

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

I am pleased to submit the 2012/13 Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2012 to March 31, 2013.

During this reporting period, the Board successfully fulfilled its mandate and met its objectives. The Board will continue to focus on the activities and strategic priorities highlighted in this report. The Board has a mandate to support constructive labour and employment relations in the Province of Manitoba. To achieve this objective, the Board must employ an array of dispute resolution services. The Board adjudicates matters when necessary; however, it also provides mediation services to parties to assist them in seeking a resolution that best meets their needs. The Board intends to strengthen its capacity to provide mediation and to continue our efforts to encourage and assist labour and management to efficiently resolve disputes through an increasing variety of dispute resolution techniques.

I assumed responsibility as the new Chairperson of the Board on November 1, 2012, following the conclusion of Mr. William D. Hamilton's term as Chairperson. I wish to take this opportunity to acknowledge Mr. Hamilton's contributions to the Board and to labour relations in the Province. Mr. Hamilton's professionalism, intellect, vast knowledge of labour and employment relations, and abiding sense of fairness and justice were the hallmarks of his leadership of the Board. His inherent decency, good humour, and methodical nature served the Board and the labour relations community extraordinarily well. The Board is delighted that Mr. Hamilton continues to serve in the capacity of Vice-Chairperson. His assistance has been invaluable to me over the years and, in his new role, he has greatly assisted with my transition to Chairperson.

I also wish to acknowledge the other Vice-Chairpersons and our Representative Board members. They continue to provide their considerable experience and expertise to the Board in furtherance of our adjudicative and administrative responsibilities.

In addition, I must recognize the considerable efforts of the Staff of the Board. The Board deals with a large volume of complex matters throughout the year and our ability to meet our objectives is dependent on having able and hard-working staff. I am very grateful to them for their guidance and the expertise that they bring to their roles with the Board.

Colin S. Robinson
Chairperson

MESSAGE DU PRÉSIDENT DE LA COMMISSION DU TRAVAIL DU MANITOBA

J'ai le plaisir de soumettre le rapport annuel 2012-2013 faisant état des activités de la Commission du travail du Manitoba pour la période allant du 1^{er} avril 2012 au 31 mars 2013.

Au cours de cette période de déclaration, la Commission a respecté son mandat et a rempli ses objectifs. Elle continuera de mettre l'accent sur les priorités stratégiques dont il est question dans le présent rapport. Le mandat de la Commission est d'appuyer les relations d'emploi et de travail constructives dans la province du Manitoba. Pour ce faire, la Commission doit employer une gamme de services de règlement des différends. La Commission règle des affaires lorsque cela est nécessaire; cependant, elle fournit aussi des services de médiation aux parties afin de les aider à chercher un règlement qui répond au mieux à leurs besoins. La Commission a l'intention de renforcer sa capacité de fournir de la médiation et de continuer ses efforts afin d'encourager et d'aider les syndicats et le patronat à résoudre efficacement les différends grâce à un éventail de plus en plus diversifié de techniques de règlement des différends.

Le 1^{er} novembre 2012, je suis devenu le nouveau président de la Commission, après la fin du mandat de président de M. William D. Hamilton. J'aimerais profiter de cette occasion pour reconnaître les contributions de M. Hamilton à la Commission et aux relations de travail dans la province. Son rôle de chef de file de la Commission a été marqué par son professionnalisme, son intellect, ses vastes connaissances des relations d'emploi et de travail, et son sens profond de l'équité et de la justice. Sa décence intrinsèque, sa bonne humeur et sa nature méthodique ont extrêmement bien servi la Commission et la communauté des relations de travail. Les membres de la Commission se réjouissent du fait que M. Hamilton continue de servir cette dernière à titre de vice-président. Son aide a été inestimable pour moi au fil des ans et, dans son nouveau rôle, il a grandement aidé ma transition en tant que président.

Je souhaiterais aussi reconnaître les autres vice-présidents et les membres de notre conseil des représentants, qui continuent d'apporter à la Commission leur expérience et expertise considérables vis-à-vis de nos responsabilités administratives et décisionnelles.

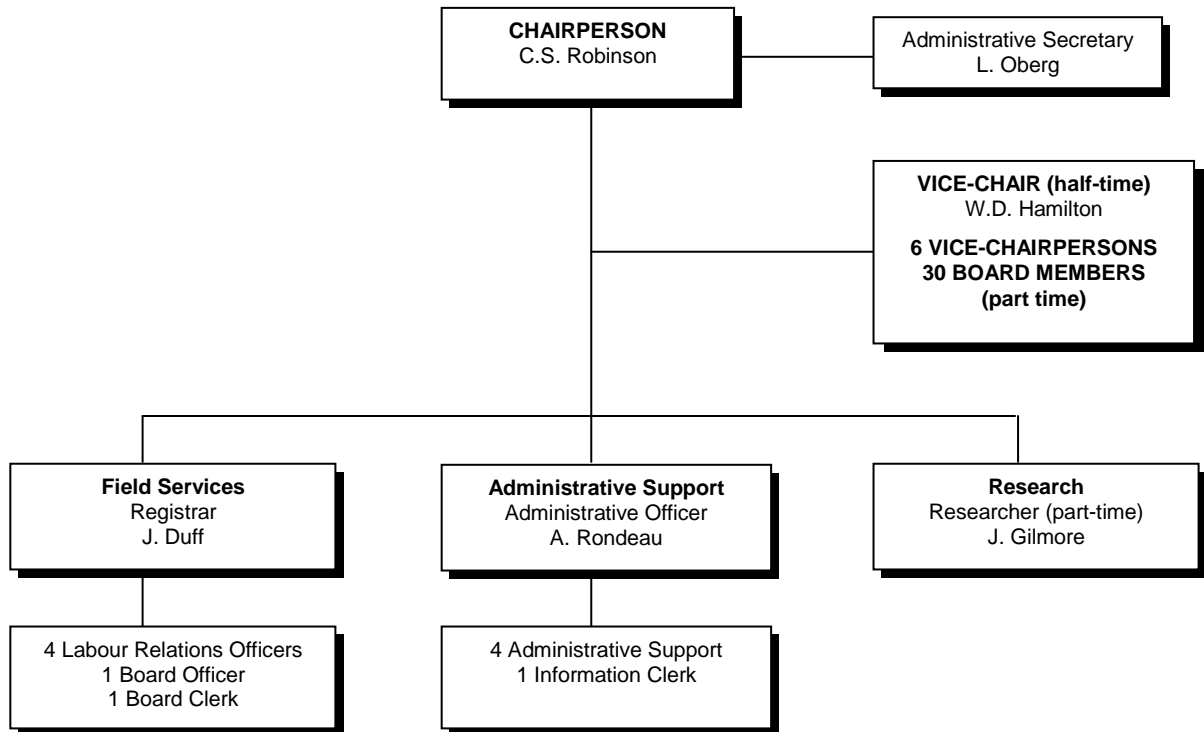
Je dois également reconnaître les efforts considérables du personnel de la Commission. Celle-ci traite un grand nombre d'affaires complexes tout au long de l'année, et c'est grâce à des membres du personnel capables et dévoués que l'on peut atteindre nos objectifs. Ils offrent des conseils et de l'expertise dans leurs rôles auprès de la Commission, et je leur en suis très reconnaissant.

Le président
Colin S. Robinson

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**Manitoba Labour Board
Organization Chart
as of March 31, 2013**



The Manitoba Labour Board

INTRODUCTION

Report Structure

The Manitoba Labour Board (the Board) annual report is prepared pursuant to subsection 138(14) of *The Labour Relations Act*.

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

Vision and Mission

To further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees.
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Objectives

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

Role

The Board is an independent and autonomous specialist tribunal responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under *The Labour Relations Act* and any other Act of the Consolidated Statutes of Manitoba.

