with the Charter is to the extent of the inconsistency of "no force or effect". The Board held that there was such a requirement, citing the Supreme Court of Canada decision in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295. *Cuddy Chicks Limited*, [1988] OLRB Rep. May 468.

Negotiating for a reduced mandatory retirement age may not violate duty of fair representation

This was a section 68 (duty of fair representation) case. The complainant alleged that the union had, in negotiating a reduction in the mandatory retirement age from 70 to 65, violated its section 68 duty. The age limit was said to be discriminatory in that it affected only Ontario workers since it would not be enforceable under Quebec law. At the Canadian Auto Workers National Union Collective Bargaining Convention preceding the negotiations the delegates had agreed that inflation protection for retirees would be a high priority, and in bargaining such had indeed been a major platform. Because this would mean less money would be available for wages and benefits, the union bargained for improved job security (by way of the reduced retirement age) in order to induce younger workers to accept the contract.

The Board held that the discrimination prohibited by section 68 must be understood as the antithesis of fairness. A union cannot accommodate every concern of each employee consistently; therefore section 68 requires only that all relevant interests be weighed and the union make an honest judgment in the circumstances. In the instant case the union had weighed the right to work until an older age against the right to greater economic security after retirement at whatever age, and chose, on balance, to protect its members from the financial repercussions of a fragile pension on retirement. In so doing, it was neither arbitrary, discriminatory, nor acting in bad faith. The complaint was dismissed. *Leopold Morin*, [1988] OLRB Rep. May 506.

Board dismisses objections of employees who missed representation vote because they ignored Board notices

In this case, an application for a declaration terminating bargaining rights, three employees had claimed they had not been given a reasonable opportunity to vote. A date had been chosen for a vote (January 26, 1988). As usual, an alternate date was also chosen as a precautionary measure (January 28, 1988). The Board notices, Form 69-Notice of Taking of Vote, clearly stated that the vote would be held on January 26. The objecting employees admitted that they saw the notices and may even have read parts of them. Yet they claimed that they did not pay attention to the Board notices because they relied on a letter that they had received from the employer. That letter set out both the "Date of Vote" and "Alternate Date". The employees indicated that upon reading the letter, they understood that they would have an opportunity to vote on either January 26 or January 28 and that since they were not scheduled to work on the 26th they had planned to vote on the 28th. However, as planned, the vote was concluded on January 26. The employees argued that they had been misled and unfairly denied their right to vote. The Board held that an employee has an obligation to read the Board's official notices and anyone who elects not to pay attention to these notices does so at his or her own peril. The Board declined to nullify the vote. *Cable Tech Co. Ltd.*, [1988] OLRB Rep. June 562.

One-employer declaration not granted where union seeks thereby to extend general contractor's sub-contracting obligations to construction project owner

In this case Dalton Engineering and Construction Limited ('Dalton'), a general contractor, was building a new automobile showroom and doing certain other work for Rumble Pontiac Buick (1985) Inc. ('Rumble'), the owner. Dalton was bound by the Labourers Provincial Agreement, which requires general contractors to engage only those sub-contractors who are 'in contractual relations' with the union or its sister affiliated bargaining agents. However, the contract for one part of the work was between Rumble and a contractor, ABC Demolition ('ABC'), which was not in contractual relations with the union. The applicant, Labourers' International Union of North America, Local 506, contended that the performance of the work by ABC was a violation of the Agreement by Dalton because Rumble and Dalton were under common direction or control within the meaning of section 1(4) of the Act and should be treated as constituting one employer, making Rumble bound to the Agreement. As an alternative position, the union referred a construction industry grievance under section 124, and argued that the arrangement under which Rumble entered into a contract with ABC to perform the work was a sham designed to allow Dalton's subcontracting obligations to be circumvented. The union asserted that, in substance, it was Dalton which contracted with ABC notwithstanding that the form of the contract was between Rumble and ABC.

The latter argument had two branches. Dalton was the general contractor even with respect to the contracts executed by Rumble, and as such was not allowed to do through Rumble that which the contract prohibited Dalton from doing itself. In the alternative, even if Dalton was the construction manager, as claimed by the company, it was the general contractor as well, even with

respect to the demolition contract because Dalton was responsible to Rumble for ABC's work in the same manner and to the same extent as any general contractor. The only thing which Rumble did with respect to ABC was to select it from amongst the three contractors who bid the work and execute the contract prepared by Dalton. Moreover, even though Dalton did not award and execute the formal contracts, the value of those contracts was part of the cost of the work on which Dalton's fee was calculated and paid and Dalton was independently liable for the quality of the work done under the trade contracts. Therefore, the substance and reality of the ABC arrangement was that Dalton was the general contractor and the ABC contract was effectively with Dalton.

The position of Dalton and Rumble was that clearly Rumble, not Dalton, had let the demolition contract and had engaged ABC. Wood, the man who owned Rumble, wanted to have as much control as possible over how things were done on the project and did not want unionized contractors to be used. The respondent submitted that the circumstances of this case were no different in principle than where an owner lets a contract to a unionized general contractor and, before the work is performed, takes back a parcel of work and awards it to a non-union contractor. The general contractor cannot be held in breach of a subcontracting clause as a result of the owner's actions.

The Board characterized the issue as whether by entering into and fulfilling those terms of the contract with respect to the demolition work done by ABC, Dalton, not Rumble, engaged ABC to perform the work. When Rumble contracted with Dalton, Rumble expressly reserved to itself the choice of the contractors who would construct the project and the right to bind them directly to Rumble for the performance of the work. Rumble chose several of the contractors itself; thus it could not be said that Rumble did nothing more than sign the contracts. Consequently, at each time each trade contractor was engaged, Dalton did not have control over the work being awarded essential for it to have engaged the contractor either directly or indirectly. The Board found that Dalton had not violated the Agreement and dismissed the grievance.

In asserting its section 1(4) claim the union relied upon the type of contractual arrangement between Dalton and Rumble, which was "construction management". That is, Dalton became involved from the beginning in designing and planning the project. Wood also participated actively and his approval was required for every major change and for any revision to the budget. Wood visited the project daily.

The Board held it would not grant the section 1(4) declaration even if the preconditions for discretion to do so existed. Rumble was free to seek to have the project done with non-union labour. If the Board were to make the declaration, it would be analogous to the Board using its discretionary section 1(4) powers to extend bargaining rights rather than preserve them. The purpose of section 1(4) is to preserve rather than extend bargaining rights. As well, the fact that Dalton did not acquire the right or obligation to perform the demolition work was a pivotal consideration. Were one to believe that Dalton and Rumble carried on associated or related activities under common control or direction, and had Dalton transferred to Rumble a business or activity in the form of work covered by the agreement which it had the right or obligation to perform, a one-employer declaration may well have been an appropriate remedy. *Dalton Engineering & Construction Limited*, [1988] OLRB Rep. June 567.

A contract between a union representing guards and another union for services may constitute "affiliation" thereby precluding certification

This was an application by the Canadian Guards Association (CGA) for certification for a unit of security guards. Section 12 says no union shall be certified for a bargaining unit of guards

protecting the property of an employer if the union is affiliated, directly or indirectly, with an organization that admits to membership persons other than guards. At issue was whether the applicant was affiliated, within the meaning of section 12 of the Act, with the United Steelworkers of America (USWA), a union that admitted to membership persons other than guards. There was a "service contract" between the CGA and the USWA. The contract also set terms for a possible future merger of the two unions. The CGA had argued that the service contract merely provided for the sale of services, and that affiliation within the meaning of section 12 requires entities to be bound together or controlled by constitutional obligations. The Board indicated that section 12 does not have such a requirement, and found the applicant was affiliated with the USWA. The Board noted that under the contract, the USWA was obliged to make available to the CGA all support and technical services that the USWA provides to its own members, and its offices. As well, at least two-thirds of the dues paid by the members of the CGA flowed through to the USWA. The CGA had to provide a list of bargaining units and (where possible) members, and was required to co-operate and support the USWA should the USWA seek to become the bargaining agent for any or all CGA locals. At least one employee or agent of the USWA had to be invited to attend and participate in *every* meeting of all locals of the CGA. Finally, the Board noted that a telephone number in a letter soliciting membership for the CGA was answered, "United Steel Workers of America". In the result, section 12 precluded certification of the applicant. *Pinkerton's of Canada Ltd.*, [1988] OLRB Rep. June 613.

Employer's proposal to implement "notional recall list" not reasonably justified bargaining position: Board directs settlement of first contract by arbitration

This case involved an application under section 40a of the Act for a direction that a first contract be settled by arbitration, as well as unfair labour practice complaints brought pursuant to sections 15, 66, and 70 of the Act. The Board reviewed the series of dealings between the parties and found that after the union had significantly reduced its demands and largely accepted the respondent College's proposals, the College stipulated seven conditions precedent to signing an agreement. One of the conditions was that seven of the twelve bargaining unit teachers would be put on a notional recall list. This meant that they would be paid but would not return to work for the duration of the school year. Instead, replacement teachers hired during a strike would complete the year. The remainder of the bargaining unit would not be put on the list. Two of the teachers with the highest union leadership profile were not on the notional recall list.

The meeting at which the above condition precedent was proposed took place approximately three weeks after the substitute teachers had been hired, with approximately six months of school remaining before final exams and five and a half months having been completed by the striking teachers. The College's chief negotiator acknowledged at the outset of the meeting that the proposals, particularly the recall one, would likely be intolerable to the union and an impediment to the signing of a collective agreement. The only justification given for the recall proposal was that it would be disruptive to introduce a "new" group of teachers to replace the substitutes who had been there for three weeks. The Board pointed out that there was no explanation as to why substitutes were less disruptive than permanent teachers, and found that the proposal was an attempt by the College to obstruct the union, avoid bargaining in good faith, and avoid the immediate return to work of teachers who had been leading or involved with the union. Accordingly, the Board held that the College had violated sections 15, 66 and 70 of the Act. By way of remedy, the Board ordered that the College remove the notional recall proposal from its bargaining proposals and directed that the two teachers with high union leadership profiles be amongst the persons to be reinstated forthwith.

The Board further held that the concept, timing and proposed implementation of the notional recall constituted an uncompromising and not reasonably justified bargaining position

within the meaning of clause (b) of section 40a of the Act and represented the failure of the College to make reasonable or expeditious efforts to conclude a collective agreement within the meaning of clause (c) of that section. The Board accordingly directed the settlement of a first collective agreement by arbitration. *Alma College*, [1988] OLRB Rep. July 641.

Proposal to transfer all work out of a department, thereby eliminating the unit, found to be a recognition issue which could not be pressed to impasse

In this case the Brantford Typographical Union alleged that the Brantford Expositor had bargained in bad faith by pressing its proposal over work jurisdiction to impasse. The dispute between the parties concerned the employer's position that it required flexibility in the assignment of composing room work in order to compete in an era of technological change. The employer sought the right to transfer work presently in the composing room to any other area of the newspaper or outside the newspaper if and when it chose. Throughout the negotiations the employer maintained its position that it was not prepared to discuss anything separate from the jurisdiction issue. Although life-time job security was offered to the individuals in the composing room, once the individuals were gone, there would be no more bargaining unit.

The Board's jurisprudence makes it clear that neither party to a collective agreement may press to impasse the definition of the bargaining unit, the extension of bargaining rights or other matters of recognition, because the concept of the definition of the bargaining unit and the recognition of its representative is fundamental to the scheme of the Act. However, it is clear that parties are entitled to raise and discuss these matters. The issue here was whether the employer's proposal was an attempt to restructure the bargaining unit.

What complicated the matter here was that the jurisdiction of the union and the bargaining unit were defined in identical language, a common feature in collective agreements dealing with trades and crafts. In this case the union was being asked to agree to the abolition of the bargaining unit. It was also being asked to agree that in future it would be unable to assert its bargaining rights. In these circumstances the dispute was held to be a recognition issue which could not be pressed to impasse under the section 15 duty to bargain in good faith. This was no less so because it was also potentially a jurisdictional dispute which could, if crystallized in the future, be dealt with on its merits under the Board's section 91 power to inquire into and resolve jurisdictional disputes. That was the proper forum for dealing with the employer's argument that it was being required to assign redundant work. The employer was directed to cease insisting on its proposal. *Brantford Expositor*, [1988] OLRB Rep. July 653.

ICI agreement not applying to shop

This was a construction industry arbitration referral. The union contended that certain of its members were entitled to a travel allowance when they were dispatched to work at the employer's "fabrication shop". The provincial collective agreement for the industrial, commercial and institutional sector of the construction industry stipulated that "a travelling allowance of 40 cents per mile shall be paid from the boundaries of the free zone to the job and return each day". The shop was 2.1 miles beyond the free zone.

Article 24 of that agreement, dealing with fabrication, contemplates the possibility of pipe fabrication on the job site, at a fabrication location, or in an employer's shop requiring the skills of union members. The company asserted, however, that no travel allowance was payable because the provincial agreement had no application at that location. In the company's submission, the work at its Burlington facility was more properly characterized as "manufacturing" rather than "construction work" and that, consequently, the provincial agreement did not apply. The company

acknowledged that it was bound by the provincial collective agreement insofar as its construction activities were concerned, and had always applied the agreement (and its predecessors) to all of its on-site construction and fabrication work. In addition, the company had always applied all the terms of the agreement or its predecessors to its Burlington shop, except the travel allowance, which it had never paid. The company explained that the bulk of the company's economic activities were "construction oriented", so that it was convenient to use the same tradesmen and payment system for all aspects of its business, rather than set up separate payrolls. However, the evidence respecting the kind and mix of work done at the company's shop was both unclear and somewhat contradictory. The company asserted that only 5% of the work was "construction related", and 95% was "manufacturing". The company later conceded that the shop did do some fabrication in connection with its construction activities. Indeed, at the time of the hearing 100% of its work force in Burlington was engaged in the fabrication of systems for installation at a large construction project. It pointed out however that most of the fabrication work was actually done on the job site.

There was little direct evidence relating to the interpretation of the agreement, and none concerning the bargaining parties' intentions, or the industry practice, or certain other matters. Article 24 of the agreement was the only one which expressly contemplated work of the kind which the respondent did at its Burlington facility. However Article 24 did not specify that fabrication work must be done only in accordance with the terms of the agreement, and, in fact, Article 24.2 suggested the contrary. Article 24.2 defined the term "shop" as one under an agreement with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (the "U.A."), or one of its local unions. But the U.A. was not, by itself, the designated employee bargaining agency, nor was a local union entitled to enter into an agreement or other arrangement affecting construction work in the industrial, commercial, and institutional sector without the express authorization of the designated bargaining agencies. Accordingly, the language of Article 24.2 appeared to contemplate a separate and distinct shop agreement with the U.A. or one of its locals rather than the provincial agreement. The Board decided that the implication of section 24.2 was that shop work, however it was characterized, would be the subject of a separate shop agreement either with the U.A. or one of its locals. Here there was none. The travel allowance provision used the general term "job". However, Article 24 distinguished specifically between a "job" or a "job site" on the one hand, and an employer's "shop" on the other. Travel zones and allowances only applied to roving "jobs" or "job sites". The provision did not, on its face, apply to travel to and from a permanent "shop". The Board found that the bargaining parties had not intended that the agreement would apply to the respondent employer's activities in its shop; the Board also held that the term "job" in the travel pay provision, when read together with Article 24 which distinguished job sites from shops, did not contemplate the payment of a travel allowance when tradesmen were dispatched to the latter. The grievance was dismissed. *Calorific Construction Limited*, [1988] OLRB Rep. July 662.

When voluntary recognition occurs in the construction industry, there are potentially available two open periods during which termination applications can be brought

This was an application pursuant to section 57 for a declaration terminating bargaining rights. The parties in this construction industry case had become bound to the applicable provincial agreement for the industrial, commercial and institutional sector by executing a voluntary recognition agreement. The application would be timely if the provisions of section 57(2) of the Act were applicable because that section provides that in the case of a collective agreement for a term of not more than three years, the open period for applications begins after the commencement of the last two months of the agreement's operation. The application was brought after the commencement of the last two months of the agreement. The respondents asserted that it was untimely by virtue of the operation of section 123(2) which provides that the open period in the

construction industry for terminating the bargaining rights of a voluntarily recognized union is between the 305th and 365th day of the collective agreement's operation (on a first collective agreement). This application was brought after the 365th day of the operation of the provincial agreement. The issue was whether the s.123(2) open period supplants, or is in addition to, the open period contained in section 57(2). The Board held that the general provisions of section 57 continue to apply to termination applications in the construction industry, unless such application would result in conflict with the construction industry provisions of the Act. The Board held that section 123(2) provides an open period that is in addition to the open period provided in section 57(2) of the Act. However, this scenario exists only when a bargaining agent has been voluntarily recognized and is in the construction industry. This application was timely. *Pino Drywall Construction of Ottawa Ltd.*, [1988] OLRB Rep. July 692.

Union's duty of fair representation ceases upon decertification

The complainant, a member of the door staff at a restaurant, filed a complaint under section 68 of the Act alleging that the Hotel Employees, Restaurant Employees Union, Local 75 ("Local 75") breached its duty of fair representation in the manner in which it handled a grievance. Shortly after the complaint was filed Local 75 was decertified, having been replaced by the Canadian Textile and Chemical Union. After being decertified, Local 75 stopped dealing with the complainant. The Board found that up to the time of the decertification, the union did not contravene section 68. However, because the matter had not been finally dealt with by the time of decertification, the issue arose as to whether the duty imposed by section 68 continues with respect to matters arising prior to but not resolved by the time of decertification.

Section 68 imposes a duty of fair representation on the union "so long as it continues to be entitled to represent employees in a bargaining unit". The Board acknowledged that there were policy arguments both for and against a continuing duty, but concluded that the clear wording of section 68 sent an unambiguous message from the Legislature that the duty on the union under section 68 ceases at the time it is decertified. The Board observed that its interpretation of section 68 was reinforced by subsection 56(1) of the Act. That subsection states that when one union is displaced by another, the displaced union "ceases to represent the employees in the bargaining unit". Since, by virtue of subsection 56(1), Local 75 ceased to represent the complainant, it also ceased to owe any duty to the complainant under section 68. *Reinaldo Santos*, [1988] OLRB Rep. July 701.

Board will not scrutinize loan or gift of small sum of money from one rank-and-file employee to another absent evidence of membership buying

In this application for certification the employer argued that one of its employees should not be treated as a union "member" because he had not paid at least $1.00 "on his own behalf" as prescribed by section 1(1)(l) of the Act. The employee did not have a dollar when approached by a union organizer to sign a membership card, so he turned to his co-worker for assistance. The co-worker gave the employee a dollar and the employee, in turn, gave the dollar to the union organizer. There was no discussion between the two employees regarding the responsibility to repay the dollar. The dollar was not in fact repaid and the union organizer who collected the money did not inform himself as to whether or not there had been repayment. The collector did however sign a Declaration Concerning Membership Documents, Construction Industry (Form 80), stating that each member on whose behalf membership evidence was submitted personally paid the membership fee on his own behalf. The Form 80 requires that any exceptions to this statement be recorded, and the collector listed no exceptions. In addition to arguing that the employee should not be treated as a union "member", the employer argued that the failure to

record the "loan" on the From 80 declaration invalidated that document and was fatal to the whole application for certification.

The Board held that the dollar paid in the circumstances outlined above met the requirements of section 1(1)(l) of the Act and provided the requisite confirmation of the written document contemplated by the statute. That being so, there was no error, omission or misstatement on the Form 80 declaration. While it may have been wiser for the union organizer to note the loan/gift he had witnessed, there was nothing improper in his failure to do so. The Board reviewed the law regarding "non-pay" as outlined in *RCA Victor Company Ltd.*, 53 CLLC ¶16,067. In that case it was held that a monetary contribution from a person other than the applicant for membership would not be accepted as evidence of payment. The rationale was that the money payment constituted a "financial sacrifice" and as such was confirmatory evidence of the desire of the payer to become a member of the trade union. However, not every loan to a prospective member would be fatal to an applicant's case, especially where the money was repaid. The Board held that whatever may have been the case 35 years ago when *RCA Victor* was decided, today payment of one dollar could not be considered to be a true "financial sacrifice". Rather, today the purpose of such payment is symbolic, and provides a simple statutory formula for determining union membership.