The majority of the applications are filed under *The Labour Relations Act (L10)* and *The Employment Standards Code (E110)*. The Board is also responsible for the administration and/or adjudication of matters arising under certain sections of the following Acts:

The Apprenticeship and Certification Act (A110)
The Construction Industry Wages Act (C190)
The Elections Act (E30)
The Essential Services Act (E145)
The Pay Equity Act (P13)
The Public Interest Disclosure (Whistleblower Protection) Act (P217)
The Public Schools Act (P250)
The Remembrance Day Act (R80)
The Victims' Bill of Rights (V55)
The Worker Recruitment and Protection Act (W197)
The Workplace Safety and Health Act (W210)

The Labour Relations Act

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

The Employment Standards Code

As the wage board appointed pursuant to the *Code*, the Board hears complaints referred to it by the Employment Standards Division regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to *The Construction Industry Wages Act* and *The Remembrance Day Act*. Until the April 30, 2007 amendment to the *Code*, the Board also handled hours of work exemption requests and applications for exemption from the weekly day of rest.

The Apprenticeship and Certification Act

The person named in a compliance order or required to pay an administrative penalty may appeal the matter to the Board within 14 days after receiving a notice under subsection 36(6) or 37(5) of the *Act*.

The Elections Act

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

The Essential Services Act

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

The Pay Equity Act

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

The Public Interest Disclosure (Whistleblower Protection) Act

Pursuant to section 28 of the *Act*, an employee or former employee who alleges that a reprisal has been taken against them may file a written complaint with the Board. If the Board determines that a reprisal has been taken against the complainant contrary to section 27, the Board may order one or more of the following measures to be taken:

- (a) permit the complainant to return to his or her duties;
- (b) reinstate the complainant or pay damages to the complainant, if the board considers that the trust relationship between the parties cannot be restored;
- (c) pay compensation to the complainant in an amount not greater than the remuneration that the board considers would, but for the reprisal, have been paid to the complainant;
- (d) pay an amount to the complainant equal to any expenses and any other financial losses that the complainant has incurred as a direct result of the reprisal;
- (e) cease an activity that constitutes the reprisal;
- (f) rectify a situation resulting from the reprisal;
- (g) do or refrain from doing anything in order to remedy any consequence of the reprisal.

The Public Schools Act

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

The Victims' Bill of Rights

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

The Worker Recruitment and Protection Act

The director of the Employment Standards Division is empowered, on behalf of a foreign worker, a child performer or family member on behalf of a child performer, to issue orders to recover the amount of any prohibited recruitment fees or costs charged, directly or indirectly, by the employer or a person engaged in recruitment of the foreign worker or child performer and can also, by order, recover from an employer any reduction in wages or recover any reduction/elimination of a benefit or other term or condition of employment where the reduction is made to cover the costs of recruitment, all of which is contrary to sections 15, 16 and 17 of the *Act*. The Board's jurisdiction is triggered when a person affected by a director's order wishes to appeal an order of the director under any of these provisions. The Board hears the appeals pursuant to the provisions of *The Employment Standards Code*.

The Workplace Safety and Health Act

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

MANITOBA LABOUR BOARD MEMBERS

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

Chairperson

Colin S. Robinson

Appointed as chairperson in 2012, Colin Robinson previously served as the Board's full-time vice-chairperson since 2003. Mr. Robinson holds a Bachelor of Arts Honours degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. He was called to the Bar in Manitoba in 1995 and practiced primarily in the fields of labour and administrative law prior to being appointed to the Board. In addition, Mr. Robinson serves as the president of the Manitoba Council of Administrative Tribunals and carries on an active practice as an interest and grievance arbitrator and mediator in Manitoba.

Vice-Chairpersons

A. Blair Graham, Q.C.

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

William (Bill) D. Hamilton

After serving as a part-time vice-chairperson from 2002 to 2005, William Hamilton served as the full-time chairperson of the Board from November 1, 2005 to October 31, 2012. Effective November 1, 2012, he was appointed as a part-time vice-chairperson serving on a half-time basis. He holds a Bachelor of Arts degree from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. Mr. Hamilton, for many years, has carried on an active practice as an interest and grievance arbitrator/mediator in Manitoba.

M. Lynne Harrison

Appointed on a part-time basis in 2008, Lynne Harrison holds a Bachelor of Arts degree from Laval University, a Secondary Education Teaching Certificate from Laval University and a Bachelor of Laws degree from the University of Manitoba. She also serves as an adjudicator under *The Human Rights Code* (Manitoba). She practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP.

Diane E. Jones, Q.C.

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

Arne Peltz

Appointed on a part-time basis in 2002, Arne Peltz is a chartered arbitrator and carries on an active practice as an interest and grievance arbitrator/mediator in Manitoba. He has also served as an adjudicator under *The Human Rights Code* (Manitoba) and the *Canada Labour Code*. He was the director of the Public Interest Law Centre for 21 years and entered private practice in 2003. He now practices with Orle Barga Davidson LLP in dispute resolution, aboriginal law and civil litigation. Mr. Peltz's term expired September 15, 2012.

Michael D. Werier

Appointed on a part-time basis in 2006, Michael Werier is a partner in the Winnipeg law firm of D'Arcy & Deacon LLP. He carries on a practice as an arbitrator/mediator in Manitoba and as a civil litigator.

He is currently chairperson of the Manitoba Labour Management Review Committee and chairperson of the Board of Directors of the Workers Compensation Board of Manitoba.

Gavin M. Wood

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

Employer Representatives

Jim H. Baker, C.A.

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

Elizabeth M. (Betty) Black

Appointed in 1985, Betty Black is a Fellow Certified Human Resource Professional and holds a certificate in Human Resource Management from the University of Manitoba. She has over 30 years' experience in senior human resource management roles in the private and public sectors in both union and non-union environments in the areas of manufacturing, hospitality, financial services and consulting. She is a member and past president of the Human Resource Management Association of Manitoba and has instructed in the Human Resource Management Certificate program at the University of Manitoba. She has served in voluntary leadership roles with the YMCA-YWCA of Winnipeg, the United Way of Winnipeg and numerous other community organizations.

Christiane Y. Devlin

Appointed in 2002, Christiane Devlin has held senior management positions in human resources, integrating human resources within the business needs of companies in the communication and printing, agriculture, manufacturing, health care, retail co-operatives and transportation. She is currently the manager, Human Resources with the Kleysen Group. Ms. Devlin is bilingual and her human resource management experience includes unionized and non-unionized workplaces.

Robert N. Glass

Appointed in 2008, Robert Glass is a labour relations/personnel consultant-negotiator with professional qualifications and extensive experience in labour/management relations including negotiation of contracts, collective agreement interpretation and an in-depth knowledge of organized labour, employment policy, hazard control and loss management. He has experience in the communications industry, government, health care and the construction industry. His educational background is from the University of Manitoba, University of Montreal, Safety Leadership Programs and Human Resource Professional Certification.

Colleen Johnston

Appointed in 1993, Colleen Johnston is the director, Total Rewards, Health and Wellness for Manitoba Liquor and Lotteries and the president of Integre Human Resource Consulting. She is a graduate of the University of Manitoba with a Bachelor of Education degree and is a Fellow Certified Human Resource Professional. She is a past president of the Human Resource Management Association of Manitoba (HRMAM), a founding director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the Canada Labour Code in Ottawa. She has represented Canadian employers at the United Nations in Geneva and is currently a member of the Board of Directors of CAA Manitoba and a member of the Institute of Corporate Directors.

Paul J. LaBossiere

Appointed in 1999, Paul LaBossiere retired from the position of president of P.M.L. Maintenance Ltd. He is past co-chair of the Employers Task Force on Workers Compensation, a past member of the Winnipeg Chamber of Commerce, past president, parliamentarian, and government affairs advisor of the Building Owners and Managers Association, a member of the Manitoba Employers Council and is a frequent international speaker on issues pertaining to the maintenance and service industries. He is a past member of the Board of Directors of the Building Services Contractors Association International (37 countries). He is the past board president of the Prairie Theatre Exchange (PTE) and a member of the board of the PTE Foundation Trust. His past affiliations include vice-chairperson and treasurer of the Winnipeg Chamber of Commerce and on the Advisory Committee for the Continuing Education Department at the University of Manitoba. He is a trustee of Opimian Vineyard Trust and board member of the Winnipeg Jazz Orchestra.

Chris W. Lorenc, B.A., LL.B.

Appointed in 2003, Chris Lorenc is currently president of the Manitoba Heavy Construction Association, president of the Western Canada Roadbuilders and Heavy Construction Association, founding board member of the Manitoba Construction Sector Council and vice-chair of the Board of CentrePort Canada Inc. He has an extensive background in public policy writing related to trade and transportation, infrastructure, workplace safety and health. A lawyer by background, he graduated from the University of Manitoba with Bachelor of Arts and Bachelor of Laws degrees. He is a former Winnipeg city councillor having served for nine years between 1983 and 1992. During his tenure on council, he chaired a number of standing committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of business, cultural, community and hospital organizations.

Harvey Miller

Appointed in 2010, Harvey Miller is the executive director of the Merit Contractors Association of Manitoba. He holds a Bachelor of Arts degree from the University of Manitoba and a Master of Arts degree in Psychology from the University of Victoria. He has extensive senior management experience in both public and not for profit agencies, including the Workers Advisory Office and the Workers Compensation Board of Manitoba. He has served on numerous volunteer boards, and is a past president of the Winnipeg Mental Health Association and the Manitoba Biathlon Association.

Yvette Milner

Appointed in 1996, Yvette Milner is a safety and disability management consultant and president of On-Site Safety and Health Management Solutions, a consulting company specializing in assisting companies to manage injury and illness in the workplace. Past experience includes director of safety and disability management with Deloitte; president, Milner Consulting, a company specializing in safety and disability claims management; human resources coordinator, Manitoba Health; and assistant director of rehabilitation, Workers Compensation Board of Manitoba. Active in the Manitoba business community, she is involved with the Manitoba Employers Council and the Manitoba Chamber of Commerce.

Brian Peto

Appointed in 2011, Brian Peto has over 39 years experience in the human resource field in the retail, manufacturing and financial services sectors. His experience has been at the senior human resource level and he has served on the Board of Directors of the Cooperative Superannuation Society, one of Canada's largest defined contribution pension plans. He is a graduate of the University of Winnipeg and Red River Community College. Mr. Peto is a former cabinet member of the United Way of Winnipeg and past president of the Human Resource Management Association of Manitoba.

Darcy Strutinsky

Appointed in 2008, Darcy Strutinsky concluded a lengthy career in senior healthcare human resource leadership positions in 2012. He now provides independent human resource and labour relations consulting services to employers in the private and public sectors. He is a member of the Manitoba Labour Management Review Committee and is a board member of the Children's Hospital Foundation of Manitoba and the Riverview Health Centre.

Denis E. Sutton

Appointed in 1983, Denis Sutton has had extensive training in business administration and human resource management and has extensive experience in labour relations in both the private and public sectors. He has served as chairperson of the Industrial Relations Committee, Manitoba Branch of the Canadian Manufacturers Association, chairperson of the Western Grain Elevator Association Human Resource Committee, chairperson of the Conference Board of Canada, Council of Human Resource Executives (West) and is an active member of many labour relations committees and associations. He is presently employed as executive vice president of Human Resources at IMRIS Inc.

Jim Witiuk

Appointed in 2004, Jim Witiuk is the director of labour relations for Canada Safeway Limited with responsibility for labour relations matters in Manitoba, Saskatchewan and Ontario. He sits on a number of trustee health and welfare and pension plans as a management trustee and is a member of the International Foundation of Employee Benefit Plans. He is a past member of the Employment and Immigration Board of Referees. He serves on the Manitoba Labour Management Review Committee, serves on that group's Arbitration Advisory Sub-Committee and is an active member of the Manitoba Employers Council. Mr. Witiuk is on the Board of Directors of MEBCO (Multi Employee Benefit Plan Council of Canada). He is a graduate of Carleton University in Ottawa.

Mel V. Wyshynski

Appointed in 2004, Mel Wyshynski retired from Inco Limited, Manitoba Division in late 2001 after a 40-year career in the mining industry. At the time of his retirement, he was president of the division and had held that position since 1997. He is also past president of the Mining Association of Manitoba Inc. He is actively involved in the Dauphin community where he sits on a number of volunteer boards and is associated with many community initiatives. In addition, he is involved with a number of organizations. In 2006, he was appointed a director of Smook Brothers (Thompson) Ltd. Mr. Wyshynski's term expired December 31, 2012.

New members**Tom Goodman**

Appointed in 2013, Tom Goodman retired from Hudbay Minerals Inc. in June 2012 having served in a variety of senior executive roles for over 34 years both in Canada and internationally. These roles have included oversight and/or direct responsibility for human resources including labour relations for organizations of 1500+ employees in both union and non-union environments. He is a director and past chairman of the Mining Association of Manitoba and is a member of the Governing Council of the University College of the North. He was elected to the board of directors of Hudbay Minerals Inc. upon his retirement in June 2012.

Peter Wightman

Appointed in 2013, Peter Wightman is the executive director of the Construction Labour Relations Association of Manitoba, a position he has held since 1996. Previously, he was Manitoba Health Organization's senior labour relations negotiator/consultant providing collective bargaining and other labour relations services to all of Manitoba's health care employers and prior to that was a senior labour relations officer at the corporate headquarters of the Canada Post Corporation in Ottawa. Mr. Wightman chairs the employer caucus of the Manitoba Labour Management Review Committee, is a founding member of the Government of Manitoba's ongoing Construction Industry Wages Act Review Committee, and chairs a Provincial Trade Advisory Committee for the Manitoba Apprenticeship Branch. Mr. Wightman is also chairman of eight Manitoba Construction Industry Pension and Health and Welfare Benefit Trust Funds and is a Canadian director on the International Foundation of Employee Benefit Plans Board of Directors. A graduate of Carleton University in Ottawa, he holds a bachelor's degree in economics and law and has been engaged in the field of labour relations for over 25 years.

Employee Representatives

L. Lea Baturin

Appointed in 2007, Lea Baturin has been employed as a national representative with the Communications, Energy and Paperworkers Union of Canada (CEP) since 1995. As a national representative, she deals primarily with grievance arbitration matters, collective bargaining and steward education in the industrial sectors of telecommunications, broadcasting and manufacturing. Her educational background includes a Bachelor of Arts degree and a Bachelor of Laws degree from the University of Manitoba. Ms. Baturin received her call to the Manitoba Bar in 1981 and worked as a lawyer at Legal Aid Manitoba and at Myers Weinberg LLP before joining CEP as staff. She is a member of the board of the Manitoba Federation of Labour (MFL) and co-chairperson of the MFL Women's Committee.

Robert P. Bayer

Appointed in 2004, Robert Bayer had been a staff representative with the Manitoba Government and General Employees' Union (MGEU) since 1982. Previously, he was the executive director of the Institutional Employees' Union (1975-1982), and manager of human resources for the Canadian Broadcasting Corporation - Winnipeg (1965-1975). He retired from the MGEU in December 2007. Mr. Bayer's term expired December 31, 2012.

Beatrice Bruske

Appointed in 2007, Beatrice Bruske has been employed since 1993 as a union representative/negotiator for the United Food and Commercial Workers Union, Local No. 832 (UFCW Local 832). She has worked as a servicing representative dealing with grievances, negotiations and arbitrations. She worked as a full-time negotiator from 2004 to 2011. Currently, she is the secretary treasurer of her local and in this capacity is involved in the administration of the local. She also represents the UFCW Local 832 on the Manitoba Federation of Labour Executive Council and is a member of the UFCW Local 832 Women's Committee. She is a trustee on a number of health and welfare benefit plans. She graduated from the University of Manitoba with an Arts degree in Labour Studies.

Irene E. Giesbrecht

Appointed in 2002, Irene Giesbrecht was employed by the Manitoba Nurses' Union (MNU) as chief negotiator from 1978 until her retirement in June 2008. She is a founding member of the Canadian Federation of Nurses Unions. Previous to joining the MNU, she was employed as a registered nurse. She is on the Automobile Injury Compensation Appeal Commission. She provides health care/labour relations advice on a part-time consulting basis.