The Board is entitled to demand strict compliance with the statutory requirements and to reject membership evidence where the union fails to collect the $1.00 payment or to conduct the inquiries necessary to complete the Form 80 declaration. However, there comes a point when technical adherence to alleged "rules" becomes remote from the real life experience of employees whose interests must also be considered if the Board is to fulfill its statutory mandate. The ordinary employee in a plant or on a construction site does not seriously distinguish between a loan of a dollar which s/he "solemnly" undertakes to repay and an outright gift of a nominal amount. The Board will thus not ordinarily be concerned about the advance of small sums of money from one rank -and- file employee to another whether by way of "gift" or "loan". The Board will not scrutinize such gifts or loans unless the evidence suggests that a person associated with the union was "buying memberships". Absent such evidence it is artificial to focus on the expressed or presumed "intent to repay" of an individual employee in respect of the relatively trivial sum necessary to meet a statutory requirement which today is merely symbolic.

The Board was satisfied that the employee would have repaid the dollar to his co-worker had the latter asked for or expected it. Alternatively, the Board found that the dollar was a gift to be used by the employee as he saw fit. The money was thus tendered by the employee "on his own behalf" to support his written signification that he wished to join and be represented by a trade union. Whether characterized as a "gift" or a "loan", the dollar was the employee's to do with as he pleased, and advancing that sum in support of his application for union membership met the requirements of section 1(1)(l) of the Act. *Calvano Lumber & Trim Co. Ltd.*, [1988] OLRB Rep. Aug. 735.

Board found no sale of business where one meat packing business purchased assets of another through trustee in bankruptcy

In this application pursuant to section 63 of the Act the union alleged that a sale of business had occurred and that the respondents were successor employers to Royal Dressed Meats Inc. ('RDM'). The respondents and RDM were both in the meat packing business when RDM went into bankruptcy. The factors leading to RDM's demise included revocation of the company's licence to slaughter livestock as a result of allegations that the company falsified the weights of cattle killed, the laying of criminal fraud charges against certain principals of the company and bad publicity generated both by the criminal charges and by allegations that the company had sold tainted meat. The respondents purchased the assets of RDM from the trustee in bankruptcy. In

particular, the respondents acquired 6.97 acres of land, a federally inspected building situated on the land, and the machinery, equipment and vehicles of RDM. It was important to the respondents to acquire a federally inspected plant, as this allowed them to avoid the costs associated with bringing a plant up to current standards.

The Agreement of Purchase and Sale was limited strictly to the sale and purchase of assets. No one associated with RDM was involved in the financing of the acquisition of the assets by the respondents. The respondents did not acquire RDM's customer list, logos or trademark. By the time the respondents commenced operations, there was "bad will" rather than any goodwill associated with the predecessor business. The property, plant and equipment purchased were sufficient to enable the respondents to commence a wholesale meat packing business approximately seven times the size of the current business. Because of the difference in the size and type of business, the respondents were using only one half of the plant previously operated by RDM. The respondents purchased the property in the hope of increasing their operations to double the size of their current business and of severing and selling any unneeded property. In addition to acquiring the entire plant and equipment of RDM, the respondents continued to employ two of RDM's managerial employees, namely, the plant engineer and the plant manager. The plant manager was a former Vice-President and Director of RDM and one of its shareholders. The agreement of Purchase and Sale was not however contingent upon acquiring the services of the plant manager, nor upon having him participate in the operations of the respondents. While the respondents wanted to make use of his expertise, they did not expect him to help the respondent's business. In fact the respondents acquired very few customers of RDM. The respondents attracted new customers on their own initiative and not by reason of their having acquired the plant and assets of RDM.

The Board held that while there had been a "sale" there had not been a sale of a "business" or "part" of a "business" within the meaning of section 63. The Board was not prepared to draw an adverse inference from the fact that the plant and property purchased were seven times bigger than the respondents' current requirements. Just because a purchaser hopes to acquire all or part of a vendor's business does not necessarily mean that the purchaser has been "sold" the "business" within the meaning of section 63. In order for the sale of "something" to constitute a sale of a "business", there must be a transfer of a "coherent and severable part" of the predecessor's economic organization sufficient to enable the successor to perform a definable part of the functions formerly performed by the predecessor. In this case, the plant and equipment were merely isolated assets and did not constitute the "business" of wholesale meat packing. The fact that the plant acquired was federally inspected is not determinative. There is a difference between acquiring a licence to operate and acquiring the benefit of owning a federally inspected plant. There was no necessity for the respondents to operate from a federally inspected plant. While goodwill is an integral part of the business there was no transfer of goodwill from RDM to the respondents. Nor did the respondents' relationship with one of RDM's former employees amount to a transfer of goodwill. Where a purchaser purchases the assets of another employer bound by a collective agreement in order to further its own expansion, a "sale of business" is unlikely to be deemed to have occurred unless the business entity which results can be described as having its roots in the predecessor's business. In this case the Board found that the roots of the respondents' business lay in its own previous business. The essence of that business, its most important asset, was it President, whose skills and personal relationships with customers made the business a profitable one. Neither the plant nor the equipment form the "key" elements of the "business" of wholesale meat packing. The key elements are entrepreneurial skills, managerial ability and sales techniques. These key elements remained constant when the respondents acquired RDM's assets and they were absent from the RDM business operations. The minimal overlap in the customers of the respondents who had previously been customers of RDM points to the different natures of the

two business entities. RDM's customer base consisted primarily of large chain retail grocers while the respondents' customers were small independent retailers. The respondents through their own solicitation of customers managed to gain a small percentage of former RDM customers. This acquisition is not indicative of a sale of all or part of a business within the meaning of section 63 of the Act. *Crown Packers & Realties Ltd.*, [1988] OLRB Rep. Aug. 752.

Board declines to defer to arbitration where violation of statutory freeze allegedly based on violation of significant statutory rights in addition to breach of collective agreement

This case involved several complaints brought by the Retail, Wholesale and Department Store Union ("RWDSU") against Cuddy Food Products Ltd. ("the employer"). The RWDSU had earlier appeared before a differently constituted panel on an application for certification, seeking to displace the United Food and Commercial Workers International Union and its Local 175 ("UFCW"). At the time the present case was heard, no decision had yet been rendered on the certification matter. The UFCW was granted status to intervene in these proceedings by virtue of its existing bargaining rights.

The RWDSU alleged that the employer violated section 79, the statutory freeze provision. The basis for that allegation was that the employer acted contrary to the provisions of its collective agreement with the UFCW when those provisions were statutorily frozen by the RWDSU's application for certification. The RWDSU's complaints further alleged that the employer violated the collective agreement because of the grievors' support for the RWDSU. Thus, the basis for the allegation that the statutory freeze provision had been violated was not merely that the employer had breached the collective agreement. It was alleged in addition that the breach was motivated by anti-union animus. The issue was whether in these circumstances the Board should defer to arbitration.

The employer argued that the Board should refuse to inquire into the complaints. It emphasized that the complaints were primarily contractual in nature, and therefore should be addressed through the grievance and arbitration process of the collective agreement. The UFCW also urged the Board to defer to arbitration. While it acknowledged the Board's authority to inquire into unfair labour practices, it argued that where, as here, the incident giving rise to the complaint is contractual in nature, the affected employees should grieve. Otherwise, argued the UFCW, the RWDSU would be permitted to interfere with the UFCW's right to represent the employees. Counsel for the UFCW indicated the union's willingness to assist the individual complainants in the preparation of their grievance and to assist them throughout the grievance procedure. The RWDSU argued that the Board should not defer to arbitration. It argued that persons known to be RWDSU supporters were being discriminated against and that it had the right to prosecute actions taken against its members by reason of their union membership. The RWDSU argued further that deferral to arbitration would not provide an adequate remedy because, for example, a board of arbitration was unlikely to direct the employer to stop harassing RWDSU supporters. Similarly, such board could not resolve the dispute between the two unions, as the RWDSU was not a party to the collective agreement and could not therefore be a party to the arbitration process under the collective agreement.

The Board held that in the circumstances of this case, and in light of the alleged violations of significant statutory rights, it would not be appropriate to defer to arbitration. In canvassing the issue of when and under what circumstances the Board ought to defer to arbitration, the Board referred to *Valdi Inc.*, [1980] OLRB Rep. Aug. 1254 and *Imperial Tobacco Products (Ontario) Limited*, [1974] OLRB Rep. July 418. Those cases established, *inter alia*, that deferral to arbitration must be consistent with the public interest and with the Board's responsibility to administer the Act, and must be capable of effectively resolving both the unfair labour practice alleged

and the violations of the collective agreement. The Board held that in the circumstances of this case deferral to arbitration would accomplish neither of these objectives. The Board has a statutorily imposed duty to ensure that where one union is seeking to displace another, the employees are operating in a work environment which allows them to join the trade union of their choice. The public interest in ensuring that freedom of choice is paramount and cannot necessarily be addressed through the grievance and arbitration process found in the collective agreement. Furthermore, should the matter be deferred, the remedies available may be inadequate: the employer did not appear to be prepared to waive its right to raise timeliness arguments, which would impact on the arbitrability of any grievances filed. The Board will not normally defer to the arbitration process absent assurances that the aggrieved persons will have access to that process and have full opportunity to obtain a remedy using that process. Moreover, a private board of arbitration does not have available to it the Board's sophisticated array of remedies which can benefit bargaining unit employees collaterally affected by an unfair labour practice. For example, the remedy of a posting of notices is unlikely to be awarded by a private board of arbitration.

In declining to defer to arbitration, the Board emphasized that a trade union seeking to displace an incumbent union ought not to come before the Board alleging a violation of the statutory freeze based *solely* on an alleged violation of the collective agreement. Where such is the case, the alleged violation of the collective agreement is a proper matter for the arbitration process. The Board also emphasized that not every argument that deferral to arbitration would result in inadequate remedies will cause the Board to refuse to defer: the fact that the RWDSU was not a party to the collective agreement and could not invoke the grievance procedure was not determinative of the Board's decision. Rather, it was the need to determine significant statutory rights of the RWDSU and of employees that caused the Board to decline to defer to arbitration. In the absence of issues raising such significant statutory rights, the Board would not be prepared to assume that the UFCW would be unable or unwilling to seek full redress for aggrieved employees. *Cuddy Food Products Ltd.*, [1988] OLRB Rep. Aug. 768.

Mere performance of labour not an "undertaking" within meaning of *Crown Transfers Act* although provision of services may be

In this case the union sought a declaration under the *Successor Rights (Crown Transfers) Act* ("the Act") that the Crown transferred an undertaking to a private entity and that the private entity was bound by the collective agreement existing between the union and the Crown. The union cited three instances of alleged transfers of undertakings. In each case, the functions being performed by the employees of the private respondent were previously carried out by Crown employees. One instance concerned the alleged transfer of the task of transplanting seedlings at a Crown nursery. Before 1988, the summer transplanting was done exclusively by Crown staff. In 1988, it was done exclusively by employees of a private business, called Moose Creek, except for quality control which was carried out by a small number of seasonal Crown staff. Of the employees hired by Moose Creek, 34% had worked for the Crown the previous summer. Moose Creek supervised the employees, but the Crown established the specifications for lifting and transplanting, adherence to which was ensured by the Crown's quality control employees. The Crown provided all necessary equipment to Moose Creek.

A second contract involved the maintenance of facilities and day-to-day management of a park, including the provision of information and the issuance of permits to users of the Park. The contract, which covered the period of May 17, 1988 to March 31, 1989, was given to a Mr. Luckasavitch, who lived with his wife on one of the Park campgrounds. In 1987, the Crown performed the functions covered by the contract, but hired a person to collect fees for permits during July and August only. At other times there was a "self-serve" system for issuing permits. While the persons formerly employed by the Crown worked five days a week, Luckasavitch was available 24 hours,

seven days a week. There was, however, nothing in the contract imposing such a condition. The Crown argued that because of the availability of Luckasavitch, the tasks performed by him constituted a new "project", and that there could not therefore have been a "transfer" of anything. The Crown argued further that the contract merely entailed the transfer of the opportunity to do work and was therefore not encompassed by the Act. The union argued, on the other hand, that the word "work" in clause 1(1)(h) of the Act refers to the performance of labour by employees rather than "a work" in the sense of an entity.

The third contract involved the performance of janitorial services in a particular portion of Algonquin Park by a private business known as Charmaine's Janitorial Services. This contract gave a detailed description of when and how various facilities were to be cleaned during specific periods during the summer. In 1987, the same work was done by seasonal staff of the Crown. Three of those seven employees went to work for Charmaine's. Again, the Crown argued that there was merely a transfer of work. The issue with respect to all three contracts was whether the functions specified therein constituted "undertakings" within the meaning of section 1(1)(h) of the Act and if they did, whether there had been a "transfer" from the Crown to the private respondents within the meaning of section 1(1)(f) of the Act. The Board held that in all three cases there had been a transfer of an undertaking or part of an undertaking and that the private entity was therefore bound by the collective agreement between the Crown and the union. Generally speaking, under both the *Crown Transfers Act* and section 63 of the *Labour Relations Act* the union's bargaining rights and the employees' choice of representation should be continued where the essential activity remains the same, but carried out by another employer, and the essential employment relationship remains the same.

With respect to the transplanting contract, the Board found that it encompassed part of a program run by the Crown. When the Crown transfers part of a project and retains an interest in ensuring that the work performed is consistent with Crown standards there is a transfer of an undertaking within the meaning of the Act. With respect to the maintenance contract, the Board rejected the Crown's argument that a new "project" had been created. The Board found that the contract merely required that Luckasavitch perform the project comprised of selling permits or providing information in a different manner than did the employee of the Crown who previously performed it. Essentially, the functions remained the same. The Board agreed with the Crown's argument that the transfer of the opportunity to do work is not encompassed by the *Crown Transfers Act*. The Board held that the definition of "undertaking" in clause 1(1)(h) of the Act does not include the mere performance of labour in itself. The Board held, however, that provision of services may constitute an undertaking within the meaning of section 1(1)(h) of the Act. The provision of services is a function integral to modern governments and the purpose of providing such services is to carry out a government undertaking or part of an undertaking. While the purposes of section 63 of the *Labour Relations Act* and that of the *Crown Transfers Act* may be the same, the activities encompassed by the two provisions are not similar. "Business" and "undertaking" are not synonymous; nor is the definition of "part" of an undertaking the same as that of "part" of a business. The definitions must take into account the different ways in which government carries out its functions and acts as an employer. The notion of a coherent and severable portion of a business which applies under section 63 is not necessarily appropriately transferred to the *Crown Transfers Act*. A program or project may be comprised of several distinct functions which can be severed, but which do not constitute a microcosm of the whole. The Board held that what was transferred between the Crown and Luckasavitch was not merely the opportunity to perform work or engage in labour. The operation of the provincial parks is a program of the Ministry of Natural Resources and whether the tasks performed by Luckasavitch constituted a "project" or other form of undertaking, they did constitute part of an undertaking which had been transferred from the Crown to Luckasavitch. With respect to the contract to Charmaine's, the

Board again rejected the Crown's argument that there was merely a transfer of work. The Board held that the provision of cleaning services in a particular portion of Algonquin Park, where operation of the Park would be undermined without such services, constituted part of the undertaking carried on by the Crown and was therefore encompassed by section 1(1)(h) of the Act. *Charmaine's Janitorial Services*, [1988] OLRB Rep. Sept. 871.

Part XI occasional teachers who teach in French language included in bargaining unit with occasional teachers providing instruction in English

This case involved a dispute over the description of an appropriate bargaining unit of occasional teachers governed by the *Education Act*. The respondent operated twenty-one English language schools and two French language schools. Part XI occasional teachers taught in the French language. They received essentially the same training as other occasional teachers, only it was carried out in a different language. There was little interchange in work assignments between Part XI and other occasional teachers. Teachers employed by the respondent other than occasional teachers were covered by the *School Boards and Teachers Collective Negotiations Act* ("Bill 100") rather than the *Labour Relations Act*. Bill 100 divides its teachers into English instruction and French instruction bargaining units. It does however permit French and English language teachers to bargain jointly and those employed by the respondent had in fact bargained jointly for the previous ten years and were covered by one collective agreement. Non-teaching staff and education assistants comprised another bargaining unit which was represented by the Canadian Union of Public Employees Local 1479. That unit included staff working with both French and English language schools, and was covered by one collective agreement. The respondent's established policies with respect to wages, benefits and working conditions were generally the same for all occasional teachers regardless of the language in which they taught. The applicant argued that Part XI occasional teachers should be included in a bargaining unit with occasional teachers providing instruction in the English language. The respondent argued that Part XI teachers should be excluded from the bargaining unit: the two groups did not share a community of interest and the occasional teachers bargaining units should mirror those of the Bill 100 teachers.

The Board held that a unit of employees including all occasional teachers of the respondent was appropriate for collective bargaining. Referring to *Le Conseil Scolaire d'Ottawa*, [1985] OLRB Rep. July 1090 and to *Sault Ste. Marie District Roman Catholic Separate School Board*, [1988] OLRB Rep. Jan. 91, the Board held that either bargaining unit structure may be appropriate, depending on the circumstances of the case. In this case, Part XI and other occasional teachers had more similarities than differences. Given the similarities in their work, their working conditions and their employment structure, it was difficult to say that they did not share sufficient community of interest to bargain together. The Board drew on the experience of the parties with Bill XI teachers, which indicated that bargaining together had been a satisfactory arrangement for many years. The Board also noted that Part XI occasional teachers were given notice of the application along with the other occasional teachers, and none came forward to object to their inclusion in the bargaining unit. The respondent did not suggest that inclusion of Part XI occasional teachers would cause serious labour relations problems, and an all-inclusive occasional teacher unit was more consistent with the respondent's existing bargaining arrangement. The Board rejected the respondent's argument that the Board should mirror the bargaining structure set out in Bill 100. That legislation gives recognition to factors such as religion, language, ethnicity and gender, which are foreign to private and other public sector labour relations as well as to the Board's criteria for bargaining unit determinations. While the Board did not rule out that the bargaining structure imposed on the education sector may be relevant to occasional teacher bargaining units, it held that there was nothing in this case to indicate that it should provide a blueprint for the bargaining

unit before it. *Frontenac-Lennox and Addington County Roman Catholic Separate School Board*, [1988] OLRB Rep. Sept. 888.

Board orders advance production of tape recordings on which union intends to rely

In this application for certification pursuant to section 8 of the Act, the union alleged that the employer engaged in various unfair labour practices. The detailed particulars filed by the union included quotations of statements allegedly made by company representatives. These quotations led the company to believe that some or all of the statements may have been tape recorded. At the commencement of the hearing the employer requested the Board to order the union to produce any tape recordings which it had of statements made to employees by company officials during the period covered by the complaint. The employer argued that the order should be made in order to prevent "trial by ambush" and that advance production of such tapes could reduce the time required to complete the hearing. The employer argued further that production of the tapes should be ordered irrespective of whether the union intended to introduce them into evidence. The union declined to indicate whether or not it had any tape recordings in its possession, asserting that is was "none of the company's business". The union relied on Rule 72(1), which requires a party to provide a concise statement of material facts, etc., but not the evidence by which those facts are to be proved. The union argued that neither the Act nor the Rules contemplated pre-hearing production, and that the Board should not adopt such a procedure.

The Board was not prepared to direct production of tape recordings on which the union did not intend to rely, but did direct that the union produce any tape recordings in its possession on which it intended to rely in the proceedings. Holding that its power to so direct derived from sections 102(13) and 103(2)(a) of the Act, the Board noted that in recent years the Board had taken a number of steps to foster advance production of documents. In particular, the Board referred to Practice Notes 15 and 18 and to previous Board decisions directing pre-hearing production of documents in particular cases. The Board noted that in appropriate cases, advance production of documents could promote settlement discussions and expedite the hearing process by minimizing the need for document related adjournments. On the other hand, the Board also recognized the possibility that hearing and deciding issues concerning the proper scope of advance production may delay the disposition of a case. The Board was satisfied that the type of order for production made in this case would expedite the hearing of the matter without giving rise to problems concerning the adequacy or completeness of production, because the union would be precluded from relying on any tape recordings which it had not produced. *Ontario Bus Industries Inc.*, [1988] OLRB Rep. Sept. 914.

Local formwork agreement which is inconsistent with statute not creating ICI bargaining rights province-wide

In this referral to arbitration pursuant to section 124 of the Act, the Board was called upon to decide whether the employer, a company engaged in concrete formwork, was required to apply the Labourers' Union provincial industrial, commercial and institutional sector ("ICI") agreement to certain construction projects in Cambridge, Ontario. In 1984 the employer voluntarily recognized Labourers' Local 1059. Shortly thereafter, the parties entered into a 'formwork agreement' which applied to all of the employer's concrete forming work in all sectors in the London, Ontario area, including ICI projects. The agreement did not extend beyond London, nor did it bind the employer to the ICI agreement in London or elsewhere. Until 1988-89 the agreement remained unrestricted with respect to the sector in which formwork was done. The company did not apply the provincial ICI agreement and Local 1059 made no complaint. Problems arose however when the company became engaged in a project in Cambridge within the geographic jurisdiction of Local 1081. The company insisted on using a crew of members from Local 1059 and denied any

obligation to apply the ICI agreement to the work in question. Local 1081 contended that the company was required to use *its* members, and apply the terms of the provincial ICI collective agreement. The issue was whether the company had a bargaining relationship with Local 1081 and whether the provincial ICI agreement might apply to a construction project in Cambridge.

Local 1081 argued that by virtue of sections 144(4) and 137(2) of the Act, the initial voluntary agreement and the subsequent collective agreements with Local 1059 created ICI bargaining rights for Local 1081 as well, and also for all other Labourers' locals throughout Ontario. Local 1081 further argued that bargaining rights cannot be limited in ways which are not permitted by statute, and that once ICI bargaining rights are acknowledged, the provincial ICI agreement must be applied. Insofar as the London formwork agreement pertained to the ICI sector, argued Local 1081, it was inconsistent with section 146(2) of the Act, the terms of the ministerial designation, and the potential exemptions from the provincial scheme contemplated by section 139(2). The company was therefore bound by the provincial ICI agreement despite its purported local arrangement with Labourers' Local 1059. The company argued that its local formwork agreement did not fall within the ambit of section 146(2) because of the way in which the Minister framed the Labourers' employee bargaining agency designation. In the company's submission, the words of the designation suggested that Local 1059 could acquire bargaining rights or become bound by a collective agreement affecting all sectors of the construction industry covering employees engaged in concrete forming, in which case it would not be an affiliated bargaining agent within the meaning of section 137(1)(a) of the Act. The company argued therefore that insofar as the collective agreement with Local 1059 was concerned, section 146(2) could have no application. There could be no vicarious extension of bargaining rights for the benefit of Local 1081 because, for the purposes of concrete forming, Local 1059 was not an affiliated bargaining agent. Moreover, the company's collective agreement, being exempted from the provincial scheme, had no application beyond the London area - even in the ICI sector.

The Board briefly reviewed the statutory provisions within which the parties' rights had to be determined. It held that the general thrust of the legislation was that in the ICI sector, the norm is provincial bargaining through designated provincial bargaining agencies, a provincial collective agreement, and no local bargaining, collective agreement 'or other arrangement' inconsistent with the foregoing. The Board expressed doubt with respect to the company's suggestion that an affiliated bargaining agent within the meaning of section 137(1)(a) could cease to be an affiliated bargaining agent for some purposes by ministerial decree. The Board doubted that the legislature intended that exemptions from the designation might be made (and therefore exemptions from the provincial bargaining scheme might be created) other than in accordance with section 139(2) of the Act. Insofar as formwork was concerned, the Minister intended to exempt from the provincial scheme only ICI formwork which was subject to a pre-existing provincial formwork agreement conforming to the requirements of section 139(2). The Board found that the company's agreement did not conform to the requirements of that section: the company was not an employer bargaining agency and did not bargain with a council of trade unions. Its purported agreement was not province-wide. The Board concluded, therefore, that the 'formwork agreement' between the company and Local 1059, insofar as it purported to apply to the ICI sector of the construction industry, was a collective agreement or arrangement other than a 'provincial agreement' and was therefore 'null and void' by virtue of section 146(2) of the Act. That being so, the recognition clause in the agreement could not be relied upon by Locals 1059, 1081 or any other Labourers' local in Ontario to create ICI bargaining rights. Local 1081 could not argue on the one hand that the collective agreement between the company and Local 1059 was 'null and void' because it was contrary to the ICI scheme and at the same time assert that its recognition clause survives so as to provide a valid legal foundation for ICI bargaining rights for Local 1081. Nor could the voluntary recognition agreement provide an independent foundation for Labourers' bargaining rights in the

Board area it purported to cover, so that all Labourers' local unions in Ontario could assert ICI bargaining rights in their respective geographic jurisdictions. The Board held that the 1984 voluntary recognition arrangement, if it survived the subsequent collective agreements, was ineffective insofar as the ICI sector was concerned because it did not comply with the requirements of section 144(4). That being so, it could not provide an independent basis for Local 1081's bargaining rights or for its present claim. *Rockwall Concrete Forming (London) Limited*, [1988] OLRB Rep. Sept. 963.

Employer is free to explain to employees its position with respect to collective bargaining issues after negotiating with union on those issues

In this case the employer issued written communications to its employees setting out its position with respect to negotiations that were taking place with the complainant ("the Guild") about the renewal of a collective agreement. The issue was whether the employer's actions amounted to interference with the Guild's representation of employees and/or an attempt to bargain directly with employees contrary to sections 64 and 67(1) of the Act. The employer issued three written communications in total. Before the employer began distributing its reports, the Guild had issued several of its own bargaining bulletins containing exaggerations, omissions and in some cases misleading statements. All of the reports issued by the employer set out its position with respect to issues raised by the Guild in bargaining and were positions that had been conveyed to the Guild's bargaining committee prior to publication. The first report responded to issues raised by the Guild at the bargaining table and in the Guild's bulletins to its members. In it the employer sought to provide the employees with information on the company's positions and also to clarify the mistakes and distortions which the employer believed were contained in the Guild's issues. The second report, issued the day after a mediation meeting, accurately described the position taken by the employer at that meeting. The third management report was issued the day after a meeting at which the employer presented the Guild with its final offer. In this report the employer, fearing that a strike was imminent and that its position would not be fairly put to the employees, apprised employees of the final offer made to the Guild's bargaining committee. The Guild argued that such communications with employees on bargaining issues were an attempt to usurp the function of the bargaining committee and to compete with the Guild to attract the members' attention in order to encourage them to repudiate their bargaining agent.

The Board held that the employer's communications with its employees did not violate sections 64 and 67 of the Act and were well within the bounds of the employer free speech which receives explicit sanction in section 64 of the Act. An employer is free to explain its position with respect to collective bargaining issues after engaging in negotiations with the employees' bargaining agent on those issues. While employers must be circumspect when communicating with their employees, especially during negotiations, not all communications are prohibited by the Act. Communications between employer and employee which do not encroach upon the union's exclusive right to bargain on behalf of its employees are not illegal. In assessing whether employer communications in relation to collective bargaining go beyond the bounds of permitted speech, the Board considers whether they reflect an attempt to explain the employer's position at the bargaining table or rather an attempt to disparage the union. The Board also looks at the context, content, accuracy and timing of the communications. Communications of positions not first aired at the bargaining table are highly suspect. The Board rejected the Guild's view that it alone should be advising employees about the bargaining taking place with the employer. The employer's communications in this case were undertaken only after its position had been given to the Guild across the bargaining table. They were carried out in circumstances where there had existed a long-standing collective bargaining relationship, where both employer and union communications took place during the latter stages of bargaining and where there was a mutual expectation that such

communication would again take place. The employer's communications were, but for one exception, accurate and did not seek to undermine the Guild. The Board acknowledged that the employer's action in issuing the second report before the Guild had an opportunity to disclose the results of the mediation meeting to its members was a cause for some concern. The Board was nevertheless persuaded that the communications neither explicitly nor implicitly suggested to the employees that they could negotiate directly with the employer, nor did they seek to have the employees reject the Guild as their bargaining agent. *Toronto Star Newspapers Limited*, [1988] OLRB Rep. Sept. 987.

One employer declaration made despite five and one half year interval between winding up of predecessor and start of successor

In this application under subsection 1(4) of the Act for a declaration that two employers be declared one, the alleged predecessor employer, I.S.C.L., was engaged in site upgrading, landscaping, and residential work, although it did perform some work in the industrial, commercial and institutional sector of the construction industry. Shortly after voluntarily recognizing the Carpenters Union, I.S.C.L. became insolvent and was wound up (but did not go bankrupt or into receivership). Five and one half years later 671860 Ontario Ltd. began to carry on business in the construction industry, with the same principal as I.S.C.L. That principal had no ownership interest in 671860, but he was in charge of the day-to-day operations. The case raised two issues: firstly, does the five and one half year interval affect the determination of whether the two businesses constitute related or associated activities? The Board noted that in determining whether certain respondents are engaged in associated or related activities or businesses, the Board is concerned with the nature of the businesses. If the businesses or activities are related, the existence of a gap of two days or a greater period of time is of little significance. The Board was satisfied that I.S.C.L. and 671860 carried on associated or related activities. The Board then had to determine whether, given the five and one half year gap, it was appropriate to exercise its discretion to grant subsection 1(4) relief. The Board held that there was no labour relations reason in these circumstances for concluding that the bargaining rights of the union should not attach to the "definable commercial activity" simply because that activity is carried on through another legal entity years after I.S.C.L. ceased operating. In the result, the Board declared I.S.C.L. and 671860 Ontario Inc. to be one employer. *Ian Somerville Construction Ltd.*, [1988] OLRB Rep. Oct. 1022.

Failure to recall fishing boat crew at start of fishing season constituting discrimination

The company had put two boats out fishing in the 1987 season instead of the usual three. As a result, fewer crew members were required. The seven grievors claimed that the reason they were not fishing for the company was that they were supporters of the union, and that the company by not "recalling" them for the 1987 season contravened sections 66 and 70 of the Act, which prohibit employer interference in employees' rights and intimidation and coercion. At the hearing the respondent directed his legal submissions on section 66 to only the elements of "refuse to employ or continue to employ" on the basis that the complaint did not set out 'discrimination' as a separate violation. The parties were subsequently asked to make written submissions on the application of the term "discrimination" to the evidence. The Board held that it was prepared to find that a section or portion of a section that had not been pleaded had been contravened if the evidence supported such a finding. Section 66(a) of the Act, which prohibits employer interference with employees' rights, refers to both "refuse to employ or continue to employ" and to "discriminate". Not only does the Board have jurisdiction to find a violation when the evidence supports a finding but it has an obligation to do so as long as the respondent is given the opportunity to argue the case on that basis. The fact that the workers had not asked for a job in this case was not determinative of whether they would return the following year. A denial of the reasonable expectation of the

crew members with respect to employment in a subsequent year because they support the union may constitute discrimination. In this case there was a breach of the Act. The Board refused to order another boat put to work but it stated that reinstatement may be an appropriate remedy in the fishing industry in other circumstances. Compensation was ordered for the 1987 season and the 1988 season until the date of the decision. *Saco Fisheries Limited*, [1988] OLRB Rep. Oct. 1087.

Parties may enter into valid voluntary recognition agreement at a time when there is only one employee

Square One Carpentry performed house framing on a piece work basis pursuant to a subcontract with F.E.D. Construction Company ("FED"). FED was bound to a collective agreement with the Labourers' Union, Local 183, which required that all self-employed piece workers, such as the Square One workers, be signatories to a contract with Local 183. The vast majority of FED's work was performed by it as a contractor to Greenpark Homes (the builder). A representative of FED told a partner of Square One that he had to sign with Local 183 or he could not work on any of Greenpark Homes' sites. Subsequently the two partners and the single employee of Square One became members of Local 183 when they signed membership cards in each others presence. Then, Square One and the union signed a collective agreement. Later, due to a shortage of workers Square One accepted crews sent by the Carpenters' Union. Subsequently the Carpenters made an application for certification, which ultimately was granted by the Board. In the instant case the Labourers sought reconsideration of that decision arguing that the collective agreement was a bar to the certification; the Carpenters brought an unfair labour practice complaint attacking the validity of the alleged collective agreement of the Labourers. The Carpenters argued that since the Board is precluded from certifying a trade union for a one employee bargaining unit, the Act implicitly recognizes that a trade union cannot obtain bargaining rights, even through voluntary recognition, for a bargaining unit of fewer than two employees. The Board held that having placed a restriction on the numerical size of a bargaining unit for the purposes of a certification application but not in the case of a bargaining unit created through the process of voluntary recognition, the Legislature did not intend to preclude parties from entering into voluntary recognition agreements where the bargaining unit consists of one employee.

The Carpenters further argued that the voluntary recognition agreement was invalid due to employer support contrary to section 48 of the Act. These submissions focused on the statement by the FED representative to a partner of Square One that he had to sign with Local 183 or else he could not work on any of the Greenpark Homes' sites and the way in which Local 183 obtained the membership evidence. The Board dismissed the argument. There was no evidence that the Labourers' Union had been aware of the statement; moreover, the statement was designed to ensure that FED complied with its obligations vis-a-vis sub-contracting under its contract with the union. As regards the membership evidence, there was no indication that the partners had discussed joining the union with the employee or directed the employee to join. As well, it is common practice in this sector of the construction industry for the principals of small businesses to perform work and be members of the union. It was probable that the prime reason the employee signed with Local 183 was because he wished to remain working at that site and realized that this would not be possible unless he joined Local 183, in view of the subcontracting clause. Finally, the Square One agreement with Local 183 had been in effect for a number of years with no indication from employees that they did not want Local 183 to represent them. The section 89 complaint was dismissed and the Carpenters' certificate was revoked. *Square One Carpentry Inc.*, [1988] OLRB Rep. Oct. 1112.

Municipal-wide unit of cleaning employees appropriate where employer having only one location

This case involved an application for certification brought by the Canadian Union of Postal Workers with respect to certain employees of Best Cleaners and Contractors Limited. The employer was a cleaning service which until recently performed work on a contract basis outside the province. The contract which gave rise to this application for certification was with a postal plant in Toronto. The respondent had no other contracts in Metropolitan Toronto. The parties were in dispute over the proper description of the bargaining unit. The applicant argued that the Board should follow its usual practice, which is to certify on a municipal-wide basis where the employer is established at only one location. The respondent's position was that the geographic scope of the unit should be limited to the specific location. The respondent argued that since it was dependent on the contractor for the contract which gave work to the employees, the rationale of the municipal-wide unit was not applicable. The employer could not simply move its establishment to a new location to avoid the certification.

The Board referred to *VS Services Ltd.*, [1987] OLRB Rep. June 931, a decision concerning another contract industry. The respondent in VS Services Ltd. had a contract to supply cafeteria services to a client at a specific street address in Chatham. Subsequent to the date of application, but prior to the hearing, VS Services Ltd. commenced a second contract to supply cafeteria services in Chatham. The Board in that case found that in the Ontario non-vending food service industry there had developed a wide-spread practice of parties agreeing to client-specific bargaining units. On that basis, and on the basis of the community of interest between employees at the two locations and the distinct response to client needs in the contracts entered into (which resulted in different terms and conditions of employment), the Board in *VS Services Ltd.* certified the union for the employees of the one client, rather than for the City of Chatham. The Board also referred to *T.R.S. Food Services Limited*, [1980] OLRB Rep. Apr. 542, where the panel expressed the concern that a unit limited to one client meant that bargaining rights would be completely dependent on the continuation of the contract between the employer and the particular client being serviced at the time of the application for certification. The Board in *T.R.S.* went on to find that given the fluctuations of the market place and the competition for contracts, the geographic scope of the bargaining unit should be defined by reference to the municipality where the employer has but one location in the municipality.

The Board held that the bargaining unit should be described in terms of the municipality of Metropolitan Toronto. The Board recognized that the 'contract industry' raised certain distinct issues affecting employers, unions and employees. It noted further that certification in the cleaning industry has been limited to a street address in several cases, but that this was on the agreement of the parties. While there appeared to be a pattern of bargaining limited to specific locations developing in the cleaning industry, the Board had not yet developed distinct approaches to either the cleaning industry particularly or to the contract or service industry generally. The Board held that it would depart from its usual practice of certifying on a municipal-wide basis when the circumstances warranted it. The fact that parties in the industry had a practice of agreeing to limit units to one location or client was not sufficient to persuade the Board to depart from its usual practice because the parties in the present case were not in agreement as to that practice. A cleaning subcontractor with only one location in a city may be able to satisfy the Board that it would be appropriate to certify for a single location or unit where there is evidence of actual diverse contracts elsewhere in Ontario, or a history of bargaining with the applicant union. In the present case, however, the Board was not persuaded that it should depart from its usual practice. *Best Cleaners and Contractors Limited*, [1988] OLRB Rep. Nov. 1143.

Section 13 not applicable absent evidence of union complicity in employer support of a trade union

In this case both the Labourers' Union, Local 183 and the Carpenters' Union, Local 27 were applying to be certified as the exclusive bargaining agent for a unit of employees in the construction industry. Local 27 alleged that the employer and Local 183 dealt with Local 27 in a manner contrary to sections 3, 13, 64, 66 and 70 of the Act, and submitted that the Board should dismiss Local 183's application because of the company's improper conduct. The Board found that the principal of the employer told some employees that it would be better for the company and for them if they became members of Local 183 rather than Local 27. The Board held on these facts that the employer improperly interfered in the selection of a trade union. The Board held further that while the employer's actions constituted a violation of sections 64 and 70 of the Act, no violation of section 66 had been proved. The Board refused in the circumstances to accede to Local 27's request that Local 183's application be dismissed.

With regard to section 13, which precludes the Board from certifying a trade union where there has been employer interference, the Board noted that there was no evidence to suggest that Local 183 participated in, or was even aware of, the employer's improper actions. The Board agreed with the finding of the Board in *Cabral Foods Inc.*, [1985] OLRB Rep. Feb. 165 that in such circumstances it was not appropriate to dismiss an application for certification pursuant to section 13 of the Act. The Board held that in order for section 13 to apply, there must be some complicity between an applicant trade union and an employer. *Povoa Carpentry Trim*, [1988] OLRB Rep. Nov. 1174.

Board finds sheet metal shop employees fall within construction industry bargaining unit

In this application for certification in the construction industry, the applicant challenged the inclusion of certain persons on the list for purposes of the count. The respondent was engaged in the retrofit of wall facings and window openings. On the date of application, the respondent had employees working at two job sites as well as at its shop. The respondent argued that the shop employees should be included in the bargaining unit since they were commonly associated in their work with on-site employees within the meaning of section 117(b) of the Act. The materials used by the respondent on its construction sites were generally fabricated in its shop. The employees who performed work in the shop were involved primarily in the fabrication of metal products destined for a particular project of the respondent. These employees did not work in the shop exclusively; they frequently worked on construction sites performing bargaining unit work.

Having regard to these facts, the Board held that the shop employees were commonly associated in their work with on-site employees and, therefore, fell within the bargaining unit description. *Rainscreen Metal Systems Incorporated*, [1988] OLRB Rep. Nov. 1180.

Employer cannot invoke Charter of Rights to challenge union security clause in province-wide ICI agreement

In this construction industry grievance the Board was required to determine as a preliminary matter whether a "union security" provision contained in a collective agreement between the Operating Engineers Employee Bargaining Agency and the Operating Engineers Employer Bargaining Agency was subject to the *Canadian Charter of Rights and Freedoms*. The applicant alleged that the respondent violated the union security provision of the collective agreement. The respondent invoked the Charter to challenge the validity of that article of the collective agreement. The respondent did not challenge the constitutional validity of the various provisions of the Act which bound the respondent to the collective agreement. It argued, rather, that the collective

agreement itself was subject to Charter scrutiny and that the relevant provision of the collective agreement was void by reason of being contrary to the Charter.

The Board found that the respondent was a member of the Crane Rental Association of Ontario, a constituent element of the Operating Engineers Employer Bargaining Agency, and that section 51 of the Act therefore operated to bind the respondent to the collective agreement. The Board found further that the respondent was also bound by the collective agreement in respect of the industrial, commercial and institutional (ICI) sector of the construction industry by virtue of section 143 of the Act and the Ministerial designation made under section 139(1)(b) of the Act. The respondent submitted that the collective agreement to which it was subject was only binding on it by operation of statute and therefore was subject to the Charter. The applicant argued that the Charter had no relevance to the collective agreement since the respondent was bound to it by reason of private contractual obligations arising out of membership in an employer's organization that bargained with the applicant on behalf of the respondent and not by reason of legislation.