Debra R. Grimaldi

Appointed in 2010, Debra Grimaldi has been employed as a national servicing representative by the Canadian Union of Public Employees since 2000. As a servicing representative, she is actively involved in grievance processing, collective bargaining, conflict resolution and education of local unions. She is a graduate of the Labour College of Canada, class of 1989.

Jan Malanowich

Appointed in 1991, Jan Malanowich worked as a staff representative for the Manitoba Government and General Employees' Union from 1981 until her retirement in December 2007. She was actively involved in collective bargaining, grievance handling and a multitude of associated activities related to the needs of the membership. She is currently appointed as an employee representative on the Employment Insurance Appeal Board of Referees. She is also a founding member of the Workers Memorial Foundation. Ms. Malanowich's term expired December 31, 2012.

John R. Moore

Appointed in 1994, John Moore was employed as the business agent, training coordinator and business manager for the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 254, from 1982 to 2007 and has been an active member for 42 years. He is also a current representative of the Trades Appeal Board of

Manitoba. He also sits on the board for the College of Physiotherapists of Manitoba and on the Manitoba Building Standards Board. Mr. Moore's term expired December 31, 2012.

Maureen Morrison

Appointed in 1983, Maureen Morrison has worked for the Canadian Union of Public Employees for many years, first as a servicing representative and then as equality representative. Her work is primarily in the areas of pay and employment equity, harassment and discrimination, accommodation issues, and other human rights concerns.

James Murphy

Appointed in 1999, James Murphy is the Canadian director of the International Union of Operating Engineers (IUOE). Prior to that, he was the business manager of IUOE Local 987. He was elected to that position in 1995, until his appointment as Canadian director in August 2011. He was a business representative for IUOE Local 901 from 1987 through 1995 and was the training coordinator for Local 901, from 1985 to 1987. He sits on the executive board of the Canadian Conference of Operating Engineers. He was the past president of the Allied Hydro Council of Manitoba and the Manitoba Building and Construction Trades Council. Prior to 1985, he was a certified crane operator and an active member of the IUOE since the late 1960s.

Tom P. Murphy

Appointed in 2011, Tom Murphy became part of the Canadian Auto Workers' (CAW) local union leadership in 1980 while employed at Bombardier in Thunder Bay. He became involved in collective bargaining in 1984, became the local union unit chairperson and vice-president in 1985, president of the local in 1992, appointed to CAW staff as a national representative in 1998 and appointed as the area director of Manitoba/Saskatchewan/Northern Ontario in 2007. He deals with grievance arbitration matters and collective bargaining.

Sandra R.M. Oakley

Appointed in 2008, Sandra Oakley has been employed by the Canadian Union of Public Employees (CUPE) since 1981. She has worked as a national servicing representative, dealing with negotiations, grievance arbitrations and other labour relations issues, and as an assistant managing director in the Organizing and Servicing Department of CUPE at its national office in Ottawa. She was the regional director for CUPE in Manitoba from October 2002 to March 2013. She is a graduate of the University of Manitoba and the Labour College of Canada. She serves on the Children's Rehabilitation Foundation Board of Directors and on the United Way Cabinet as deputy chair labour. Ms. Oakley is chairperson of the Community Unemployed Help Centre (CUHC) and co-chair of the Manitoba Federation of Non-profit Organizations.

Rik A. Panciera

Appointed in 2011, Rik Panciera is currently employed as a national staff representative for the Canadian Union of Public Employees where he has served for the past 16 years. As a staff representative, he deals with daily grievance and labour/management issues, as well as negotiates collective agreements. Mr. Panciera also represents his peers as a regional vice-president for the Canadian Staff Union.

Grant Rodgers

Appointed in 1999, Grant Rodgers was employed for 33 years as a staff representative with the Manitoba Government and General Employees' Union (MGEU) and specialized for a number of years in grievance arbitration matters as well as collective bargaining. He holds a Bachelor of Commerce (Honours) degree from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board, director of the Winnipeg Blues Junior "A" hockey team, and involvement with Big Brothers of Winnipeg. He retired from the MGEU in January 2008 and has since done some part-time labour relations consulting.

Sonia E. Taylor

Appointed in 2005, Sonia Taylor has been employed since 1991 as a union representative with the United Food and Commercial Workers Union, Local No. 832. She is actively involved in grievance handling, negotiations, arbitrations and organizing.

New Members**Bill Comstock**

Appointed in 2013, Bill Comstock had been employed by the Manitoba Government and General Employee's Union for 29 years, retiring in 2006 as director of Negotiating Services. He worked in a number of human resource positions early in his career. Mr. Comstock was a founding member of Manitoba Special Olympics. He currently provides labour relations services to the Winnipeg Association of Public Service Officers on a part-time basis, is a member of the Manitoba Labour Management Review Committee and serves on the board of St. Amant.

Sheila Gordon

Appointed in 2013, Sheila Gordon has been employed as a staff representative/negotiator with the Manitoba Government and General Employees' Union (MGEU) since 1991. As a staff representative, she worked with members to resolve issues, process grievances and negotiate collective agreements in a variety of different public sector workplaces. More recently, she was appointed MGEU chief negotiator, responsible for negotiating the Government Employees' Master Agreement, and for supporting a team of approximately 10 staff representatives working with members of the Manitoba Civil Service. Ms. Gordon's educational background includes a Bachelor of Social Work degree from the University of Manitoba and a Master of Social Work degree from Carleton University.

Edward (Dale) Neal

Appointed in 2013, Dale Neal has been employed as a union staff representative with the Manitoba Government and General Employees' Union since July 1998. As a senior staff representative he is responsible for leading a team of approximately 10 union staff representatives, participates in grievance handling at all levels of the grievance process, leads collective bargaining and the facilitation of membership education regarding the collective bargaining process. He was appointed vice-chairperson of the Manitoba Liquor Licensing Board in the spring of 2000, and continues in that capacity. He has also participated in numerous conferences facilitated by the Manitoba Council of Administrative Tribunals.

Ron Stecy

Appointed in 2013, Ron Stecy was appointed as the executive director of the Manitoba Building and Construction Trades Council on August 2, 2011. Mr. Stecy is a member of the Apprenticeship and Certification Board, member of the Construction Industry Wages Act Panel, and member of the Manitoba Construction Sector Council Board. Mr. Stecy began his career as a construction electrician apprentice and received his Red Seal Journeyman Certificate upon completion of his apprenticeship. He was the business manager of the International Brotherhood of Electrical Workers Local Union 2085 for the past nine years where he represented construction electricians in the province of Manitoba. During his career, Mr. Stecy has been appointed and elected to numerous boards and committees. Some of these appointments were the Provincial Trades Advisory Committee for the trade of construction electrician, the Electrical Trades Advisory Committees at Red River College and Assiniboine Community College, delegate to the Winnipeg Labour Council, secretary-treasurer of the Allied Hydro Council and president of the Manitoba Building and Construction Trades Council. In 2011, Mr. Stecy was appointed to the Manitoba Labour Management Review Committee and the Advisory Council on Workplace Safety and Health.

OPERATIONAL OVERVIEW

Adjudication

During 2012/13, the Board was comprised of a full-time chairperson, one half-time vice-chairperson, six part-time vice-chairpersons and 30 board members with an equal number of employer and employee representatives. Part-time vice-chairpersons and board members are appointed by Order in Council and are paid in accordance with the number of meetings and hearings held throughout the year. The Board does not retain legal counsel on staff; legal services are provided through Civil Legal Services of Manitoba Justice.

Field Services

Field services is comprised of the registrar, four labour relations officers, one board officer and one board clerk. Reporting to the chairperson, the registrar is the official responsible for the supervision of the day-to-day field activities of the Board. The primary responsibility of the registrar is the development and execution of the administrative workload as it relates to the various acts under which the Board derives its adjudicative powers. The registrar, in conjunction with the chairperson, vice-chairpersons and panel members, is involved in the establishment of Board practice and policy. Applications filed with the Board are processed through the registrar's office, which ensures each application is processed efficiently, with hearings scheduled in a timely manner and in accordance with the *Manitoba Labour Board Rules of Procedure* and Board practice. The registrar, together with the board officers, communicates with all parties and with the public regarding Board policies, procedures and jurisprudence.