The Board reviewed the relevant jurisprudence on the Charter's application and concluded that in order to hold that the collective agreement was subject to the Charter, it must find that the collective agreement was a manifestation of government rather than private activity, i.e., that the Bargaining Agency was an agency or emanation of government. In this regard, the Board found that the collective agreement, as it related to the ICI sector, was negotiated by the Operating Engineers Employer Bargaining Agency and the Operating Engineers Employee Bargaining Agency, both of which were designated by the Minister of Labour pursuant to the Act. The creation, administration and operation of those agencies were not, however, controlled by the Minister, who gave no directions to the agencies to act in a particular way. The Board held that the negotiation of a collective agreement by the Operating Engineers Employer Bargaining Agency was essentially a private matter not involving the exercise of government policy or a government function. Relying on the case of *Tomen v. Federation of Womens Teachers Association of Ontario* (1987), 61 O.R. (2d) 489 (H.C.), the Board rejected the argument that there was a "public dimension" to the collective agreement such as to make it subject to Charter scrutiny. The collective agreement could be amended by the parties without reference to the Legislature, the Lieutenant-Governor in Council or the Minister and was, in that sense, a private matter directly affecting only employers who were members of the Employer Bargaining Agency or those for whose employees the applicant held bargaining rights in respect of the ICI sector. Being satisfied that neither of the parties to the collective agreement were manifestations of government and that the function of negotiating a collective agreement was not a public or governmental function, the Board held that the collective agreement was not subject to Charter scrutiny. *Arlington Crane Service Limited*, [1988] OLRB Rep. Dec. 1187.

Section 124 arbitration proceedings available to parties whether or not work in question is "construction work"

In this construction industry grievance pursuant to section 124 of the Act, the union alleged that the employer had contravened the terms of a collective agreement by which it was bound. In particular, the union asserted that certain work performed by employees was covered by the agreement and that the employees doing that work should have been union members working in accordance with the terms of the agreement. The employer argued that section 124 of the Act was only available to employees engaged in *construction* work, and to the extent that the activities underlying a particular grievance were not "construction", any alleged contravention of a collective agreement must be pursued through the grievance arbitration procedure. The employer asserted that the expedited process prescribed by section 124 was not available because section 124 applied only to the construction industry. If employees were engaged in a mixture of construction and non-construction activities, that portion of their duties labelled 'construction' could be pursued

under section 124, but that portion classified as "non-construction" must follow the "private route" mandated by section 44 of the Act.

The Board rejected the employer's proposed interpretation of section 124 of the Act, and held that so long as the applicant is a "trade union" within the meaning of section 117(f), and the employer operates a business in the construction industry under section 117(c) (albeit not necessarily exclusively so), either party may resort to the expedited arbitration procedure in section 124. The Board held that this interpretation of section 124 made the most 'industrial relations sense'. It is often difficult to distinguish "repair", which is specifically mentioned in the definition of construction industry, and "maintenance", which is not. One set of functions will often be done in conjunction with the other, by the same tradesman, employing the same craft skills, tools and equipment. It would make for much mischief and procedural uncertainty if a simple problem such as the non-payment of overtime had to be settled in two different forums, with the potential for conflicting interpretations of the collective agreement or contradictory notions about what is construction work and what is not. The Board further held that its interpretation of section 124 did not "open the floodgates" to claims that could not reasonably have been within the contemplation of the Legislature. Since the unions that come within the definition of "trade union" in section 117(f) of the Act are almost invariably craft unions confined to their historic craft units, it is unlikely that they will have collective agreements entirely unrelated to their construction industry base. And even if, for example, the Boilermakers' Union found itself representing the clerical employees of a construction industry employer, the result of allowing the parties to resort to the arbitration procedure in section 124 would be positive. The parties would thereby gain access to a faster and cheaper arbitration process, with the added advantage of a Labour Relations Officer to assist them in resolving their differences without recourse to litigation. The Board's interpretation of section 124 is thus not only attractive from the perspective of labour relations policy, it also provides aggrieved parties with an expeditious and relatively inexpensive method for resolving disputes. *Babcock and Wilcox Canada Ltd.*, [1988] OLRB Rep. Dec. 1198.

Union's failure to consult with employees or to hold ratification vote before concluding a collective agreement violating duty of fair representation

In this application the company had operated a single plant in London but the union held municipality-wide bargaining rights. The company then opened a second plant. Employees at the new plant were told by members of management that they were not represented by a union. The employees were later informed by the U.F.C.W. that they were in fact represented by that union and that the union had concluded a collective agreement for them. At this point they turned to the R.W.D.S.U. which made a certification application. The R.W.D.S.U. argued that the collective agreement should be set aside under section 60, the provision concerning termination of bargaining rights after voluntary recognition. The U.F.C.W. argued that this was not a "first" collective agreement because the scope clause in the collective agreement at the first plant was broad enough to cover both plants and therefore the R.W.D.S.U.'s application was untimely. Finally, the employees at the new plant filed a section 68 duty of fair representation complaint against the U.F.C.W. for failing to consult them before concluding a collective agreement and asked that the collective agreement be set aside.

This case raised several issues. Firstly, had the union lost its bargaining rights for the new plant when it negotiated a collective agreement covering only the first plant? The Board explained that once bargaining rights are acquired for employees under the Act, they cannot be lost by a union unless it abandons those rights or they are terminated by the Board. Abandonment is a question of fact. By deciding to bargain separate agreements for the two plants, neither party understood that the union was abandoning its bargaining rights for the new plant when it signed the collective agreement for the first plant. Parties are free to divide a unit into two or more units.

Therefore, the collective agreement at the new plant constituted a bar to the R.W.D.S.U.'s certification application.

Secondly, had the U.F.C.W. breached the employees' section 72(5) right to participate in a vote on a strike or proposed collective agreement by failing to invite employees at the new plant to attend strike and ratification votes at the first plant? The Board reasoned that the Legislature would have intended that section 72(5), which allows "all employees in a bargaining unit" to vote, be circumscribed by the condition that these employees be affected by the vote. Those employees are, in a strike vote, only those who would be considered "scabs" if they refused to strike, and in a ratification vote, only those employees who would be bound by the collective agreement. In neither case here were the employees in the new plant "affected" by the votes since they were not going to be joining the strike nor would they be bound by the collective agreement at the first plant. It was unlikely that the Legislature intended to extend a right to participate in strike and ratification votes to employees who would not be affected by them. If the Legislature's choice of language nevertheless compelled the conclusion that the U.F.C.W. breached section 72(5), the breach or breaches were technical ones which would not violate the spirit of the subsection and would not warrant a remedial response. As a remedy was not warranted, the Board did not decide whether there was a technical breach or no breach at all.

A third issue was whether the U.F.C.W. had breached section 68 by negotiating a collective agreement with terms and conditions of employment for the new plant which were different from those of the first plant. The Board held that differences in the two contracts would not alone warrant the finding of a violation. However, the process of reaching the agreement here violated section 68 because the union failed to consult the employees before concluding a collective agreement affecting them. The failure to hold a ratification vote was also a breach of section 68 because no explanation was offered for treating the two locations differently.

The final question was whether the Board had jurisdiction to set aside the collective agreement at the new plant as a remedy for a breach of section 68. The Board noted that if the Board has the power to set aside a collective agreement by way of remedy for the unfair labour practice of only one party to it over the objection of the other party, it is a power which should be used only in compelling circumstances. There was no evidence that the employer was engaged in a conspiracy with the union to mislead the employees. If the Board does have jurisdiction to set aside the agreement, that jurisdiction was not exercised here. Nor would the Board substitute the R.W.D.S.U. as the bargaining agent. The Board could not say that the employees lost any opportunity to select a bargaining agent as a result of the union's breach of section 68. They were entitled to damages but the Board rejected the argument that the measure of those damages was the difference between the wages in the two collective agreements. *Cuddy Food Products Ltd.*, [1988] OLRB Rep. Dec. 1211.

Remedy for interference in the trade union may be denied where the union has also been cavalier towards the employer's interests

In this case some employees had asked for time off to attend a union meeting, but then ignored the decision of management not to allow the time off, and attended the meeting. Management responded with suspensions. The purpose of the meeting was to prepare for a strike. The union argued that the refusal of permission amounted to employer interference with the administration of the union or the representation of employees by the union (contrary to section 64), and that the discipline imposed both penalized employees for exercising rights under the Act (contrary to sections 66 and 70) and amounted to an illegal lock-out under section 75. The respondent testified that it would not have refused permission for employees to leave work for a negotiating meeting. However, because of the greater number of employees involved and because

the meeting had nothing to do with negotiations but involved the strike captains, the respondent decided not to allow employees to have time off. The respondent was of the view that employees were needed in the plant in light of the impending strike. However, several factors indicated to the Board that the more prominent reason for denying permission was the nature of the meeting. The respondent had made no attempt to consider whether the specific employees involved were actually required for work and the exact number of employees requesting leave was unknown. The respondent chose discipline that removed the workers from the workplace. It appeared that the volume of orders was relatively normal at this time. The number of employees who wished to leave was indeed the employer's business, both figuratively and literally; the nature of the meeting in question was not, once it was clear that it was a lawful union activity.

In the end, however, the Board decided it was unnecessary to decide whether the Act had been violated because the Board would not, in any event, grant the remedies requested by the union. The union had no cogent explanation for why the meeting had to be scheduled during working hours and held precisely as scheduled. There was no suggestion that holding the meeting after hours would either significantly limit or effectively deprive employees of their opportunity to participate. Accordingly the Board was not convinced that the union should be protected from the consequences of its own rash actions. *Del Equipment Limited*, [1988] OLRB Rep. Dec. 1248.

CLAC entitled to be certified for one craft limited to the ICI sector on a displacement application

In this application for certification made under the construction industry provisions of the Act, the Christian Labour Association of Canada ("CLAC") sought to displace the Sheet Metal Workers' province-wide industrial, commercial, institutional ("ICI") craft bargaining unit. The Sheet Metal Workers argued that CLAC, being neither an employee bargaining agency ("E.B.A.") nor an affiliated bargaining agent ("A.B.A."), was outside the scheme of provincial bargaining. CLAC could apply in the construction industry only pursuant to section 144(5) of the Act and accordingly was not entitled to a bargaining unit confined to the ICI sector and provincial in scope. The Sheet Metal Workers submitted that the appropriate bargaining unit under section 144(5) was all trades at work on the application date in all sectors in a particular Board area. The Board's usual policy in displacement applications should not be followed in these circumstances, because it would enable CLAC to obtain "through the back door" a bargaining unit it would not be entitled to on a fresh application for certification. Employees would become a "craft unit" without being represented by a craft union, and CLAC would in effect obtain a provincial ICI bargaining unit without any of the obligations imposed upon those craft unions which are A.B.A.'s or E.B.A.'s. CLAC argued that there were no legislative limitations or parameters set out in section 144(5) which would impact upon the Board's determination as to the appropriate bargaining unit. In section 144(5) applications the appropriateness of the bargaining unit stands to be determined pursuant to section 6(1) of the Act. The Board's general policy pursuant to that section has been that the appropriate bargaining unit in a displacement application is the unit held by the incumbent. CLAC submitted that nothing in section 144 of the Act prevented the Board's normal policy from applying. To deny displacement applications unless the trade union seeking to displace also sought to represent all other unrepresented trades would promote trade union monopolies of the "crafts".

The Board held that it would depart from its displacement policy only in compelling circumstances, but that such circumstances were present in this case. The Board's displacement policy is not necessarily applicable in the ICI sector of the construction industry, because the scope of the incumbent's union is statutorily compelled. The Board held that in determining the appropriate bargaining unit a primary policy consideration is to avoid results which are, or can be, detrimental to province-wide bargaining in the ICI sector. While the bargaining unit normally found to be appropriate for CLAC when it applied pursuant to section 144(5) was all trades at work in all

sectors in a Board area, the issue to be determined in this case was whether CLAC's 'normal' bargaining unit could "fit" within this displacement application without doing violence to the scheme of province-wide bargaining.

The Board found that an "all trades at work on the application date" unit was not appropriate in the circumstances of this case. Given that a trade union should only be deprived of its bargaining rights by a majority vote conducted amongst employees it represents, and that the community of interest of employees already represented by an incumbent union is distinct from the community of interest of employees unrepresented by any trade union, a unit greater than the one found in the existing collective agreement between the employer and the Sheet Metal Workers was not appropriate. To grant CLAC a unit described in "craft" like terms on a displacement application would not be inconsistent with the scheme of province-wide bargaining. No provision in the Act prohibits CLAC from representing a unit described in "craft" like terms, nor is such a result impossible on a "fresh" application for certification. The Board further found that CLAC could acquire bargaining rights limited to the ICI sector. To grant CLAC such bargaining rights where it applied for certification by way of displacement was neither harmful nor inconsistent with the concept of province-wide bargaining. While such a limitation may involve the Board in making sectoral determinations, it is more desirable that in displacement applications employees be able to choose freely which trade union, if any, they wish to have represent them. Finally, the Board held that CLAC could not obtain bargaining rights for the province of Ontario. While nothing in section 144(5) prohibits CLAC from obtaining province-wide bargaining rights, such a result would be inconsistent with the scheme of province-wide bargaining. That scheme was the result of a certain quid-pro-quo: the E.B.A.'s and A.B.A.'s were statutorily granted the right to represent employees and negotiate on a province-wide basis, but the "price" of this right were the checks and balances found in the province-wide provisions of the Act. Not being subject to any of these checks and balances, CLAC had not paid the "price" to obtain province-wide bargaining rights. *Reitzel Heating & Sheet Metal Ltd.*, [1988] OLRB Rep. Dec. 1310.

In assessing the reasonableness of an employee's belief that work is unsafe, information available only after the initial, employer's investigation is irrelevant

In this health and safety case, the complainant had refused to work a job drawing a particular kind of wire if not assigned a helper, because he believed the work was unsafe. The employer investigated and, although it could find nothing unsafe, the complainant continued to refuse to do the work. The employer indicated that no alternative work was available. It sent the complainant home, four hours early, and without pay for those hours. The complainant claimed that the loss of wages constituted an employer reprisal for enforcement of the *Occupational Health and Safety Act*, prohibited by section 24 of that Act. An employee may continue to refuse to do work following the employer or supervisor's initial investigation if, objectively speaking, the employee has reasonable grounds to believe the work continues to be unsafe. In this case, both the Ministry of Labour Inspector and a joint labour-management Occupational Health and Safety Committee at the company had done investigations in the following days and had found that the work was not unsafe. However, the Board held that these two reports can have no effect or impact on the Board's assessment as to whether the "reasonable grounds" or subjective test had been met. The Board will look only to the reasonableness of the employee's views in light of the information available at the time when only the initial investigation has been completed and the employee makes his decision whether to continue to refuse to do the work. In this case it was ultimately unnecessary for the Board to apply the further objective test because the employee had been sent home for lack of alternative work and not because he was exercising his rights under the OHSA. In the result, the complaint was dismissed. *Sidbec Dosco Inc.*, [1988] OLRB Rep. Dec. 1334.

Cross-municipality bargaining unit may be appropriate where operations are integrated

In this certification application there was disagreement about the community of interest of two persons employed as service mechanics in the Belleville area. The applicant took the position that because of the geographical separation of these employees from the respondent's main operation in Kingston, there was not sufficient community of interest between these employees and the employees in Kingston to include them in the bargaining unit. The respondent took the position that its operation was an integrated one including Kingston and Belleville and therefore that the two employees should be included in the unit. The respondent was in the business of selling soft drinks and did so out of a plant in Kingston where over thirty employees reported to work, and an office with a warehouse in Belleville where two service mechanics and a sales supervisor reported to work.

The Board stated that the operation was an integrated one and that the inclusive bargaining unit preferred by the respondent was *an* appropriate unit. The principal objection raised by the applicant was the large distance between the two locations. Given that there may be more than one appropriate unit, if the applicant's unit was also appropriate, the preference of the applicant would have increased weight. The Board's general practice has been to not include employees in widely separated municipalities in one unit. In this case the Board did not find it sound to hive off a portion of the single operation. The facts of this case, in terms of both the extent of employee interchange and general integration of the operation, were distinguishable from the cases cited which reinforce the single municipality bargaining unit policy. Therefore, the appropriate unit included both municipalities. A vote was ordered. *Coca-Cola Ltd.*, [1989] OLRB Rep. Jan. 1.

First contract arbitration time limits directory not mandatory

This was a request for an adjournment made in the course of hearings on an application under section 40a for a direction that a first collective agreement be settled by arbitration. The union had taken the position that the parties had in fact reached a collective agreement and, because the company did not agree that that was so, the union wished to prove the settlement. There was no indication that the union had given the company any prior notice of its motion. Counsel for the company would become a witness and thus the company sought an adjournment in order to retain new counsel. (The company had tried but failed to retain new counsel that day). The Board held that as a matter of natural justice, the company was entitled to an adjournment. An adjournment, and the time necessary for the motion, meant that making a decision within thirty days of receiving the application as stipulated in section 40a(2) would be impossible. The applicant did not argue that the limits were mandatory. The Board found those time limits to be merely directory, not mandatory, for several reasons. If the limits were mandatory they might in some cases prevent resolution through settlement, or require that previously scheduled proceedings be adjourned to accommodate the scheduling of at least applications like this. Moreover, the Board would be without jurisdiction to continue to deal with an application with respect to which the time limits had been exceeded. Such a result would be the antithesis of sound labour relations policy. The adjournment was granted. *Del Equipment Limited*, [1989] OLRB Rep. Jan. 19.

Board limiting its remedial relief by declaring that two companies would only be considered one employer when they work together in the construction industry

This was an application for a one-employer declaration under section 1(4). Green-King Ltd. was incorporated in 1982. Its only officer and sole shareholder was Mr. Barclay. Green-King was in the construction business. Mr. Barclay later became a construction manager at Widcor. At this time Green-King was dormant. When Widcor decided to get out of the construction business, Mr.

Barclay decided to reactivate his construction business. While still at Widcor he entered into a contract to build a car dealership with Widcor. The construction contract between the car dealer and Widcor was mirrored in the construction contract between Green-King and Widcor. Green-King did not enter into any contractual relationship with the car dealer directly. The actual construction of the dealership was done by subcontractors who entered into subcontracts with Green-King. Widcor was bound by the Carpenter Union's provincial agreement.

In the circumstances the first two criteria for a one-employer declaration were easily identifiable - there were two corporate entities and they carried on associated or related activities. A number of factors also pointed to the third criteria - common direction or control. Entities can be under common control without sharing common officers. Secondly, common control can be found where two entities share in a commercial venture. Further, in appropriate circumstances, section 1(4) may be broad enough to encompass subcontracting arrangements. In this case Widcor was not simply a purchaser of construction services but was intimately connected with the negotiations in respect of the manner of construction which occurred through Green-King. As to whether the Board ought to exercise its discretion, the contractual arrangement between the two entities eroded the union's bargaining rights. On the other hand, Widcor no longer was engaged in the construction industry. The Board therefore limited its remedial relief and declared that only in those instances where Widcor and Green-King together engage in construction industry work would they be together treated as constituting one employer. *Widcor Limited*, [1989] OLRB Rep. Jan. 66.

Membership evidence held voluntary where misrepresentation made by union official clarified by same official the next day

In this application for certification in the construction industry, the respondent alleged that certain statements made by the applicant's organizer and by one of its own employees tainted the voluntariness of the membership evidence obtained by the applicant. The evidence revealed that the union organizer had told two employees that if they did not sign applications for union membership they would not be working on the site the next morning. Employees were told that it would cost $300.00 to join since the company was already unionized. The union organizer conveyed to the employees that they *had* to become members of the union because he was under the mistaken impression that the employer had already been organized by the union and was therefore bound to employ only union members. Both employees signed applications for membership. The union organizer had earlier conveyed the same misinformation to another of the respondent's employees. This employee, who had already joined the union, spoke often about the union to his fellow employees and indicated to them that the respondent was already unionized. Thus, several weeks before the union organizer came to the job site the employee had advised other employees that if they did not join the union, the union would probably picket the job site and shut the job down. The Board held that while the employee's comments were misleading and inappropriate, a reasonable employee of ordinary convictions would not be influenced, threatened or intimidated by such comments. The Board distinguished between statements made during an organizing campaign by rank and file employees who are not in a position to achieve the consequences of their statements, and statements made by persons who have, or are perceived to have, the authority to bring about the consequences of their statements.

The union organizer learned of his mistake the same day that he signed up the other employees. The following day he returned to the job site and advised the employees that he had made a mistake and that the respondent was not a "union" company. He informed the employees that if they wanted to be represented by the union an application for certification would have to be filed. He explained that in order to do this he would require a $5.00 initiation fee from each employee. Each of the employees paid the $5.00 fee and signed an application for membership.

Counsel for the employer argued that the union organizer's initial statements to the employees threatened the job security of the employees and tainted the voluntariness of the membership evidence obtained on that day. Counsel argued that the threats were not 'cured' by the statements made by the union organizer the following day. Counsel argued further that the $5.00 initiation fee, following so closely on the heels of the union's previous assertion that it would cost $300.00 to join, was an inducement which, coupled with the threats to continued employment, should cause the Board to doubt whether the membership evidence filed was a true expression of the wishes of employees. The Board concurred with counsel's characterization of the initiation fee as an inducement but held that the surrounding circumstances were not intimidating, coercive or threatening. Two-tier initiation fee structures are customarily used by trade unions in organizing employees and are not *per se* unlawful. The Board further found that any misrepresentations caused by the union organizer's initial mistake were explained by him as soon as he became aware of the correct facts. The totality of the evidence indicated that when the employees signed the application cards and paid the initiation fee they were aware of the nature and purpose of the membership applications and the $5.00 payment. The Board therefore held that the membership evidence was a true and voluntary expression of the wishes of the employees. *Covello Brothers Limited*, [1989] OLRB Rep. Feb. 119.

Not critical that an applicant for certification establish a technically satisfactory constitutional continuum if it has been in existence a long time

In this certification case the employer had recognized the applicant, the Society of Ontario Hydro Professional and Administrative Employees ("the Society") as the representative body for a group of employees for several years. This decision considered two issues: whether the Society was a trade union, as defined by clause 1(1)(p) of the Act, and whether section 13, which prohibits certification of a union if any employer has participated in its formation or administration or has contributed support, prevented certification of the Society.

The respondent argued, and the Board agreed, that there was not evidence sufficient to show that the applicant was a continuation of the organization which had been found to be a trade union in a 1947 certification decision. However the issue here was whether the applicant was a 'trade union' at times material to the instant application for certification. The Board explained that when an organization's formation is followed almost immediately by an application for certification, the Board's close attention to the steps taken to create the organization is a natural consequence of the fact that there will be no other substantial evidence of the existence of the organization. When faced with an organization which claims to have been in existence for a considerable period of time, however, the Board has recognized that it will be less critical to focus on the steps originally taken to bring the organization into existence. It follows that it will not be critical to the Board's finding it to be a trade union that an applicant establish a technically satisfactory constitutional continuum from its date of origin to the present day. The evidence was that a great many people have for many years conducted themselves as though the Society were an organization which had long ago been formed and did have members who were governed by the terms of a constitutional document which could be identified without dispute. There was no evidence that this common premise or any action taken on the basis of it was ever challenged in a timely way. Thus the Board found the applicant was an "organization". Moreover, the Board held it could not make a ratification vote on the union's constitution, or similar formalities, a prerequisite to trade union status. The respondent further argued that the applicant was not a trade union because a trade union must be an organization of employees only, and in determining whether the applicant was a trade union the Board proceeded on the assumption that disputed individuals would be found "managerial". However, the Board followed the reasoning used in *Board of Education for the City of York*, [1984] OLRB Rep. Sept. 1279, where the Board held that merely the presence of managerial

persons within the membership would not disqualify the union as a trade union within the meaning of the Act. The Board found that the Society was a "trade union".

Would section 13 prohibit certification? The respondent alleged employer support had been given in two forms. One was the involvement in the union's affairs, both generally and in the card-signing campaign in particular, of persons alleged to exercise managerial functions. Neither the respondent nor a certain group representing objecting employees ('the Coalition') expressly described any allegedly managerial person as having engaged in supportive conduct *on behalf of* Hydro or any other named employer. The respondent had argued that the activities of the managerial persons were nevertheless activities of the employer as a matter of law simply by virtue of the fact those activities were done by managerial persons. The Coalition argued that the activities of those persons amounted to employer support because they would be perceived as members of management and so would have undue influence over the expression by employees of their wishes. The Board found that no one was acting on behalf of, or in the interests of, Hydro when they participated in the union's affairs. The Board applied the analysis in *Children's Aid Society of Metropolitan Toronto*, [1976] OLRB Rep. Nov. 651, where the Board held that a finding of managerial function under section 1(3)(b) in respect of person(s) who actively participate in the formation of the trade union does not in and of itself activate section 13 of the Act. Rather a finding of managerial status in respect of these persons must be coupled with evidence which establishes that they were acting on behalf of or in the interests of the employer.

Hydro had provided, free of charge, several privileges to the union, including access to the internal mail system, certain bulletin boards, the auditorium and meeting rooms. As well, members of the union's executive and delegates were permitted to take time off, without loss of salary or benefits, to attend union activities. The union used Hydro facilities in connection with its bid for certification. The employer argued that the above privileges were illegal as constituting employer support because they were not provided for in a collective agreement, a requirement for protection under section 46. The Board disagreed that the privileges were illegal, noting that such employer assistance is not seen as "employer support" when it is the result of "arm's length" dealings which occur after the assisted organization has established support among the affected employees. Such was the nature of the dealings in this case. In the result there was no employer support that would activate section 13. *Ontario Hydro*, [1989] OLRB Rep. Feb. 185.

Carpenters Union permitted to carve out its craft from concrete forming agreement

In this case the Carpenters' Union, Local 27 ("Local 27") sought, in an application made pursuant to section 144(3) of the Act, to be certified as the bargaining agent for its standard non-ICI craft unit, namely, carpenters and carpenters' apprentices employed by Ellis-Don Limited ("the employer") in all sectors of the construction industry, except the ICI, in Board Area 8. The employer's carpenters and carpenters' apprentices who were engaged in concrete forming in the residential sector of the construction industry in Board Area 8 and the County of Simcoe were already represented by the Form Work Council under a Form Work style collective agreement (the "Ellis-Don Form Work style agreement"). Accordingly, this was a partial displacement application. Local 27 argued that it should be permitted to "carve out" its craft or trade from the bargaining unit defined by the Form Work style agreement between Ellis-Don and the Form Work Council.

The Board held that the general practice in the construction industry is to permit a craft construction trade union to apply and be certified for a bargaining unit of employees engaged in its craft, whether or not such employees are in an existing bargaining unit represented by another trade union at the time of the application. This practice in the construction industry contrasts with the practice in non-construction cases where the Board on a displacement application generally

finds the appropriate bargaining unit to be described in the same terms as the existing unit. The Board noted that the possibility of fragmentation and jurisdictional disputes weighed against permitting Local 27 to carve out carpenters and carpenters' apprentices. On the other hand, the Ellis-Don Form Work style agreement was limited in its application to concrete forming construction in the residential sector in Board Area 8 and the County of Simcoe. Further, the classification schemes in the agreement suggested that members of crews performing concrete forming construction did not exercise so similar a combination of skills as to be entirely interchangeable. The fact that employees work in composite crews does not mean carpenters cannot be distinguished from labourers, even when the work in question falls within the overlap between the two trade jurisdictions. The Board observed, moreover, that the employee's right of self-determination favoured permitting craft carve outs in a craft oriented industry. Precluding craft carve outs could severely limit the opportunity for tradesmen to opt for representation by their craft union in circumstances where some other trade union has previously obtained bargaining rights including that craft. The *Labour Relations Act* itself recognizes the craft nature of the construction industry. Section 6(3) deems craft units to be appropriate and in the ICI sector craft carve outs are mandatory in applications for certification to which section 144(1) of the Act applies. Similarly, section 144(3), the section pursuant to which Local 27 brought its application, deems the craft unit proposed by Local 27 to be appropriate for collective bargaining. This is so whether or not the craft employees in question happen to be in a bargaining unit represented by another trade union at the time the application is made. In the result, the Board held that the nature and history of organization in the construction industry and the right of self-determination favoured permitting Local 27 to carve out the carpenters and carpenters' apprentices represented by the Form Work Council under the Ellis-Don Form Work style agreement. *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254. The Board subsequently dismissed three requests for reconsideration filed by the respondents. *Ellis-Don Limited*, [1989] OLRB Rep. March 234.

Board has power to enforce payment of conduct money

In this case the union argued that the employer's failure to pay conduct money to two bargaining unit employees upon whom it had served summonses amounted to an unfair labour practice. The union characterized the employer's action as imposing a financial penalty on the employees by reason of their connection with and support of the trade union, in furtherance of the employer's overall scheme to destroy the union. The union requested as a remedy that the employer be made to comply with its legal obligation to pay conduct money.

The Board declined to address the non-payment of conduct money from the perspective of the unfair labour practice sections of the Act, but held that it had the authority to direct payment of conduct money without making a finding that an unfair labour practice had been committed. The Board reviewed its powers to summons and compel the attendance of witnesses under both the *Labour Relations Act* (the "LRA") and the *Statutory Powers Procedure Act* (the "SPPA") and its power to determine its own practice and procedure under the LRA. The Board held that while neither the LRA nor the SPPA expressly confers on the Board the power to enforce payment of conduct money, this power must be a concomitant of the express power to summons and compel attendance of witnesses. Since it is part of the Board's process that conduct money be paid by the parties who request and effect service of a summons, it is, arguably, an abuse of the Board's process to use a summons without discharging the corresponding obligation to pay the conduct money. The Board held in the alternative that if the power to enforce payment of conduct money was not implicit in the Board's powers to summons and compel the attendance of witnesses and determine its own practice and procedure, then such a power flowed from subsection 23(1) of the SPPA. That subsection empowers a tribunal to make such orders as it considers proper to prevent abuse of its processes. The Board held that there was no doubt as to the potential for abuse of the

Board's processes by the use of its summonses. In order to ensure that such an abuse had not and would not occur in relation to the Board's proceedings, the Board found it appropriate to direct that conduct money owing to the two employees as a result of the employer's use of the Board's summons be paid forthwith together with interest thereon. *Hamilton Automatic Vending Company Limited*, [1989] OLRB Rep. Mar. 248.

Board considering whether union's refusal to give a complainant a copy of a grievance can amount to a breach of the Act

In this section 68 duty of fair representation case the employee alleged that the union's refusal to take two grievances to arbitration, and refusal to provide the complainant with a copy of one of the grievances, constituted violations of the Act. One of those grievances related to a matter arising in 1978; the Board declined to inquire into that aspect of the complaint because of the complainant's excessive delay in raising the matter. The Board found the union's decision not to pursue the second grievance to arbitration was reasonable under the circumstances. After the union had advised the complainant of its decision to withdraw the latter grievance, the complainant began to make requests for a copy of that grievance. At the end of the several months the complainant spent trying to get a copy of his grievance, the only reason the union's vice president gave for refusing a copy was that the original was the property of the union. There was no evidence that providing a copy would have involved any significant effort or expense on the union's part. The Board described the union's refusal as arbitrary action, perhaps even action in bad faith and noted that in an appropriate case a union's refusal to provide a worker it represents with a copy of a grievance it has filed on his or her behalf violates section 68. As a practical matter, however, complaints about a trade union's failure to provide information about its activities on behalf of employees tend to arise when there are suspicions or allegations that the activities themselves involve a breach of the Act. The propriety of the activities generally becomes the real focus of attention, as it did in this case. If the complaint fails on that issue the matter of the initial failure of communication can take on an almost academic quality as it did in this case. Even if the denial of a copy of the grievance violated section 68, that caused the complainant no loss for which he should be compensated. Not even nominal damages would be awarded because the complainant had failed to renew his request at certain meetings with union officials. As well, for that same reason and because the union had since changed its policy with respect to providing copies of grievance documents, a cease and desist direction or other remedy with prospective effect would not be granted. Under these circumstances the Board declined to pronounce on whether or not the union's refusal to provide a copy of the grievance amounted to a breach of the Act. *Balford Lindsay*, [1989] OLRB Rep. Mar. 264.

Board not bound to consider whether the respondent to a construction industry grievance was a construction industry employer within the meaning of the Act

The union had referred a construction industry grievance under section 124 to the Board alleging that Metropolitan Toronto ("Metro") had breached the collective agreement by which it was bound by contracting for the performance of electrical work with a contractor who was not party to a collective agreement with the union or any of its locals. The provision in question prohibited Metro from directly or indirectly 'subletting' any work to an employer who was not a party to an agreement with the union. Metro entered into a contract with Torontario Mechanical and Electrical Company Limited ("Torontario") for the performance of electrical work. Torontario was not a party to the provincial agreement. Metro argued that in these circumstances it was not an "employer" in the construction industry within the meaning of section 117(c) of the Act but rather an owner and therefore not bound by the provincial agreement and, in any event, the work was not "sublet". The Board held that it was not bound to consider whether a respondent to a

section 124 proceeding was acting as a person operating a business in the construction industry in respect of the subject matter of the grievance but only whether the respondent's activities had violated the provincial agreement. The question whether Metro was both "an employer" in the literal sense and "a person who operates a business in the construction industry" in the sense intended by clause 117(c) of the Act was a relevant question when the union made its application for certification. However, it was not a relevant question during the currency of the collective bargaining relationship except to the extent that a resulting collective agreement made the question or any aspect of it relevant. Once Metro has been found to be an employer as defined in section 117(c), the applicability of the collective agreement to any particular situation would thereafter be determined by the terms to which the parties had agreed. The Board stated that if it was wrong in this and if it must determine on each section 124 proceeding that the employer was a person who operated a business in the construction industry, then the respondent satisfied that test in this case. The phrase "operates a business in the construction industry" described anyone who effects construction, whether by hiring construction workers or by engaging contractors. Here, Metro effected construction. The grievance was dismissed because Metro's contract with Torontario was not in substance a "subcontract". *The Municipality of Metropolitan Toronto*, [1989] OLRB Rep. Mar. 279.

VI COURT ACTIVITY

During the year under review, the Courts dealt with nine applications for judicial review, and dismissed all nine.

In one of the applications for judicial review which were dismissed by the Divisional Court, the applicant sought and obtained leave to appeal to the Court of Appeal, and that appeal is pending.

Two applications for judicial review were withdrawn or abandoned by the applicants in the year under review.

Two applications to stay Board proceedings pending judicial reviewapplications were both dismissed.

Fifteen other applications for judicial review are pending as at year-end. Five applications for leave to appeal the dismissals of judicial review applications, as well as four appeals, three to the Court of Appeal and one to the Supreme Court of Canada, are also pending.

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

Atway Transport Inc.
Supreme Court of Ontario, Divisional Court
May 30, 1988; Unreported

The union filed a complaint alleging that the employer had dismissed an employee for union activity and in order to intimidate other employees. The employer responded that the individual involved was not an employee but an independent contractor.

During the course of hearing evidence on the issue of whether or not the individual was an employee, the Board made several evidentiary rulings which were recorded in its decision dated April 12, 1988. The Board ruled that certain photocopies which the respondent sought to introduce were inadmissible. The Board also ordered the production by the employer of certain payroll documents and contracts which the union had requested in a summons to witness. The Board held that these documents were arguably relevant to the issue under consideration and that there is always an implied undertaking, and in this case there was an explicit one, that documents produced will be used only for the purposes of the proceeding.

The employer sought judicial review of the Board's decision on the grounds of numerous errors of law and denial of natural justice, as well as violations of the Charter provisions respecting fundamental justice (section 7) and unreasonable search and seizure (section 8). It also sought a stay of the Board's decision and of any further proceedings at the Board pending the disposition of the application for judicial review.

On May 30, 1988, the Divisional Court dismissed the application for a stay, on the basis that it was not satisfied that there was any merit to the employer's application for judicial review.

The application for judicial review is still pending as at year-end.

Cuddy Chicks
Supreme Court of Ontario, Divisional Court
November 2, 1988; 66 O.R. (2d) 284; 33 Admin. L.R. 304; 88 CLLC ¶14,053
Ontario Court of Appeal
January 16, 1989; Unreported

The union applied for certification of employees at the employer's hatchery. The employer asserted in reply that the employees were employed in agriculture and therefore not covered by the *Labour Relations Act* by virtue of section 2(b). The union responded that the agricultural exemption is contrary to the Charter and should therefore not be applied in any event. The employer then objected that the Board had no jurisdiction to consider the union's Charter argument.

The Board in its oral decision of April 28, 1988, with written reasons issuing May 6, 1988, held first that the employees were employed in agriculture. The majority of the Board went on to decide that the Board does have jurisdiction to apply the Charter in proceedings before it by virtue of its obligation under section 52 of the Charter to apply the *Labour Relations Act* in a manner consistent with the Charter and by virtue of its being a "court of competent jurisdiction" within the meaning of section 24(1) of the Charter with respect to matters before it.

The employer sought judicial review of the Board's decision that it has jurisdiction to apply the Charter on the grounds that the Board is not a court of competent jurisdiction under section 24(1) and that section 52 is not an independent source of jurisdiction.

The Divisional Court, in its decision dated November 2, 1988, held that the Board was correct in holding that it has jurisdiction to apply the Charter. The Court held that the Board is a court of competent jurisdiction under section 24(1) with respect to matters before it, and has jurisdiction to apply the Charter by virtue of section 52 and by virtue of the Board's common law duty to apply statutes to proceedings before it. The application for judicial review was therefore dismissed.

Cuddy Chicks sought leave to appeal, which was granted by the Court of Appeal on January 16, 1989.

Dellbrook Homes
Supreme Court of Ontario, Divisional Court
March 13, 1989; [1989] OLRB Rep. March 315

The Carpenters Union complained that the Labourers Union had interfered with its rights and those of employees by negotiating collective agreements which contained clauses requiring home builders to subcontract carpentry work only to carpentry contractors who were in contractual relations with the Labourers, notwithstanding that they did not represent any carpenters employed by the home builders. The Labourers and the employers responded that the complaints should be dismissed on the basis of delay and abuse of process.

The Board in its decision dated February 7, 1988 exercised its discretion to decline to enquire into the complaints and dismissed them. The Board found that the delay in bringing these complaints was unreasonable and that the other parties would be substantially prejudiced if the complaints were allowed to proceed.

The Carpenters sought judicial review of the Board's decision on the grounds that the Board had wrongfully declined jurisdiction and denied natural justice by refusing to enquire into the complaints. They alleged that the Board had also wrongfully exercised its discretion when it

declined to enquire into a complaint that it had taken irrelevant considerations into account, found prejudice without any evidence in support and attributed responsibility for its own delay to the Carpenters.

The Divisional Court on March 13, 1989 dismissed the application for judicial review, finding that the Board had sufficient evidence before it and gave sufficient grounds in its decision for exercising its discretion not to hear the complaint.

Extendicare Health Services Inc.
Supreme Court of Ontario, Divisional Court
May 3, 1988; Unreported

The Ontario Nurses Association ("ONA") complained that the employer had bargained in bad faith by concluding an agreement with a local of ONA which did not provide for wage parity with nurses in hospitals, when the employer had known that the union's central office signed all contracts and would not accept less than wage parity with hospital nurses. Extendicare countered that ONA had bargained in bad faith by refusing to acknowledge the agreement between it and the local. The union also alleged that the employer, in implementing the terms of the invalid contract, had violated the Act by altering working conditions during bargaining, and it requested the appointment of a conciliation officer.

The Board found that the employer had bargained in bad faith by entering into a contract with the local which it knew the local had no authority to sign. The document was therefore not a collective agreement and ONA had been entitled to refuse to acknowledge it. Furthermore, the Board found that the employer had violated the freeze provisions of the Act and that, as there was no collective agreement, the Minister had the authority to appoint a conciliation officer.

Extendicare sought judicial review of the Board's decision on the grounds that the Board had committed jurisdictional errors by failing to consider relevant evidence.

On May 3, 1988 the Divisional Court dismissed the application for judicial review, noting that there was no indication that the Board had failed to consider relevant evidence, in particular, the old collective agreement.