Reporting to the registrar are four "labour relations" board officers who are responsible for dealing with various cases and conducting investigations pertaining to the applications filed with the Board, under the varying statutes. They can be appointed to act as Board representatives in an endeavour to effect settlement between parties, reducing the need for costly hearings. The board officers act as returning officers in Board conducted representation votes, attend hearings and assist the registrar in the processing of various applications. They also play a conciliatory role when assisting parties in concluding a first or subsequent collective agreement and they act as mediators during the dispute resolution process. Also reporting to the registrar is a board officer, primarily responsible for processing all referrals from the Director of the Employment Standards Division and who is involved in mediation efforts in an attempt to resolve the issues. The board clerk is primarily responsible for the processing of expedited arbitration referrals, and maintaining the Board's library of collective agreements and union constitution and by-laws files. Both the board officer and board clerk also attend Board hearings.

Administrative Services

The staff of the administrative services and field services works closely to ensure the expeditious processing of applications. Administrative services is comprised of the administrative officer and five administrative support staff. Reporting to the chairperson, the administrative officer is responsible for the day-to-day administrative support of the Board, fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures to ensure departmental and government policies are implemented.

Reporting to the administrative officer are four administrative secretaries responsible for the processing of documentation. Also reporting to the administrative officer is the information clerk who is responsible for the case management system and files and responds to information requests from legal counsel, educators and the labour community for name searches, collective agreements and certificates.

Research Services

Reporting to the chairperson, the researcher is responsible for providing reports, statistical data, jurisprudence from other provincial jurisdictions and undertaking other research projects as required by the Board. The researcher summarizes and indexes Written Reasons for Decision and Substantive Orders issued by the Board and compiles the *Index of Written Reasons for Decision*.

Library Collection

Copies of these documents can be viewed by the public in the Board's office or made available in accordance with the fee schedule.

- Arbitration awards
- Collective agreements
- Certificates
- Unions' constitution & by-laws
- Written Reasons for Decision and Substantive Orders

Publications Issued

- *Manitoba Labour Board Annual Report* - a publication disclosing the Board's staffing and membership as well as highlights of significant Board and court decisions and statistics of the various matters dealt with during the reporting period.
- *Index of Written Reasons for Decision* - a publication containing indexes of Written Reasons for Decision and Substantive Orders categorized by topic and employer. Decisions issued under *The Labour Relations Act* are also indexed by section of the *Act*. Until March 31, 2013, this publication had been available on a subscription basis. In the 2013/14 fiscal year, it is anticipated that the Board's website will be updated to provide online access to the Index.

The Board distributes full-text copies of Written Reasons for Decision, Substantive Orders and arbitration awards to various publishers for selection and reprinting in their publications or on their websites.

Website Contents

<http://www.gov.mb.ca/labour/labbrd>

*link to French version available

- Board Members* (list and biographies)
- Forms*
- Library* (hours)
- Publications* (list and links for convenient access, including previous annual reports)
- "Guide to *The Labour Relations Act*"* (explanations in lay persons' terms of the various provisions of the *Act* and the role of the Board and Conciliation & Mediation Services)
- Information Bulletins* (listing and full text)
- Manitoba Labour Board's Arbitrators List* (list of arbitrators maintained pursuant to section 117(2) of *The Labour Relations Act*)
- Written Reasons for Decision and Substantive Orders (full text, English only, from January 2007 to present, with key word search capability)
- *The Labour Relations Act**
- Regulations* (including *The Manitoba Labour Board Rules of Procedure*)
- Contact Us* (information and links to the Government of Manitoba Home Page, other Department of Labour and Immigration divisions, LexisNexis Quicklaw and Statutory Publications)

E-mail

mlb@gov.mb.ca

E-mail service is available for general enquiries and requests for information.

NOTE: The Board does not accept applications or correspondence by e-mail.

If you wish to file an application, contact:

Manitoba Labour Board
Suite 500, 5th Floor
175 Hargrave Street
Winnipeg, Manitoba, Canada R3C 3R8
Telephone: 204-945-2089 Fax: 204-945-1296

Information Bulletins

The Board produces information bulletins regarding its practice and procedure. The Board did not issue any new or amend any existing information bulletins during the reporting period. The following is a list of the current information bulletins.

1. Review and Reconsideration
2. *Manitoba Labour Board Rules of Procedure* – Regulation 184/87 R - Rule 28 (Part V – Rules of Board Practice)
3. The Certification Process
4. Financial Disclosure
5. Fee Schedule
6. Arbitrators List
7. Filing of Collective Agreements
8. Process for the Settlement of a First Collective Agreement
9. Objections on Applications for Certification
10. *The Employment Standards Code* - Appeal Hearings
11. Reduction of Deposits on Referrals to the Manitoba Labour Board under *The Employment Standards Code*
12. Exemption to Requests for Leave under *The Elections Act*
13. Extension of Time to File Documentation, Notice of Hearing and Request for Adjournment
14. Bargaining Agent's Duty of Fair Representation
15. Disclosure of Personal Information

The information bulletins are published in the Manitoba Labour Board's Index of Written Reasons for Decision and on the Board's website at <http://www.gov.mb.ca/labour/labbrd/bulletin.html>. Copies of the information bulletins may be requested from the Board by calling 204-945-2089 or by writing to 500-175 Hargrave Street, Winnipeg, Manitoba, R3C 3R8.

SUSTAINABLE DEVELOPMENT

The Board strives to achieve the goals set out in the Sustainable Development Action Plan. In compliance with *The Sustainable Development Act*, the Manitoba Labour Board is committed to ensuring that its activities conform to the principles of sustainable development. The Board promoted sustainable development through various activities including recycling, paper management, use of environmentally preferable products and duplex copying.

FINANCIAL INFORMATION

Expenditures by Sub-Appropriation	Actual 2012/13 (\$000s)	FTE	Estimate 2012/13 \$(000s)	Variance Over/(Under)	Expl. No.
Total Salaries	1,595	16.50	1,306	289	1
Total Other Expenditures	491		451	40	
Total Expenditures	2,086		1,757	329	