Great Lakes Fisheries and Allied Workers' Union
Supreme Court of Ontario, Divisional Court
November 23, 1988; Unreported

The union had filed numerous applications for certification of fishermen working on boats. Nine of the employers named in the certification applications had then applied to Weekly Court for a determination of the constitutional validity of the Board's considering the certification applications and for a declaration that the fishermen came within federal jurisdiction. On September 5, 1986 the court dismissed the application as premature, as the Board, with its expertise in labour relations, had not yet heard the evidence and ruled on the constitutional issue.

Meanwhile, the Board proceeded to consider the constitutional issue, which the employers had also raised in their replies to the certification applications. The Board decided that labour relations respecting these fishing boat crews came within provincial jurisdiction and that therefore the Board had jurisdiction to hear the applications.

The nine employers then sought judicial review of the Board's decision on the ground that it had no jurisdiction to entertain the certification applications since labour relations respecting these fishermen came within federal jurisdiction.

The Divisional Court on November 23, 1988 ruled that the Board had been correct in its decision, and for the reasons it gave, and dismissed the application for judicial review.

The employers are now seeking leave to appeal the Divisional Court's decision to the Court of Appeal, and that appeal is pending as at year-end.

KBM Forestry Consultants Inc.
Supreme Court of Ontario, Divisional Court
April 25, 1988; Unreported

The Ontario Public Service Employees Union ("OPSEU") sought a declaration pursuant to the *Successor Rights (Crown Transfers) Act* that there had been a transfer of an undertaking from the Crown to KBM with respect to certain harvesting work which had previously been performed by employees represented by the union and which the Ministry of Natural Resources had subcontracted to KBM.

The majority of the Board declared that there had been a transfer from the Crown to KBM of work which had been performed by employees represented by the union and that therefore KBM was bound by the collective agreement between the Crown and the union.

The Crown brought an application for judicial review of the Board's decision on the grounds that the Board had made various errors of law in finding that there was a transfer of an undertaking under the *Successor Rights (Crown Transfers) Act.*

The Divisional Court on April 25, 1988 dismissed the application for judicial review, holding that the Board's finding of a transfer was not patently unreasonable.

Knob Hill Farms Limited; Donna Baydak
Supreme Court of Ontario, Divisional Court
May 30, 1988; 10 A.C.W.S. (3d) 221

The United Food and Commercial Workers Union ("UFCW") applied for certification for employees of Knob Hill. The union also alleged that the employer had interfered with the union and with employees' rights and intimidated employees by means of lay-offs and wage increases, and the union sought certification under section 8 of the *Labour Relations Act* on the basis that the employer's contraventions of the Act made it unlikely that the true wishes of the employees could be ascertained. The employer argued that section 89(5) of the Act, which places the burden of proof on the employer in such complaints, is contrary to the equality of provisions of the Charter. A group of objecting employees, represented by Ms. Baydak, had filed a petition in opposition to the union.

The majority of the Board ruled that the reverse onus provisions of the Act do not violate the Charter, and in any event found the employer to have contravened the *Labour Relations Act* without relying on the reverse onus. The Board, having determined that it was not satisfied that the petition was voluntary, determined that the union had adequate support and that the employer's contraventions had resulted in a situation in which the employee's wishes were not likely to be ascertained. The Board therefore determined that this was an appropriate case in which to certify the union pursuant to section 8, and ordered various remedies for the unfair labour practices. A request for reconsideration of this decision was denied by the same majority.

Both Knob Hill and Ms. Baydak (on behalf of the objecting employees) sought judicial review of the Board's decision, the former on the grounds of various errors of law and patently unreasonable decisions, and the latter on the grounds that the Board had denied natural justice by

misleading Ms. Baydak as to the relevant evidence and issues and had erred in failing to find the reverse onus to be in violation of the Charter.

Knob Hill sought a stay of the Board's decision pending the disposition of the judicial review and requested that the two judicial reviews be heard together.

The Divisional Court on May 30, 1988 dismissed the application for a stay and directed that the two judicial reviews would be heard together. In its reasons issued June 6, 1988, the Court noted that there was no strong *prima facie* case in the judicial review application, as the issues raised were evidentiary matters within the Board's exclusive jurisdiction.

The applications for judicial review were both pending as at year-end.

Douglas Lloyd
Supreme Court of Ontario, Divisional Court
March 9, 1989; [1989] OLRB Rep. March 316

Douglas Lloyd complained that he had been penalized by the Ministry of Community and Social Services for acting in compliance with the *Occupational Health and Safety Act* contrary to section 24 of that Act. A youth services officer at a secured custody facility, he had refused to report to work at another location at the facility because he believed that he would be leaving the remaining employees in jeopardy due to understaffing. The employer had reprimanded him and withheld his pay for the balance of the shift worked after the refusal.

The Board in its decision noted that by section 23(1)(c), section 23, including the right to refuse unsafe work, does not apply to persons employed in the operation of a correctional facility, and that therefore Mr. Lloyd could not rely on section 23 to refuse to work. The majority held that section 17, which prohibits a worker from working in a manner which might endanger himself or others, does not indirectly give a right to refuse an instruction. The majority also held that this was not an appropriate case in which to exercise its discretion under section 24(7) to substitute a different penalty. The complaint was therefore dismissed.

Mr. Lloyd sought judicial review of the Board's decision on the grounds that the Board erred in law and declined jurisdiction by finding that he was not protected by section 24 and exceeded its jurisdiction in its interpretation of the Act. He also alleged that section 23(1)(c), by which he was excluded from the application of the right to refuse work provisions, was contrary to the equality provisions of the Charter.

The Divisional Court on March 9, 1989 dismissed this application for judicial review. The Court found that the Board's interpretation of the legislation was not patently unreasonable. The Court also held that section 23(1)(c) does not infringe the equality provisions of the Charter. The section does not relate to personal characteristics and meets a legitimate government objective in any event. The Court explicitly left open the issue of whether it would as a general rule hear Charter issues not raised before the tribunal, noting that normally on such issues the Court requires a factual record from the tribunal.

Ontario Hydro
Supreme Court of Ontario, Divisional Court
September 1, 1988; Unreported

The Electrical Power Systems Construction Association referred a grievance in the construction industry to the Board, seeking recovery from the Ironworkers Union of money paid to an employee pursuant to an inaccurate declaration regarding room and board allowance. The

union responded that the employer could not recover through the union and that the grievance was untimely in any event as the 30 day time limit in the collective agreement for filing a grievance had expired.

The Board considered the evidence respecting the three year period between the discovery of the overpayment and the filing of the grievance, and concluded that the employer's delay in filing was considerable and not justified. The Board therefore declined to exercise its statutory discretion to extend the time limit in the collective agreement for initiating grievances and, finding the grievance to be untimely, dismissed the application.

The Association and Ontario Hydro sought judicial review of the Board's decision on the grounds that the Board had erred in finding that the delay resulting from Ontario Hydro pursuing the matter through the courts was unreasonable and in refusing to extend the time for filing the grievance.

The Divisional Court on September 1, 1988 dismissed the application for judicial review, noting that while the court would not necessarily have reached the same conclusion, it was not persuaded that the Board's refusal of the extension was so patently unreasonable as to amount to a loss of jurisdiction.

The City of Sault Ste. Marie
Supreme Court of Ontario, Divisional Court
October 5, 1988; Unreported

The Labourers Union applied to be certified to represent employees of the city and the Canadian Union of Public Employees and the Carpenters Union intervened. At the Board's hearing, no one appeared on behalf of the city.

The Board in its decision dated August 7, 1987 certified both the Labourers and the Carpenters pursuant to the construction industry provisions of the *Labour Relations Act*.

Counsel for the city subsequently requested that the Board conduct a hearing to reconsider its decision on the basis that he had failed to appear as he had erroneously assumed as a result of communications with the Board that there would be no hearing on the scheduled date. The Board received written submissions from the parties and in its decision of October 9, 1987 found that the city had received a notice of hearing and that counsel's failure to attend was due to his own unwarranted and false assumption. The Board declined to reconsider its earlier decision.

The city sought judicial review of the Board's decisions on the grounds that the Board made various errors of law and denied the city natural justice by proceeding in its absence and then refusing to hold a reconsideration hearing. It also alleged that sections 117 to 136 of the *Labour Relations Act* should not have been applied to a municipal corporation since that would result in the municipality being bound to a contract which might be inconsistent with the *Municipal Act*, and that furthermore these sections violate the equality provisions of the Charter.

The Divisional Court on October 5, 1988 dismissed the application for judicial review. The Court held that the bulk of the responsibility for counsel for the city's failure to appear at the hearing was his own, as he had wrongly assumed that the hearing dates had been changed. The Court was not satisfied that the two unions would not be prejudiced if the decisions were quashed, and so declined to exercise its discretion to grant the application.

The city is seeking leave to appeal to the Court of Appeal, which application is scheduled at year-end for April 3, 1989.

The Board of Education for the City of Windsor
Supreme Court of Ontario, Divisional Court
January 25, 1989; [1989] OLRB Rep. February 231

The Plumbers Union referred to the Board two construction industry grievances, alleging that the Windsor Board had violated the provincial agreement with respect to wages and non-union contracting-out. The employer responded that it was not bound by the provincial agreement because it was not an employer in the construction industry, because it contracted the work out as an owner, and because the work was not construction work but maintenance work. In any event, if it was bound by the provincial agreement, the union was estopped from enforcing the provincial agreement because of a "gentlemen's agreement" between it and the union that the union would set aside its contracting-out rights under the provincial agreement.

In its decision dated March 4, 1988, the majority of the Board found that the Windsor Board was an employer in the construction industry with respect to the work at issue in the grievances and was therefore bound to the provincial agreement. The "gentlemen's agreement" which purported to set aside the provincial agreement's provisions was found to be null and void pursuant to section 146(2) of the *Labour Relations Act* as being an "arrangement... other than a provincial agreement", and the union was therefore not estopped from grieving the non-union contracting-out. The Board then dealt with the grievances, and found violations of the wage and contracting-out provisions of the provincial agreement.

The Windsor Board sought judicial review of the Board's decision on the grounds, among others, that the Board erred in finding it to be an employer in the construction industry and in refusing to apply the doctrine of estoppel.

The Divisional Court, in its decision dated January 25, 1989, held that the Board's findings were not unreasonable or for that matter wrong, and dismissed the application for judicial review.

The Windsor Board is seeking leave to appeal the Divisional Court's decision to the Court of Appeal, which application is pending as at year-end.

VII CASELOAD

In fiscal year 1988-89, the Board received a total of 3,225 applications and complaints, a decrease of 10 percent over the intake of 3,583 cases in 1987-88. Of the three major categories of cases that are brought to the Board under the Act, applications for certification of trade unions as bargaining agents decreased by 17 percent over last year, contravention of the Act decreased by 9 percent and referrals of grievances under construction industry collective agreements decreased by 15 percent. The total of all other types of cases increased by 5 percent. (Tables 1 and 2).

In addition to the cases received, 1,006 were carried over from the previous year, for a total caseload of 4,231 in 1988-89. Of the total caseload, 2,856 or 68 percent, were disposed of during the year; proceedings in 448 were adjourned sine die (without a fixed date for further action; The Board regards sine die cases as disposed of, although they are kept on docket for one year) at the request of the parties; and 927 were pending in various stages of processing at March 31, 1989.

The total number of cases processed during the year produced an average workload of 282 cases for the Board's full-time chair and vice-chair, and the total disposition represented an average output of 190 cases.

Labour Relations Officer Activity

In 1988-89, the Board's labour relations officers were assigned a total of 2,063 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 49 percent of the Board's total caseload, and included 486 certification applications, 37 cases concerning the status of individuals as employees under the Act, 695 complaints of alleged contravention of the Act, 739 grievances under construction industry collective agreements, 104 complaints under the *Occupational Health and Safety Act*, and 2 complaints under the *Environmental Protection Act*. (Table 3).

The labour relations officers completed activity in 1,432 of the assignments, obtaining settlements in 1,277, or 89 percent. They referred 155 cases to the Board for decisions; proceedings were adjourned sine die in 287 cases; and settlement efforts were continuing in the remaining 344 cases at March 31, 1989. Labour relations officers were also successful in having hearings waived by the parties in 172, or 74 percent, of 232 certification applications assigned for this purpose.

Representation Votes

In 1988-89, the Board's returning officers conducted a total of 239 representation votes among employees in one or more bargaining units. Of the 239 votes conducted, 169 involved certification applications, 69 were held in applications for termination of existing bargaining rights, and 1 was taken in successor employer applications. (Table 5).

Of the certification votes, 120 involved a single union on the ballot; 46 involved two unions, 2 involved three unions, and one involved two unions with a 'no union' choice. Of the two-union and three-union votes, 93 percent entailed attempts to replace incumbent bargaining agents.

A total of 14,049 employees were eligible to vote in the 239 elections that were concluded, of whom 10,516, or 75 percent, cast ballots. Of those who participated, 54 percent voted in favour of

union representation. In the 120 elections that involved a single union, 75 percent of the eligible voters cast ballots, with 50 percent of the participants voting for union representation. In the elections involving three unions, 100 percent of the eligible voters cast ballots for union representation.

In the 69 votes in applications for termination of bargaining rights, 86 percent of the eligible voters cast ballots, with only 27 percent of those who participated voting for the incumbent unions.

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 12 requests dealt with by the Board during the fiscal year, votes were conducted in 7 situations, settlements were reached in 4 cases before a vote was taken, and 1 case was withdrawn.

In the 7 votes held, employees accepted the employer's offer in 2 cases by 16 votes in favour to 11 against, and rejected the offer in 5 cases by 1,648 votes against to 697 in favour.

Hearings

The Board held a total of 1,091 hearings and continuation of hearings in 1,321, or 31 percent of the 4,231 cases processed during the fiscal year. This was an increase of 61 sittings from the number held in 1987-88. One hundred and forty one of the hearings were conducted by vice-chair sitting alone, compared with 187 in 1987-88.

Processing Time

Table 7 provides statistics on the time taken by the Board to process the 2,856 cases disposed of in 1988-89. Information is shown separately for the three major categories of cases handled by the Board - certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements - and for the other categories combined.

A median of 43 days was taken to proceed from filing to disposition for the 2,856 cases that were completed in 1988-89, the same as in 1987-88. Certification applications were processed in a median of 36 days, compared with 43 in 1987-88; complaints of contravention of the Act took 64 days, the same as 1987-88; and referrals of construction industry grievances required 15 days, the same as in 1987-88. The median time for the total of all other cases increased to 85 days from 71 in 1987-88.

Sixty-eight percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 79 percent for certification applications, 59 percent for complaints of contraventions of the Act, 81 percent for referrals of construction industry grievances, and 50 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete was 449, one case less than in 1987-88.

Certification of Bargaining Agents

In 1988-89, the Board received 938 applications for certification of trade unions as bargaining agents of employees, a decrease of 187 over 1987-88. (Tables 1 and 2).

The applications were filed by 88 trade unions, including 21 employee associations. Thirteen of the unions, each with more than 20 applications, accounted for 70 percent of the total filings: Canadian Auto Workers (41 cases), Public Employees (CUPE) (42 cases), Food and Commercial Workers (31 cases), Ontario Public Service Employees (23 cases), Retail Wholesale Employees (32 cases), Service Employees Intl. (49 cases), United Steelworkers (56 cases), Carpenters (65 cases), Intl. Operating Engineers (56 cases), Labourers (139 cases), Ontario Nurses Association (35 cases), Plumbers (27 cases) and Teamsters (61 cases). In contrast, 35 percent of the unions filed fewer than 5 applications each, with thirteen making just one application. These unions together accounted for 3 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 79 percent of the applications received, concentrated in construction (313 cases), education and related services (48 cases), health and welfare services (148 cases), accommodation and food services (33 cases), retail trade (35 cases), wholesale trade (22 cases), and transportation (27 cases). These seven groups comprised 84 percent of the total non-manufacturing applications. Of the 197 applications involving establishments in manufacturing industries, 83 percent were in nine groups: food and beverage (16 cases), metal fabricating (28 cases), wood (14 cases), non-metallic minerals (29 cases), transportation equipment (21 cases), electrical products (13 cases), printing and publishing (19 cases), rubber and plastics (12 cases) and other manufacturing (12 cases).

In addition to the applications received, 272 cases were carried over from last year, making a total certification caseload of 1,210 in 1988-89. Of the total caseload, 944 were disposed of, proceedings were adjourned sine die in 39 cases, and 227 cases were pending at March 31, 1989. Of the 944 dispositions, certification was granted in 649 cases including 25 in which interim certificates were issued under section 6(2) of the Act, and 3 that were certified under section 8; 129 cases were dismissed; proceedings were terminated in 4 cases; and 162 cases were withdrawn. The certified cases represented 69 percent of the total dispositions. (Table 1).

Of the 782 applications that were either certified, dismissed or terminated, final decisions in 145 cases were based on the results of representation votes. Of the 145 votes conducted, 103 involved a single union on the ballot; 39 were held between two unions; two involved three unions and one involved two unions with a "no union" choice. Applicants won in 79 of the votes and lost in the other 66. (Table 6).

A total of 10,786 employees were eligible to vote in the 145 elections, of whom 7,803 or 72 percent cast ballots. In the 79 votes that were won and resulted in certification, 4,259 or 69 percent of the 6,174 employees eligible to vote cast ballots, and of these voters 2,986 or 70 percent favoured union representation. In the 66 elections that were lost and resulted in dismissals, 3,544 or 77 percent of the 4,612 eligible employees participated, and of these only 36 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 1988-89. The average size of the bargaining units in the 649 applications that were certified was 30 employees, compared with 36 in 1987-88. Units in construction certifications averaged 7 employees, the same as in 1987-88; and in non-construction certifications they averaged 40 employees, compared with 52 in 1987-88. Seventy-nine percent of the total certification applications involved units of fewer than 40

employees, and 44 percent applied to units of fewer than 10 employees. The total number of employees covered by the 649 certified cases decreased to 21,440 from 27,085 in 1987-88. (Table 10).

Of the employees covered by the applications certified, 7,016 or 33 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 2,389 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 12,035 employees, including units that did not specifically exclude employees working 24 hours or less a week. (Tables 12 and 13).

Seventy-one percent of the employees, or 15,165, were employed in production, service and related occupations; and 1,227 were in office, clerical and technical occupations - mainly in education, and health and welfare services. Professional employees, found mostly in education and health and welfare services, accounted for 3,896 employees; a small number, 508 employees, were in sales classifications; and 644 were in units that included employees in two or more classifications. (Tables 14 and 15).

Disposition Time: A median time of 37 calendar days was required to complete the 649 certified cases from receipt to disposition. For non-construction certifications the median time was 38 days, and for construction certifications the median time was 30 days. (Table 11).

Eighty-three percent of the 649 certified cases were disposed of in 84 days (3 months) or less, 71 percent took 56 days (2 months) or less, 30 percent required 28 days (one month) or less, and 13 percent were processed in 21 days (3 weeks) or less. Forty-five cases required longer than 168 days (6 months) to process, compared with 63 in 1987-88.

Termination of Bargaining Rights

In 1988-89, the Board received 177 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions. In addition, 65 cases were carried over from 1987-88.

Of the total cases processed, bargaining rights were terminated in 102 cases, 41 cases were dismissed, 64 were withdrawn or settled, proceedings were terminated or adjourned sine die in 5 cases, and 30 cases were pending at March 31, 1989.

Unions lost the right to represent 1,615 employees in the 102 cases in which termination was granted, but retained bargaining rights for 5,158 employees in the 103 cases that were either dismissed or withdrawn.

Of the 143 cases that were either granted or dismissed, dispositions in 69 were based on the results of representation votes. A total of 1,455 employees were eligible to vote in the 69 elections that were held, of whom 1,221 or 84 percent cast ballots. Of those who cast ballots, 329 voted for continued representation by unions and 892 voted against. (Table 6).

Declaration of Successor Trade Union

In 1988-89, the Board dealt with 34 applications for declarations under section 62 of the Act concerning the bargaining rights of successor trade unions resulting from a union merger or transfer of jurisdiction, compared to 81 in 1987-88.

Affirmative declarations were issued by the Board in 21 cases, 1 case was withdrawn, 2 cases were dismissed, and 10 cases were pending at March 31, 1989.