1. The over-expenditure is primarily due to costs associated with severance payments and unrealized staff turnover.

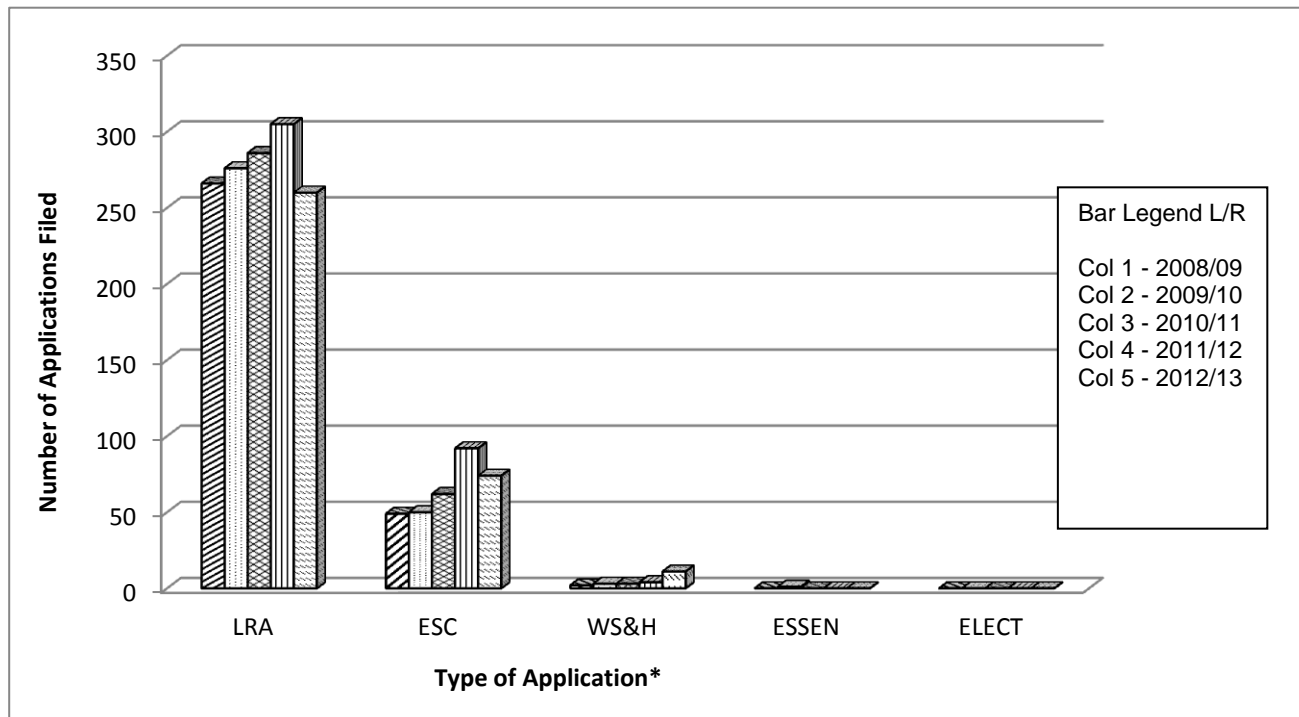
PERFORMANCE REPORTING

Summary of Performance

The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes and its decisions established policy, procedures and precedent and provided for a more sound, harmonious labour relations environment. The Board conducted formal hearings; however, a significant portion of the Board's workload was administrative in nature. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its board officers to mediate outstanding issues and complaints. The Board monitored its internal processes to improve efficiencies and expedite processing of applications or referrals.

The number of applications filed with the Manitoba Labour Board during the past 5 years (for the period April 1 to March 31) is indicated in the chart below.

**Manitoba Labour Board
Number of Applications Filed**



*Types of Applications	
LRA	Labour Relations Act
ESC	Employment Standards Code
WS&H	Workplace Safety and Health Act
ESSEN	Essential Services Act
ELECT	Elections Act

Detailed statistical tables can be found beginning on page 45 of this report.

Program Performance Measurements

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

Program Performance Measurements

April 1 - March 31

Indicator	Actual 2011/12	Actual 2012/13
Percentage of Cases disposed of	74%	69%
Number of hearing dates scheduled	337	441
Percentage of hearings that proceeded	34%	31%
Number of votes conducted	11	21
Median processing time (calendar days):		
<i>The Labour Relations Act:</i>	60.5	79.5
<i>The Workplace Safety and Health Act</i> ¹	66.5	159.5
<i>The Essential Services Act</i>	NA	NA
<i>The Elections Act</i>	NA	NA
<i>The Employment Standards Code</i>	124	136

"NA" - No applications processed in reporting period

¹ - The median processing time for applications filed under *The Workplace Safety and Health Act* in both fiscal years was based on the processing of less than ten cases. The processing times are not necessarily indicative of the normal median processing times of the Board.

In addition to applications filed, and pursuant to *The Labour Relations Act*, the Board also received and filed copies of collective agreements and arbitration awards. In addition to the 3,186 collective agreements on file, there are 2,291 arbitration awards, and 979 Written Reasons for Decision and Substantive Orders in the Board's collection. Copies of collective agreements, arbitration awards and Written Reasons are available upon request and in accordance with the Board's fee schedule. Copies of Written Reasons for Decision and Substantive Orders issued since January 2007 are posted on the Board's website.

Key Statistics in the Reporting Period

- 483 cases before the Board (pending from previous period plus new applications);
- 332 (69 percent) of the cases before the Board were disposed of/closed;
- 223 applications scheduled for hearing;
- 135 hearing dates proceeded;
- Board conducted 21 votes; and
- Issued three Written Reasons for Decision and 34 Substantive Orders.

Ongoing Activities and Strategic Priorities

- Develop succession plan for key positions;
- Promote learning plans for staff;
- Conduct bi-annual seminar for vice-chairpersons and Board members;
- Increase appointments of Board representatives to effect successful dispute resolutions without the need for formal hearings;
- Improve practices and procedures and to increase efficiencies;
- Expand information available on the website for ready access by the labour relations community, legal practitioners, educators and the public;
- Maintain accountability for allocated budget; and,
- Reduce median processing times.

Statistiques importantes pendant la période de référence

- 483 cas ont été portés devant la Commission (demandes en instance depuis l'exercice précédent et nouvelles demandes).
- 69 % des cas portés devant la Commission (332) ont été réglés ou classés.
- Une date d'audience a été fixée pour 223 demandes.
- La Commission a tenu 135 audiences.
- La Commission a tenu 21 votes.
- La Commission a rendu trois motifs écrits de décision et 34 ordonnances importantes.

Activités en cours et priorités stratégiques

- Élaboration d'un plan de relève pour des postes de premier plan.
- Promotion de plans d'apprentissage à l'intention du personnel.
- Organisation d'un colloque à l'intention des vice-présidents et des membres de la Commission.
- Augmentation des nominations de représentants de la Commission afin de permettre le règlement de différends sans avoir recours à des audiences officielles.
- Amélioration des pratiques et des procédures et augmenter les efficacités.
- Diffusion de davantage de renseignements sur le site Web afin qu'ils soient facilement accessibles aux intervenants du secteur des relations du travail, aux professionnels du droit, aux éducateurs et au public.
- Respect de l'obligation redditionnelle pour le budget alloué.
- Réduction des délais moyens de traitement des demandes.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS

During the reporting period, the Board issued 3 Written Reasons for Decision and 34 Substantive Orders.

The full text of the Written Reasons and the Substantive Orders issued since January 2007 are available on the Board's website (<http://www.gov.mb.ca/labour/labbrd/decisions/index.html>) or from the Board's office, upon payment of the applicable copying fee.

Pursuant to *The Labour Relations Act*

Gerdau Manitoba - and - United Steelworkers, Local 5442 - and - S.A.N.

Case No. 42/12/LRA

April 13, 2012

DUTY OF FAIR REPRESENTATION - Discharge - Employee filed duty of fair representation application alleging Union failed to take proper steps or do proper investigation of his dismissal - Union had filed grievance upon Employee's termination - Collective agreement provided that probationer may be discharged without notice at any time in sole and exclusive discretion of Employer and discharge deemed to be for just cause and, further, neither probationary employee nor Union may access grievance/arbitration procedure - Subsequent to dismissal, Employer and Union determined Employee was on probation at time of dismissal - Union withdrew grievance, based on provisions of collective agreement and Employer's reasons for dismissal were based upon its assessment of Employee's work habits - Held steps taken by Union in assessing whether it would proceed to arbitration, given Employee's status as a probationer and explicit wording of collective agreement, reflected degree of care which person of ordinary prudence and competence would exercise in the same or like circumstances - Employee failed to establish *prima facie* case - Application dismissed - Substantive Order.

City Of Winnipeg - and - Canadian Union of Public Employees, Local 500 - and - P.M.K.

Case No. 45/12/LRA

April 13, 2012

DUTY OF FAIR REPRESENTATION - TIMELINESS - Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for failing to pursue his complaint that Employer discontinued his company vehicle benefit and did not proceed with his job reclassification - Union contended portion of Application relating to vehicle benefit was untimely because Employee raised issue, but did not pursue it further until application was filed two years later - Employee submitted loss of benefit was inter-related with reclassification dispute and that issue was live issue until he received decision of Union executive not to proceed to arbitration - Board determined to treat vehicle benefit issue as part of Application from a timeliness perspective - Substantive Order.

DUTY OF FAIR REPRESENTATION - Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for failing to pursue his complaint Employer discontinued his company vehicle benefit - Board determined benefit not conferred by any explicit provision in collective agreement - Union did take steps to have Employer examine issue but no basis under collective agreement for Union to seek formal remedial relief - Manner in which Union addressed vehicle benefit did not disclose any conduct that could reasonably be characterized as arbitrary, discriminatory or taken in bad faith - Board determined Employee failed to establish *prima facie* case that Union breached section 20(b) of the Act - Application dismissed - Substantive Order.