Declaration of Successor or Common Employer

In 1988-89, the Board dealt with 329 applications for declarations under section 63 of the Act concerning the bargaining rights of trade unions of 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 21 cases, 97 cases were either settled or withdrawn by the parties, 20 cases were dismissed, proceedings were terminated or adjourned sine die in 42 cases, and 149 cases were pending at March 31, 1989.

Accreditation of Employer Organizations

Eight 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 and 6 cases were pending at March 31, 1989.

Declaration and Direction of Unlawful Strike

In 1988-89, the Board dealt with 5 applications seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. One case was dismissed, 3 cases were withdrawn or settled and proceedings were adjourned sine die in 1 case.

Thirty-eight applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 3 cases, 1 case was dismissed, 17 were withdrawn or settled, proceedings were terminated or adjourned sine die in 16 cases, and 1 case was pending at March 31, 1989.

Twenty-two 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, 12 were withdrawn or settled, proceedings were terminated or adjourned sine die in 5 cases, and 3 were pending at March 31, 1989.

Declaration and Direction of Unlawful Lock-out

Three applications were processed in 1988-89, seeking a declaration under section 93 of the Act against an alleged unlawful lock-out by construction employers. One was settled, one terminated, and one was pending at March 31, 1989.

One application was processed seeking a direction under section 93 of the Act against an alleged unlawful lock-out by a non-construction employer. It was withdrawn.

Consent to Prosecute

In 1988-89, the Board dealt with 10 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 10 applications processed, which included 6 carried over from the previous year, 9 were disposed of and 1 was pending at March 31, 1989. Of the cases disposed of, 2 were dismissed, and 7 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.

The Board received 787 complaints under this section in 1988-89, a decrease of 81 cases over the 868 filed in 1987-88. In complaints against employers, the principal charges were alleged illegal discharge of or discrimination against 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, 284 cases were carried over from 1987-88. Of the 1,071 total processed, 751 were disposed of, proceedings were adjourned sine die in 87 cases, and 233 cases were pending at March 31, 1989.

In 537, or 72 percent, of the 751 dispositions, voluntary settlements and withdrawals of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 29 cases, 106 cases were dismissed, proceedings were terminated in 12 cases, and 67 were either settled or withdrawn by the parties.

In the cases settled by labour relations officers and those in which Board awards were made, compensation amounting to $616,459 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 29 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay compensation to 54 employees for wages and benefits lost in a specified period, and 15 of these employees were also ordered reinstated.

In addition, employers in 10 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 5 other cases.

Construction Industry Grievances

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

In 1988-89, the Board received 739 cases under this section. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds, failure to deduct union dues, and alleged violated of the subcontracting and hiring arrangements in the collective agreement.

In addition to the cases received, 137 were carried over from 1987-88. Of the total 876 processed, 529 were disposed of, proceedings were adjourned sine die in 235 cases, and 112 cases were pending at March 31, 1989.

In 479, or 91 percent, of the 529 dispositions, voluntary settlements and withdrawals of the grievance were obtained by labour relations officers, awards were made by the Board in 19 cases, 12 cases were dismissed, proceedings were terminated in 4 cases, and 15 were withdrawn or settled by the parties.

Payments totalling $882,434 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 1988-89, the Board dealt with 3 applications in which the union sought access to the employer's property under section 11 of the Act. Access was granted in 1 case, and 2 were settled.

Religious Exemption

Sixteen 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. Three applications were granted, 5 were dismissed, 4 were withdrawn, proceedings were adjourned sine die in 3 cases, and 1 was pending at March 31, 1989.

Early Termination of Collective Agreements

Fifteen applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 13 cases, and 2 were pending at March 31, 1989.

Union Financial Statements

Twelve complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. Two cases were dismissed, 8 cases were withdrawn or settled, and 2 were pending at March 31, 1989.

Jurisdictional Disputes

Seventy-one complaints were dealt with under section 91 of the Act, involving union work jurisdiction. An assignment of the work in dispuste was made by the Board in 2 cases, 2 cases were dismissed, 18 cases were settled or withdrawn, 1 was terminated, proceedings were adjourned sine die in 7 cases, and 41 cases were pending at March 31, 1989.

Determination of Employee Status

The Board dealt with 105 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-six cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4), and 12 were withdrawn or settled by the parties. Determinations were made by the Board in 5 cases, in which 16 of the 40 persons in dispute were found to be employees under the Act. Nine cases were dismissed, proceedings were adjourned sine die in 10 cases, and 33 cases were pending at March 31, 1989.

Referrals by Minister of Labour

In 1988-89, the Board dealt with 4 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. Determinations declaring the Minister's authority to appoint a conciliation officer were made in 3 cases, one case was dismissed.

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, 1989.

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.

During 1988-89, the Board received 20 applications for directions to settle first agreements by arbitration. Directions were issued in 6 cases, 1 case was dismissed, 13 cases were settled or withdrawn, and proceedings were adjourned sine die in 3 cases. (Table 1).

Arbitration Provision

One application was made under section 44(3) asking the Board to modify the arbitration provision in a collective agreement. The case was terminated.

Occupational Health and Safety Act

In 1988-89, the Board received 110 complaints under section 24 of the *Occupational Health and Safety Act*, and 2 complaints under section 134(b) of the *Environmental Protection Act* alleging wrongful discipline or discharge for acting in compliance with the Acts. Nineteen cases were carried over from 1987-88.

Of the total 54 cases disposed of, 38 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4.); six cases were granted, 9 were dismissed, and 1 was terminated.

Colleges Collective Bargaining Act

One complaint was dealt with under section 78 of the *Colleges Collective Bargaining Act*, alleging contraventions of the Act. The case was withdrawn.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt with by the Board are included under contravention of the Act 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 layperson'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 1988-89, the Board employed a total of 118 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 servants.

The total budget of the Ontario Labour Relations Board for the fiscal year was $7,607,300.

II STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1988-89.

Table 1

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1988-89

Type of Case	Caseload			Disposed of, Fiscal Year 1988-89							
	Total	Pending April 1, 88	Received Fiscal Year 1988-89	Total	Granted*	Dismissed	Termi-nated	With-drawn	Settled	Sine Die	Pending March 31, 1989
Total	**4,231**	**1,006**	**3,225**	**2,856**	**886**	**344**	**32**	**676**	**918**	**448**	**927**
Certification of Bargaining Agents	1,210	272	938	944	649	129	4	162	—	39	227
Declaration of Termination of Bargaining Rights	242	65	177	209	102	41	2	62	2	3	30
Declaration of Successor Trade Union	34	26	8	24	21	2	—	1	—	—	10
Declaration of Successor Employer or Common Employer Status	329	92	237	140	21	20	2	25	72	40	149
Accreditation	8	2	6	2	2	—	—	—	—	—	6
Declaration of Unlawful Strike	5	—	5	4	—	1	—	1	2	1	—
Declaration of Unlawful Lockout	3	1	2	2	—	—	1	—	1	—	1
Direction respecting Unlawful Strike	60	6	54	39	4	2	4	11	18	17	4
Direction respecting Unlawful Lockout	1	—	1	1	—	—	—	1	—	—	—
Consent to Prosecute	10	6	4	9	—	2	—	5	2	—	1
Contravention of Act	1,071	284	787	751	29	106	12	202	402	87	233
Right of Access	3	1	2	3	1	—	—	—	2	—	—
Exemption from Union Security Provision in Collective Agreement	16	2	14	12	3	5	—	4	—	3	1
Early Termination of Collective Agreement	15	3	12	13	13	—	—	—	—	—	2
Trade Union Financial Statement	12	4	8	10	—	2	—	5	3	—	2
Jurisdictional Dispute	71	41	30	23	2	2	1	8	10	7	41

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1988-89

	Caseload			Disposed of, Fiscal Year 1988-89							
Type of Case	Total	Pending April 1, 88	Received Fiscal Year 1988-89	Total	Granted*	Dismissed	Termi-nated	With-drawn	Settled	Sine Die	Pending March 31, 1989
Total	**4,231**	**1,006**	**3,225**	**2,856**	**886**	**344**	**32**	**676**	**918**	**448**	**927**
Referral on Employee Status	105	40	65	62	5	9	—	21	27	10	33
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	4	1	3	4	3	1	—	—	—	—	—
Referral of Construction Industry Grievance	876	137	739	529	19	12	4	153	341	235	112
Referral from Minister on Construction Bargaining Agency	1	1	—	—	—	—	—	—	—	—	1
Complaint under Occupational Health and Safety Act	129	19	110	53	6	9	1	9	28	3	73
Environmental Protection Act	2	—	2	1	—	—	—	—	1	—	1
First Agreement Arbitration Direction	23	3	20	20	6	1	—	6	7	3	—
Arbitration Provision	1	—	1	1	—	—	1	—	—	—	—

* 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 1984-85 to 1988-89

	Number Received in Fiscal Year						Number Disposed of in Fiscal Year					
Type of Case	**Total**	**1984-85**	**1985-86**	**1986-87**	**1987-88**	**1988-89**	**Total**	**1984-85**	**1985-86**	**1986-87**	**1987-88**	**1988-89**
Total	**17,130**	**3,509**	**3,236**	**3,577**	**3,583**	**3,225**	**15,117**	**2,866**	**2,912**	**3,371**	**3,112**	**2,856**
Certification of bargaining Agents	5,270	1,148	1,025	1,034	1,125	938	5,077	985	1,034	1,006	1,108	944
Declaration of termination of bargaining Rights	817	155	155	171	159	177	807	139	135	191	133	209
Declaration of Successor trade union or employer	825	193	88	175	185	184	650	131	85	190	136	108
Declaration of common employer status	482	104	117	123	77	61	404	58	81	147	62	56
Accreditation	13	3	—	3	1	6	7	1	1	2	1	2
Declaration of unlawful strike or lockout	24	2	6	4	5	7	22	6	5	3	2	6
Direction respecting unlawful strike or lockout	258	39	52	63	49	55	191	31	36	49	35	40
Consent to prosecute	43	11	11	8	9	4	41	11	8	8	5	9
Contravention of Act	4,292	920	855	862	868	787	3,863	729	758	891	734	751
Referral of construction industry grievance	3,965	751	745	865	865	739	3,098	620	614	664	671	529
Miscellaneous	1,063	183	182	232	219	247	889	155	155	189	208	182
First Agreement Arbitration Direction	74	—	—	34	20	20	64	—	—	28	16	20
First Agreement Arbitration Proceedings	4	—	—	3	1	—	4	—	—	3	1	—

Table 3

**Labour Relations Officer Activity in Cases Processed*
Fiscal Year 1988-89**

Type of Case	Total Cases Assigned	Cases in Which Activity Completed					
		Settled			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
Total	**2,063**	**1,432**	**1,277**	**89.2**	**155**	**287**	**344**
Certification	486	463	397	85.7	66	5	18
Interim certificate	17	15	13	86.7	2	—	2
Pre-hearing application	75	66	60	90.9	6	—	9
Other application	394	382	324	84.8	58	5	7
Contravention of Act	695	464	408	87.9	56	60	171
Construction industry grievance	739	441	419	95.0	22	215	83
Employee status	37	26	24	92.3	2	4	7
Occupational Health and Safety Act	104	37	28	75.7	9	3	64
Environmental Protection Act	2	1	1	100.0	—	—	1

* 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 1988-89**

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
Total	**1,396**	**1,090**	**78.1**
Contravention of Act	751	537	71.5
Construction industry grievance	529	479	90.5
Employee status	62	36	58.1
Occupational Health and Safety Act	53	37	70.0
Environmental Protection Act	1	1	100.0

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

Table 5

Results of Representation Votes Conducted*
Fiscal Year 1988-89

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
Total	**239**	**14,049**	**10,516**	**5,635**
Certification	169	12,516	9,186	5,213
Pre-Hearing Cases				
One Union	46	4,906	3,245	1,746
Two Unions	36	3,421	2,293	1,486
Three Unions	2	263	251	251
Construction Cases				
One Union	11	127	101	16
Two Unions	3	30	29	14
Regular Cases				
One Union	63	3,436	2,996	1,430
Two Unions	7	329	268	267
Two Unions, with "no union" choice	1	4	3	3
Termination of Bargaining Rights	69	1,438	1,237	329
Successor Employer				
Two unions	1	95	93	93

* 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 1988-89

Type of Case	Number of Votes			Eligible Votes			All Ballots Cast			Ballots Cast in Favour of Unions		
					In Votes			In Votes			In Votes	
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
Total	**215**	**86**	**129**	**12,336**	**6,559**	**5,777**	**9,117**	**4,599**	**4,518**	**4,686**	**3,221**	**1,465**
Certification	145	79	66	10,786	6,174	4,612	7,803	4,259	3,544	4,264	2,986	1,278
Pre-hearing Cases												
One Union	38	20	18	4,231	2,853	1,378	2,712	1,496	1,216	1,405	981	424
Two Unions	29	25	4	3,139	1,702	1,437	2,167	1,393	774	1,362	301	—
Three Unions	2	2	—	263	263	—	251	251	—	159	159	—
Construction Cases												
One Union	10	1	9	131	4	127	107	4	103	19	2	17
Two Unions	3	2	1	19	8	11	14	4	10	9	6	3
Regular Cases												
One Union	55	21	34	2,671	1,012	1,659	2,276	835	1,441	1,065	532	533
Two Unions	7	7	—	328	328	—	273	273	—	242	242	—
Two Unions, with "no union" choice	1	1	—	4	4	—	3	3	—	3	3	—
Termination of Bargaining	69	6	63	1,455	290	1,165	1,221	247	974	329	142	187
Successor Employer												
Two Unions	1	1	—	95	95	—	93	93	—	93	93	—

* 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 1988-89

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 89 Cases		Section 124 Cases		All Other Cases	
	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent	Dispositions	Cumulative Percent
Total	**2,856**	**100.0**	**944**	**100.0**	**751**	**100.0**	**529**	**100.0**	**632**	**100.0**
Under 8 days	62	2.2	12	1.3	18	2.4	7	1.3	25	4.1
8-14 days	217	9.8	35	5.0	36	7.2	123	24.6	23	7.6
15-21 days	331	21.2	90	14.5	47	13.4	168	56.3	26	10.7
22-28 days	250	29.9	140	29.4	45	19.4	31	62.2	34	15.4
29-35 days	251	38.7	138	44.1	68	28.5	17	65.4	28	19.9
36-42 days	210	46.1	108	55.4	48	34.9	20	69.2	34	25.5
43-49 days	131	50.7	51	60.8	44	40.7	10	71.1	26	29.6
50-56 days	122	55.0	41	65.2	32	45.0	15	73.9	34	35.1
57-63 days	104	58.6	39	69.3	24	48.2	15	76.7	26	39.2
64-70 days	99	62.1	35	73.0	28	51.9	8	78.3	28	43.7
71-77 days	75	64.7	30	76.2	21	54.7	7	79.6	17	46.3
78-84 days	80	67.5	22	78.6	31	58.9	5	80.5	22	49.9
85-91 days	68	69.9	18	80.5	28	62.6	9	82.2	13	52.1
92-98 days	52	71.8	13	81.8	15	64.6	6	83.4	18	55.0
99-105 days	51	73.6	13	83.2	19	67.1	5	84.3	14	57.3
106-126 days	132	78.2	30	86.3	47	73.4	15	87.1	40	63.9
127-147 days	103	81.8	21	88.5	37	78.3	13	89.6	32	68.8
148-168 days	69	84.2	12	89.8	25	81.6	3	90.2	29	73.6
over 168 days	449	100.0	96	100.0	138	100.0	52	100.0	163	100.0

Table 8

Union Distribution of Certification Applications Received and Disposed of Fiscal Year 1988-89

Union	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
All Unions	**938**	**944**	**649**	**133**	**162**
CLC* Affiliates	**381**	**387**	**286**	**53**	**48**
Aluminum Brick & Glass Wkrs.	2	3	2	1	—
Bakery & Tobacco Wkrs.	1	2	2	—	—
Brewery and Soft Drink Wkrs.	4	3	2	1	—
Canadian Auto Workers	41	44	36	5	3
Canadian Paperworkers	7	6	4	1	1
Canadian Public Employees (CUPE)	42	46	36	5	5
CLC Directly Chartered	2	3	3	—	—
Clothing and Textile Workers	3	3	2	1	—
Communications Workers (Amer)	3	3	2	—	1
Communications-Electrical Wkrs.	—	1	1	—	—
Electrical Workers (UE)	3	3	2	1	—
Energy and Chemical Workers	7	6	3	—	3
Food and Commercial Workers	31	33	24	5	4
Glass, Pottery & Plastic Wkrs.	2	1	1	—	—
Graphic Communications Union	11	10	6	2	2
Hotel Employees	16	15	10	2	3
IWA-Canada	9	10	6	3	1
Ladies Garment Workers	2	2	1	—	1
Machinists	7	5	4	—	1
Newspaper Guild	5	2	2	—	—
Novelty Workers	1	1	—	1	—
Office and Professional Employees	6	7	7	—	—
Ontario Public Service Employees	23	22	20	1	1
Postal Workers	1	1	1	—	—
Public Service Alliance	1	2	1	—	1
Railway, Transport and General Workers	4	4	2	—	2
Retail Wholesale Employees	32	33	22	6	5
Rubber Workers	2	2	2	—	—
Service Employees International	49	44	32	4	8
Technical Engineers	1	1	1	—	—
Theatrical Stage Employees	2	—	—	—	—
Transit Union (Intl.)	2	1	—	—	1
United Paperworkers	1	—	—	—	—
United Steelworkers	56	60	42	13	5
United Textile Workers	1	2	1	1	—
Woodworkers	1	6	6	—	—

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

Table 8 (Cont'd)

Non-CLC Affiliates	557	557	363	80	114
Allied Health Professionals	2	1	1	—	—
Asbestos Workers	2	3	2	1	—
Boilermakers	7	6	5	1	—
Bricklayers International	4	4	2	1	1
Carpenters	65	68	33	17	18
Canadian Educational Workers	1	2	1	—	1
Canadian Operating Engineers	3	3	1	2	—
Canadian Telephone Employees	1	1	1	—	—
Canadian Transit Union	12	4	3	—	1
Christian Labour Association	13	14	11	1	2
Electrical Workers (IBEW)	18	11	7	1	3
Elevator Constructors	1	1	—	—	1
Engineers Association	1	1	—	—	1
Guards Association	8	2	1	1	—
Independent Local Union	21	21	10	2	9
International Operating Engineers	56	66	46	8	12
Labourers	139	128	86	10	32
Ontario English Catholic Teachers	—	2	2	—	—
Ontario Nurses Association	35	39	33	3	3
Ontario Public School Teachers	7	5	2	1	2
Ontario Secondary School Teachers	15	19	16	2	1
Painters	20	21	16	2	3
Plant Guard Workers	9	8	5	3	—
Plumbers	27	29	17	3	9
Sheet Metal Workers	5	8	6	1	1
Structural Iron Workers	11	11	5	3	3
Sudbury Mine Workers	2	2	1	—	1
Teamsters	61	58	36	14	8
Textile & Chemical Union	1	1	1	—	—
Textile Processors	6	8	6	1	1
United Auto Workers	4	7	4	2	1
Other	—	3	3	—	—

Table 9

Industry Distribution of Certification Applications Received and Disposed of Fiscal Year 1988-89

Industry	Number of Applications Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
All Industries	**938**	**944**	**649**	**133**	**162**
Manufacturing	**197**	**212**	**149**	**37**	**26**
Food, beverages	16	20	12	5	3
Tobacco products	—	—	—	—	—
Rubber, plastics	12	15	11	2	2
Leather	—	1	—	1	—
Textile	5	6	3	3	—
Knitting mills	—	—	—	—	—
Clothing	3	6	5	1	—
Wood	14	14	11	3	—
Furniture and fixtures	6	6	5	—	1
Paper	3	3	2	—	1
Printing, publishing	19	16	10	3	3
Primary metals	7	9	5	3	1
Fabricated metals	28	29	23	4	2
Machinery	4	6	4	2	—
Transportation equipment	21	27	23	2	2
Electrical products	13	12	10	—	2
Non-metallic minerals	29	30	16	7	7
Petroleum, coal	1	—	—	—	—
Chemicals	4	4	3	—	1
Other manufacturing	12	8	6	1	1
Non-Manufacturing	**741**	**732**	**500**	**96**	**136**
Agriculture	1	1	—	1	—
Forestry	1	3	2	1	—
Fishing, trapping	—	—	—	—	—
Mining, quarrying	4	5	2	1	2
Transportation	27	28	14	10	4
Storage	3	3	3	—	—
Communications	—	—	—	—	—
Electric, gas, water	5	3	2	1	—
Wholesale trade	22	24	16	4	4
Retail trade	35	30	22	5	3
Finance, insurance	7	8	7	1	—
Real Estate	17	12	9	1	2
Education, related services	48	54	41	4	9
Health and welfare services	148	147	117	15	15
Religious organizations	1	1	1	—	—
Recreational services	4	3	2	1	—
Management services	19	9	5	2	2
Personal services	8	7	5	2	—
Accommodation, food services	33	33	20	4	9
Other services	27	22	15	1	6

Table 9 (Cont'd)

Federal government	1	1	—	—	1
Provincial government	—	—	—	—	—
Local government	17	12	7	—	5
Other government	—	2	2	—	—
Construction	313	324	208	42	74

* Includes cases that were terminated.

Table 10

Size of Bargaining Units in Certification Applications Granted Fiscal Year 1988-89

	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	**649**	**21,440**	**205**	**1,458**	**444**	**19,982**
2-9 employees	287	1,420	165	758	122	662
10-19 employees	129	1,775	29	341	100	1,434
20-39 employees	95	2,605	9	256	86	2,349
40-99 employees	80	4,857	2	103	78	4,754
100-199 employees	41	5,443	—	—	41	5,443
200-499 employees	16	4,727	—	—	16	4,727
500 employees or more	1	613	—	—	1	613

* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 711 bargaining units were certified in the 649 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 208 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 1988-89

	Total Certified		Non-Construction		Construction	
Calendar Days	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	**649**	**100.0**	**444**	**100.0**	**205**	**100.0**
8-14 days	22	3.4	4	0.9	18	8.8
15-21 days	64	13.3	14	4.1	50	33.2
22-28 days	111	30.4	79	21.8	32	48.8
29-35 days	113	47.8	98	43.9	15	56.1
36-42 days	90	61.6	79	61.7	11	61.5
43-49 days	39	67.6	32	68.9	7	64.9
50-56 days	23	71.2	17	72.7	6	67.8
57-63 days	26	75.2	19	77.0	7	71.2
64-70 days	22	78.6	19	81.3	3	72.7
71-77 days	19	81.5	12	84.0	7	76.1
78-84 days	10	83.1	7	85.6	3	77.6
85-91 days	13	85.1	8	87.4	5	80.0
92-98 days	5	85.8	3	88.1	2	81.0
99-105 days	6	86.7	6	89.4	—	—
106-126 days	20	89.8	10	91.7	10	85.9
127-147 days	12	91.7	7	93.2	5	88.3
148-168 days	9	93.1	5	94.4	4	90.2
over 168 days	45	100.0	25	100.0	20	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 1988-89

Industry	All Units		Full-time		Part-time		Full-time and Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	**711**	**21,440**	**177**	**7,016**	**33**	**2,389**	**95**	**3,409**	**406**	**8,626**
Manufacturing	**158**	**8,909**	**60**	**3,246**	**1**	**3**	**28**	**1,839**	**69**	**3,821**
Food, Beverages	13	520	8	435	—	—	2	22	3	63
Rubber, Plastics	11	540	4	206	—	—	1	5	6	329
Textile	3	142	2	131	—	—	1	11	—	—
Clothing	5	277	3	170	—	—	—	—	2	107
Wood	12	649	4	130	—	—	3	192	5	327
Furniture, Fixtures	6	386	3	205	—	—	1	159	2	22
Paper	2	61	—	—	—	—	—	—	2	61
Printing, Publishing	14	270	6	184	1	3	3	45	4	38
Primary Metals	6	199	1	25	—	—	1	123	4	51
Fabricating Metals	23	1,756	9	630	—	—	4	570	10	556
Machinery	4	236	—	—	—	—	—	—	4	236
Transportation Equipment	24	1,368	8	563	—	—	6	348	10	457
Electrical Products	10	1,485	3	208	—	—	2	287	5	990
Non-metallic Minerals	16	498	3	91	—	—	3	34	10	373
Chemicals	3	101	2	58	—	—	1	43	—	—
Other Manufacturing	6	421	4	210	—	—	—	—	2	211
Non-Manufacturing	**553**	**12,531**	**117**	**3,770**	**32**	**2,386**	**67**	**1,570**	**337**	**4,805**
Forestry	2	61	—	—	—	—	—	—	2	61
Mining, Quarrying	2	26	—	—	—	—	—	—	2	26
Transportation	17	376	8	104	—	—	2	16	7	256
Storage	3	31	2	28	—	—	—	—	1	3
Electric, Gas, Water	2	7	2	7	—	—	—	—	—	—
Wholesale Trade	16	279	6	94	—	—	2	47	8	138
Retail Trade	26	599	11	159	1	15	6	120	8	305
Finance, Insurance Carriers	6	51	1	4	1	2	1	13	3	32
Real Estate, Insurance Agencies	9	35	2	10	—	—	1	2	6	23
Education, Related Services	43	2,910	8	497	11	1,705	5	260	19	448
Health, Welfare Services	154	4,770	49	2,029	17	581	35	654	53	1,506
Religious Organizations	1	19	1	19	—	—	—	—	—	—
Recreational Services	4	93	2	47	—	—	2	46	—	—
Management Services	5	259	3	132	—	—	2	127	—	—
Personal Services	5	179	4	148	—	—	—	—	1	31
Accommodation, Food Services	25	851	9	412	1	3	8	254	7	182
Other Services	16	180	3	36	—	—	3	31	10	113
Local Government	7	172	5	35	1	80	—	—	1	57
Other Government	2	17	1	9	—	—	—	—	1	8
Construction	208	1,616	—	—	—	—	—	—	208	1,616

Table 13

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1988-89

Union	All Units		Full-time		Part-time		Full-time and Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	**711**	**21,440**	**177**	**7,016**	**33**	**2,389**	**95**	**3,409**	**406**	**8,626**
CLC	**294**	**11,004**	**106**	**4,447**	**14**	**479**	**69**	**2,089**	**105**	**3,989**
Aluminum Brick and Glass Workers	2	30	1	12	—	—	1	18	—	—
Bakery and Tobacco Workers	2	123	2	123	—	—	—	—	—	—
Brewery and Soft Drink Workers	2	33	—	—	—	—	—	—	2	33
Canadian Paperworkers	4	208	1	108	—	—	1	22	2	78
Canadian Public Employees (CUPE)	46	1,677	16	476	6	253	10	427	14	521
CLC Directly Chartered	3	30	—	—	1	2	—	—	2	28
Clothing and Textile Workers	2	33	1	22	—	—	1	11	—	—
Communications-Electrical Workers	1	123	—	—	—	—	1	123	—	—
Electrical Workers (UE)	3	138	1	116	—	—	—	—	2	22
Energy and Chemical Workers	3	147	1	88	—	—	1	5	1	54
Food and Commercial Workers	31	898	17	472	1	15	7	118	6	293
Glass, Molder and Allied Workers	1	300	—	—	—	—	—	—	1	300
Graphic Communications Union	8	189	3	123	—	—	2	38	3	28
Hotel Employees	13	440	4	132	1	3	5	195	3	110
Ladies Garment Workers	1	50	—	—	—	—	—	—	1	50
Machinists	5	317	2	148	—	—	2	149	1	20
Newspaper Guild	3	19	1	10	1	3	—	—	1	6
Office and Professional Employees	6	104	1	4	—	—	—	—	5	100
Ontario Liquor Board Employees	31	1,233	9	601	4	203	13	260	5	169
Ontario Public Service Employees	1	31	—	—	—	—	—	—	1	31
Public Service Alliance	1	9	1	9	—	—	—	—	—	—
Railway, Transport and General Workers	2	67	2	67	—	—	—	—	—	—
Retail Wholesale Employees	27	840	9	310	—	—	9	210	9	320
Rubber Workers	2	20	1	6	—	—	—	—	1	14
Service Employees International	39	1,489	16	939	—	—	10	167	13	383
Theatrical Stage Employees	1	4	—	—	—	—	1	4	—	—
United Auto Workers	4	54	3	24	—	—	—	—	1	30
United Steelworkers	43	2,076	14	657	—	—	5	342	24	1,077
United Textile Workers	1	42	—	—	—	—	—	—	1	42
Woodworkers	6	280	—	—	—	—	—	—	6	280

Table 13 (Cont'd)

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1988-89

Union	All Units		Full-time		Part-time		Full-time and Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	**417**	**10,436**	**71**	**2,569**	**19**	**1,910**	**26**	**1,320**	**301**	**4,637**
Air Crew Association	2	8	1	4	—	—	1	4	—	—
Allied Health Professionals	1	8	—	—	—	—	1	8	—	—
Asbestos Workers	2	9	—	—	—	—	—	—	2	9
Boilermakers	5	37	—	—	—	—	—	—	5	37
Bricklayers International	2	28	1	26	—	—	—	—	1	2
Carpenters	33	332	2	24	—	—	—	—	31	308
Canadian Auto Workers	36	3,744	11	1,016	—	—	8	1,094	17	1,634
Canadian Educational Workers	1	128	1	128	—	—	—	—	—	—
Canadian Operating Engineers	1	4	—	—	—	—	—	—	1	4
Canadian Telephone Employees	1	13	—	—	—	—	1	13	—	—
Canadian Transit Union	3	21	—	—	—	—	—	—	3	21
Christian Labour Association	13	169	2	20	—	—	3	47	8	102
Communications Workers (AMER)	2	59	2	59	—	—	—	—	—	—
Electrical Workers (IBEW)	7	75	1	2	—	—	—	—	6	73
Guards Association	1	6	—	—	—	—	—	—	1	6
Independent Local Union	10	372	4	279	—	—	1	30	5	63
International Operating Engineers	46	307	2	11	—	—	—	—	44	296
IWA-Canada	6	122	2	74	—	—	—	—	4	48
Labourers	87	688	2	20	—	—	2	5	83	663
Multi-Union	1	59	—	—	—	—	—	—	1	59
Ontario English Catholic Teachers	2	215	—	—	2	215	—	—	—	—
Ontario Nurses Association	43	1,032	14	244	9	217	2	8	18	563
Ontario Public School Teachers	2	776	—	—	2	776	—	—	—	—
Ontario Secondary School Teachers	16	886	1	9	6	702	1	27	8	148
Painters	16	84	—	—	—	—	—	—	16	84
Plant Guard Workers	5	135	2	88	—	—	3	47	—	—
Plumbers	17	138	—	—	—	—	—	—	17	138
Sheet Metal Workers	6	21	1	4	—	—	—	—	5	17
Structural Iron Workers	5	26	—	—	—	—	—	—	5	26
Sudbury Mine Workers	2	24	1	5	—	—	—	—	1	19
Teamsters	36	558	16	258	—	—	3	37	17	263
Textile & Chemical Union	1	18	—	—	—	—	—	—	1	18
Textile Processors	6	334	5	298	—	—	—	—	1	36

Table 14

Occupational Groups in Bargaining Units Certified by Industry
Fiscal Year 1988-89

Industry	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	**711**	**21,440**	**520**	**15,165**	**48**	**1,227**	**90**	**3,896**	**17**	**508**	**36**	**644**
Manufacturing	**158**	**8,909**	**141**	**8,700**	**6**	**79**	**3**	**27**	**—**	**—**	**8**	**103**
Food, Beverage	13	520	9	489	1	8	1	3	—	—	2	20
Rubber, Plastics	11	540	11	540	—	—	—	—	—	—	—	—
Textile	3	142	3	142	—	—	—	—	—	—	—	—
Clothing	5	277	5	277	—	—	—	—	—	—	—	—
Wood	12	649	12	649	—	—	—	—	—	—	—	—
Furniture, Fixtures	6	386	6	386	—	—	—	—	—	—	—	—
Paper	2	61	1	56	—	—	—	—	—	—	1	5
Printing, Publishing	14	270	10	202	—	—	—	—	—	—	4	68
Primary Metals	6	199	4	191	2	8	—	—	—	—	—	—
Fabricated Metals	23	1,756	23	1,756	—	—	—	—	—	—	—	—
Machinery	4	236	3	203	1	33	—	—	—	—	—	—
Transportation Equipment	24	1,368	21	1,332	1	12	2	24	—	—	—	—
Electrical Products	10	1,485	10	1,485	—	—	—	—	—	—	—	—
Non-metallic Minerals	16	498	14	470	1	18	—	—	—	—	1	10
Chemicals	3	101	3	101	—	—	—	—	—	—	—	—
Other Manufacturing	6	421	6	421	—	—	—	—	—	—	—	—
Non-Manufacturing	**553**	**12,531**	**379**	**6,465**	**42**	**1,148**	**87**	**3,869**	**17**	**508**	**28**	**541**
Forestry	2	61	2	61	—	—	—	—	—	—	—	—
Mining, Quarrying	2	26	2	26	—	—	—	—	—	—	—	—
Transportation	17	376	17	376	—	—	—	—	—	—	—	—
Storage	3	31	3	31	—	—	—	—	—	—	—	—
Electric, Gas, Water	2	7	1	5	1	2	—	—	—	—	—	—
Wholesale Trade	16	279	11	202	2	24	—	—	—	—	3	53
Retail Trade	26	599	5	24	—	—	—	—	17	508	4	67
Finance, Insurance Carriers	6	51	—	—	6	51	—	—	—	—	—	—
Real Estate, Insurance Agencies	9	35	9	35	—	—	—	—	—	—	—	—
Education, Related Services	43	2,910	9	336	7	227	26	2,332	—	—	1	15
Health, Welfare Services	154	4,770	58	2,279	20	745	59	1,485	—	—	17	261
Religious Organizations	1	19	1	19	—	—	—	—	—	—	—	—
Recreational Services	4	93	2	28	—	—	—	—	—	—	2	65
Management Services	5	259	3	187	1	68	1	4	—	—	—	—
Personal Services	5	179	5	179	—	—	—	—	—	—	—	—
Accommodation, Food Services	25	851	25	851	—	—	—	—	—	—	—	—
Other Services	16	180	13	124	2	8	1	48	—	—	—	—
Local Government	7	172	5	86	1	6	—	—	—	—	1	80
Other Government	2	17	—	—	2	17	—	—	—	—	—	—
Construction	208	1,616	208	1,616	—	—	—	—	—	—	—	—

Table 15

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1988-89

Union	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	**711**	**21,440**	**520**	**15,165**	**48**	**1,227**	**90**	**3,896**	**17**	**508**	**36**	**644**
CLC	**326**	**14,694**	**210**	**11,824**	**41**	**1,126**	**27**	**701**	**17**	**508**	**31**	**535**
Aluminum Brick and Glass Workers	2	30	1	12	1	18	—	—	—	—	—	—
Bakery and Tobacco Workers	2	123	2	123	—	—	—	—	—	—	—	—
Brewery and Soft Drink Workers	2	33	2	33	—	—	—	—	—	—	—	—
Canadian Auto Workers	36	3,744	33	3,689	2	45	—	—	—	—	1	10
Canadian Paperworkers	4	208	3	203	—	—	—	—	—	—	1	5
Canadian Public Employees (CUPE)	46	1,677	20	902	10	276	8	234	—	—	8	265
CLC Directly Chartered	3	30	1	2	2	28	—	—	—	—	—	—
Clothing and Textile Workers	2	33	2	33	—	—	—	—	—	—	—	—
Communications-Electrical Workers	1	123	1	123	—	—	—	—	—	—	—	—
Electrical Workers (UE)	3	138	3	138	—	—	—	—	—	—	—	—
Energy and Chemical Workers	3	147	3	147	—	—	—	—	—	—	—	—
Food and Commercial Workers	31	898	19	579	1	8	2	9	6	259	3	43
Glass, Molder and Allied Workers	1	300	1	300	—	—	—	—	—	—	—	—
Graphic Communications Union	8	189	8	189	—	—	—	—	—	—	—	—
Hotel Employees	13	440	13	440	—	—	—	—	—	—	—	—
Ladies Garment Workers	1	50	1	50	—	—	—	—	—	—	—	—
Machinists	5	317	5	317	—	—	—	—	—	—	—	—
Newspaper Guild	3	19	2	13	1	6	—	—	—	—	—	—
Office and Professional Employees	6	104	1	16	2	8	2	65	—	—	1	15
Ontario Public Service Employees	31	1,233	3	216	14	636	7	282	—	—	7	99
Postal Workers	1	31	1	31	—	—	—	—	—	—	—	—
Public Service Alliance	1	9	—	—	1	9	—	—	—	—	—	—
Railway, Transport and General Workers	2	67	2	67	—	—	—	—	—	—	—	—
Retail Wholesale Employees	27	840	13	560	1	4	—	—	10	233	3	43
Rubber Workers	2	20	2	20	—	—	—	—	—	—	—	—
Service Employees International	39	1,489	28	1,282	3	78	4	96	—	—	4	33
Technical Engineers	1	4	—	—	—	—	1	4	—	—	—	—
United Steelworkers	43	2,076	33	2,017	3	10	3	11	1	16	3	22
United Textile Workers	1	42	1	42	—	—	—	—	—	—	—	—
Woodworkers	6	280	6	280	—	—	—	—	—	—	—	—

Table 15 (Cont'd)

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1988-89

Union	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	**385**	**6,746**	**310**	**3,341**	**7**	**101**	**63**	**3,195**	**—**	**—**	**5**	**109**
Air Crew Association	2	8	—	—	2	8	—	—	—	—	—	—
Allied Health Professionals	1	8	1	8	—	—	—	—	—	—	—	—
Asbestos Workers	2	9	2	9	—	—	—	—	—	—	—	—
Boilermakers	5	37	5	37	—	—	—	—	—	—	—	—
Bricklayers International	2	28	2	28	—	—	—	—	—	—	—	—
Carpenters	33	332	33	332	—	—	—	—	—	—	—	—
Canadian Educational Workers	1	128	—	—	—	—	1	128	—	—	—	—
Canadian Operating Engineers	1	4	—	—	—	—	—	—	—	—	1	4
Canadian Telephone Employees	1	13	—	—	1	13	—	—	—	—	—	—
Canadian Transit Union	3	21	2	15	—	—	1	6	—	—	—	—
Christian Labour Association	13	169	12	152	—	—	—	—	—	—	1	17
Communications Workers (AMER)	2	59	1	20	—	—	—	—	—	—	1	39
Electrical Workers (IBEW)	7	75	6	73	1	2	—	—	—	—	—	—
Guards Association	1	6	1	6	—	—	—	—	—	—	—	—
Independent Local Union	10	372	7	83	—	—	2	259	—	—	1	30
International Operating Engineers	46	307	46	307	—	—	—	—	—	—	—	—
IWA-Canada	6	122	6	122	—	—	—	—	—	—	—	—
Labourers	87	688	87	688	—	—	—	—	—	—	—	—
Multi-Union	1	59	1	59	—	—	—	—	—	—	—	—
Ontario English Catholic Teachers	2	215	—	—	—	—	2	215	—	—	—	—
Ontario Nurses Association	43	1,032	—	—	—	—	43	1,032	—	—	—	—
Ontario Public School Teachers	2	776	—	—	—	—	2	776	—	—	—	—
Ontario Secondary School Teachers	16	886	2	49	2	58	12	779	—	—	—	—
Painters	16	84	16	84	—	—	—	—	—	—	—	—
Plant Guard Workers	5	135	5	135	—	—	—	—	—	—	—	—
Plumbers	17	138	17	138	—	—	—	—	—	—	—	—
Sheet Metal Workers	6	21	6	21	—	—	—	—	—	—	—	—
Structural Iron Workers	5	26	5	26	—	—	—	—	—	—	—	—
Sudbury Mine Workers	2	24	1	5	—	—	—	—	—	—	1	19
Teamsters	36	558	35	538	1	20	—	—	—	—	—	—
Textile & Chemical Union	1	18	1	18	—	—	—	—	—	—	—	—
Textile Processors	6	334	6	334	—	—	—	—	—	—	—	—
United Auto Workers	4	54	4	54	—	—	—	—	—	—	—	—

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