DUTY OF FAIR REPRESENTATION - REMEDY - Employer - Proper Party - Employee asserted Employer violated collective agreement in not proceeding with his job reclassification and for discontinuing his vehicle benefit - Board held no basis under section 20 of *The Labour Relations Act* to seek ruling that Employer violated collective agreement nor to claim substantive relief against Employer - Board not forum where disputes resolved on merits - Board agreed with Employer that Board lacked jurisdiction to appoint arbitrator to conduct job analysis review and compensation review, but disagreed

Employer was not party to proceedings - In section 20 applications, employers are interested parties because of employer's interest in potential remedial relief - Board has no jurisdiction to order Union and Employer make Employee "whole" by ordering payment of an (undefined) amount as compensation for diminution of income or other employment benefits or losses suffered - Employee also sought compensatory relief on behalf of any other person affected by reclassification - Awarding relief for unnamed persons beyond Board's jurisdiction within scope of section 20 application - Application dismissed - Substantive Order.

DUTY OF FAIR REPRESENTATION - Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for not proceeding with his job reclassification - Board noted Union assisted Employee with filing of his reclassification request; made numerous inquiries of Employer on status of reclassification; after Employer issued decision on reclassification request, union representative advised Employee there was no merit to proceeding to arbitration but advised of his right to appeal decision to Union's executive; and Union obtained extension of time from Employer to ensure time limit to refer reclassification to arbitration - Employee disagreeing with decision of Union did not, standing alone, establish any violation of section 20(b) of the *Act* - No *prima facie* evidence of discriminatory treatment or bad faith and not within Board's jurisdiction to second guess or function as appeal tribunal regarding merits of decision - Application dismissed - Substantive Order.

DUTY OF FAIR REPRESENTATION - Scope of Duty - Employee filed application alleging Union breached section 20 of *The Labour Relations Act* for not proceeding with his job reclassification - Board noted Employee's believed salary range for classification inadequate, but it is Union and Employer who negotiate wage scales - Board does not function as surrogate arbitration board especially where matters in dispute involve issues normally subject of collective bargaining - Section 20 does not apply to collective bargaining process or matters which are proper subject of collective bargaining such as negotiation of classification salary range - Board determined Employee failed to establish *prima facie* case Union breached section 20(b) of the *Act* - Application dismissed - Substantive Order.

B.S. and Bri's Stucco Service - and - P.S.

Case No. 411/11/LRA

May 3, 2012

UNFAIR LABOUR PRACTICE - REMEDY - Interference - Board determined Employer violated subsection 7(h) of *The Labour Relations Act* by not continuing to employ Employee after he raised concerns about his rights regarding wages payable under *The Employment Standards Code* - As remedial relief, Board satisfied order for wages or benefits not appropriate, but Employee entitled to award of \$2,000 pursuant to subsection 31(4)(e) of the *Act* for Employer's interfering with Employee's exercise of his rights under *The Employment Standards Code*- Substantive Order.

Deaf Centre Manitoba - and - Canadian Union of Public Employees, Local 2874 - and - J.S.M.

Case No. 367/11/LRA

May 8, 2012

DUTY OF FAIR REPRESENTATION - *Prima facie* - Employee, terminated for alleged abuse of resident, filed duty of fair representation application - Board determined Union investigated Employer's allegations that Employee abused resident, interviewed resident, considered Employee's explanation and determined his explanation was not credible - Union determined Employee had no chance of successfully grieving termination, although matter was grieved and grievance hearing scheduled - Board does not sit in appeal of union's decisions; does not decide if union's opinion of likelihood of success of grievance correct; and, does not minutely assess and second guess every union action - Held Employee failed to establish *prima facie* case Union acted contrary to section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order.

Parkview Place - and - Canadian Union of Public Employees, Local 2039 (specifically, D.C.) - and - J.S.M.

Case No. 39/12/LRA
May 8, 2012

DUTY OF FAIR REPRESENTATION - *Prima facie* - Employee, terminated for alleged abuse of resident, filed duty of fair representation application - Board determined Union investigated Employer's allegations that Employee abused resident, attended discipline meeting, filed grievance, and attended grievance hearing - Union determined grievance not likely to succeed at arbitration - Employee was given opportunity to appeal to Union executive - Board does not sit in appeal of union's decisions; does not decide if union's opinion of likelihood of success of grievance correct; and, does not minutely assess and second guess every union action - Held Employee failed to establish *prima facie* case Union acted contrary to section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order.

Garda Canada Security Corporation - and - United Food and Commercial Workers Union, Local No. 832 -and- F.D.T.

Case Nos. 197/11/LRA & 198/11/LRA
June 1, 2012

DUTY OF FAIR REPRESENTATION - *Prima facie* - Union investigated Employee's complaints, filed grievances on his behalf, met with Employer to resolve his complaints and negotiated settlements of some complaints with Employer - Employee not being satisfied with Union's interventions and results obtained did not constitute breach of section 20 of *The Labour Relations Act* - Applications did not disclose any reasonable likelihood that complaints against Union would succeed and no facts were presented in Applications which constituted arbitrary, discriminatory or bad faith conduct by Union - Applications did not establish *prima facie* violation of section 20 - Application dismissed - Substantive Order.

UNFAIR LABOUR PRACTICE - Coercion - Employee advanced complaints with respect to Employer citing section 17(b) of *The Labour Relations Act* - Board satisfied Employee had not established necessary elements of coercion, intimidation, or threats by Employer in attempt to have Employee refrain from exercising rights set in section 17(b)(i) through (v) - Issues raised simply disagreements between Employee and Employer regarding application and interpretation of collective agreement which are to be resolved through grievance and arbitration processes - Applications did not establish *prima facie* violation of the Act and, further, Applicant's complaints against Employer may be adequately determined under grievance and arbitration provisions of collective agreement - Substantive Order.

Garda Canada Security Corporation - and - United Food and Commercial Workers Union, Local No. 832 -and- F.D.T.

Case Nos. 281/11/LRA & 282/11/LRA
June 1, 2012

DUTY OF FAIR REPRESENTATION - UNFAIR LABOUR PRACTICE - *Prima facie* - Employee filed unfair labour practice and duty of fair representation applications - Allegations in Applications connected to Employer imposing one-day suspension on Employee - Union filed grievance, met with Employee, attended at grievance meeting on his behalf and referred matter to arbitration - Board determined Applications did not disclose any reasonable likelihood that complaints against Union would succeed - Complaints Employee advanced with respect to Employer were simply disagreements regarding application and interpretation of collective agreement which were to be resolved through grievance and arbitration processes - Employee who is subjected to discipline, or whose conduct is investigated or otherwise questioned by his employer did not, standing alone, constitute unfair labour practice - Applications were frivolous, vexatious, constituted abuse of processes of Board and were without merit - Applications dismissed - Substantive Order.

Seven Oaks School Division - and - Manitoba Teachers' Society - and - E.Y.

Case No. 117/12/LRA

June 28, 2012

DUTY OF FAIR REPRESENTATION - Prima facie - Applicant filed application under Section 20 of *The Labour Relations Act* - Board held that Section 20(a) of the *Act* did not apply as Applicant's resignation did not constitute a "dismissal" - In addition, even assuming Applicant's allegations against Union were true, application did not establish a *prima facie* violation by the Union of sections 20(a) or 20(b) of the *Act* - Application dismissed - Substantive Order.

DUTY OF FAIR REPRESENTATION - Undue delay - Applicant unduly delayed filing application - Board has interpreted "undue delay" to mean periods of as little as six months - Application concerned events which allegedly took place over a year prior to its filing - Applicant's contention he was medically incapable of filing application in timely manner not established by medical documentation which he provided - Application dismissed - Substantive Order.

University of Manitoba - and - Association of Employees Supporting Education Services

Case No. 32/11/LRA

August 17, 2012

PRACTICE AND PROCEDURE - Adjournment - Union filed application for Board Determination on whether position of Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Position vacant at time Application filed - Board, noting position in dispute was vacant, determined matter be adjourned until an incumbent occupied position for six months, in keeping with Board's practice and policy - Substantive Order.

APPROPRIATE BARGAINING UNIT - EMPLOYEE - EVIDENCE - Management Exclusion - Onus - Union filed application for Board Determination on whether Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Employer acknowledged position originated from position that had been included in bargaining unit - Employer determined position should be removed from bargaining unit without consulting Union - As position not new, Employer bore onus to demonstrate significant and material changes occurred to justify exclusion from bargaining unit of previously included position - Substantive Order.

APPROPRIATE BARGAINING UNIT - EMPLOYEE - Management Exclusion - Union filed application for Board Determination on whether Manager MED IT, previously referred to as Information Systems Manager, should be included within bargaining unit - Board determined that, although Manager MED IT has some additional responsibilities, Board was not satisfied evidence established changes were material and significant to sustain conclusion that previously included position should be excluded from bargaining unit nor that position performed management functions primarily - Essence of position was development, implementation and maintenance of Information Technology and project management - Occasional performance of some managerial functions did not justify exemption - Not unfair to include position in bargaining unit as prior position specifications contemplate Information Technologist may have "full supervisory responsibilities" and some may spend "majority of time supervising staff - Manager MED IT was "employee" under the *Act* and was included in bargaining unit - Substantive Order.

Freed & Freed International and The Down Room - and - Workers United Canada Council, L. 459

Case No. 49/12/LRA

August 28, 2012

SUCCESSORSHIP - UNION - Union filed successorship application as successor to UNITE Manitoba Joint Council - Board, having noted Employers had no objection to successorship declaration and being satisfied Union was a union within meaning of *The Labour Relations Act*, issued declarations Union sought under sections 55(1) and 55(2) of the *Act* - Successorship declaration effective as of date when Union was issued its Charter - Substantive Order.

COMMON EMPLOYER - Subsequent to Union being certified bargaining agent for employees of Freed & Freed International, Down Room was incorporated - Employers consented to issuance of common employer declaration but submitted that Board should not declare that certificate should be amended to reflect both businesses as singular employer; that both employers were parties to and bound to collective agreement and that employees of both employers were included in certified bargaining unit - Board of view that declarations was inconsistent with Employers' agreement to common employer declaration. Such declarations are granted as normal consequence of issuing common employer declaration under Section 59(1) of *The Labour Relations Act* - Declaration effective date when Down Room was incorporated - Substantive Order.

Schmuland Crane Rentals - and - International Union of Operating Engineers, Local 987

Case No. 296/12/LRA

October 16, 2012

APPLICATION FOR CERTIFICATION - PRACTICE AND PROCEDURE - Employer Lists - Union filed application for certification for craft unit of all crane operators and crane apprentices employed by Employer - Union filed correspondence with Board requesting that Employer provide proof that employees listed in Employer's Reply were certified journeypersons or registered apprentices - Board advised parties it does not make inquiries as to whether individuals meet licensing requirements under other statutes, and would not be requiring Employer to provide information requested - Substantive Order.

Brandon University - and - Public Service Alliance of Canada

Case No. 109/12/LRA

October 22, 2012

APPLICATION FOR CERTIFICATION - Rule 28 - Union filed application for certification to represent research assistants and student assistants - Board accepted circumstances of case reflect "unique employment situation" to modify requirements of Rule 28 to reflect "all employees in the proposed bargaining unit who were employees on the date of application and performed work at least once in the twelve weeks preceding filing of Application" - After applying modified formula under Rule 28 to the agreed upon bargaining unit, Board satisfied requirements of section 40(1)2 of *The Labour Relations Act* had been met, in that, as of date of filing of Application, more than 40 percent but less than 65 percent of employees in unit wished to have Applicant represent them - Based on results of the representation vote, majority of eligible employees who voted, wished to have Applicant represent them as their bargaining agent - Board ordered certification to be issued - Substantive Order.

Winnipeg Free Press - and - CEP Media Union of Manitoba, Local 191 - and - L.D.B.

Case No. 204/12/LRA

November 20, 2012

DUTY OF FAIR REPRESENTATION - Dismissal defined - Employer notified Employee she was laid off due to "economic downturn" - Employee asserted she was unfairly targeted for layoff as consequence for filing harassment complaint with Manitoba Human Rights Commission - Board noted section 20(a) of *The Labour Relations Act* refers to "dismissal" in culpable or no just cause sense commonly understood in collective bargaining relationships - Layoff not a "dismissal" - Union's duty of Applicant set out in section 20(b) of the *Act* - Substantive Order.

DUTY OF FAIR REPRESENTATION - *Prima facie* - Employer laid off Employee due to "economic downturn" - Employee asserted she was unfairly laid off as consequence for filing harassment complaint with Human Rights Commission - Union representative, having reviewed seniority list, noted Employee was most junior in her classification, and was not entitled to benefit of job security article of collective agreement given date she commenced employment - Representative advised there was no basis upon which to file a grievance - Nothing in material Employee filed to suggest facts pleaded in application disclosed arguable position that application would succeed even assuming all facts presented were true -

Disagreement with Union's position did not constitute unfair labour practice - Employee did not establish *prima facie* violation of section 20(b) of *The Labour Relations Act* - Substantive Order.

Manitoba Teachers' Society - and - Canadian Union of Public Employees, Local 1637- and - K.O. and J.D. on behalf of Manitoba Teachers' Society Support Staff included in CUPE, Local 1637

Case No. 244/12/LRA

December 6, 2012

DECERTIFICATION - REMEDY - Standing - Collective Agreement - Employees filed application for decertification alleging Union lost support of majority of employees in bargaining unit because it was unable to assist members with pension concerns - Employer filed Reply asserting grounds stated by employees insufficient and contrary to principles of collective bargaining - Employer submitted Board should order current collective agreement binding on members of Union for its entire term; was to remain in full force and effect for its entire term; and that provisions relating to pension plan and pension contribution rates were terms of employment until collective agreement expired - Board determined resolution of issues raised by Employer not matter over which Board had jurisdiction - Section 54 of *The Labour Relations Act* provides where certification of bargaining agent cancelled, employer not required to bargain collectively with bargaining agent and subject to clause 44(c) any collective agreement in force and effect between parties was terminated - Based on provisions of the *Act*, Board could not entertain orders sought by Employer which had no role in determining whether or not employees wish to be represented by Union - Substantive Order.

DECERTIFICATION - JURISDICTION - Scope - Voluntariness - Employees filed application for decertification alleging Union lost support of majority of employees in bargaining unit because it was unable to assist members with pension concerns - Employer and Union opposed application - Board held neither Union nor Employer advanced specific grounds contesting voluntariness of petition - Unless some illegality or conduct contrary to *The Labour Relations Act* disclosed, and as long as material filed in support of application for decertification disclosed more than 50 percent of employees in bargaining unit voluntarily support application, Board does not inquire into reasons why employees wish to decertify rights of bargaining agent - Such subjective inquiries beyond scope of Board's role under the *Act* - Board satisfied more than 50 percent of employees in unit voluntarily supported Application - Board directed ballots cast in representation vote be counted - Substantive Order.

City of Winnipeg and Winnipeg Police Service - and - Winnipeg Police Association

Case No. 210/12/LRA

January 24, 2013

JURISDICTION - UNFAIR LABOUR PRACTICE - Arbitration - Union filed unfair labour practice application alleging Employer refused to provide it with information regarding "minimum staffing level", a term used in collective agreement, which placed Union in position where it was unable to take reasonable care to protect interests of its members and potentially placing it in violation of its duty of fair representation - Union also argued Employer's failure to provide the information interfered with administration of Union and representation of its members - Board did not accept this perspective as reason to hear Application on its merits - Position being advanced by Union speculative in nature because it is asking Board to rule in advance on hypothetical situation which may arise - Also to determine Application on its merits, Board would have to interpret meaning of phrase "minimum staffing level" and then assess Employer's obligation to provide information to Union under that clause - Board satisfied interpretative determinations more properly fell within jurisdiction and expertise of arbitration board - Application dismissed - Substantive Order.

St. James Assiniboia School Division - and - M.A.N.T.E., K.N. - and - C.G.

Case No. 349/12/LRA

March 28, 2013

DUTY OF FAIR REPRESENTATION - Based on investigation into complaints received about Employee's behaviour, Employer decided to terminate his employment but offered opportunity for him to resign

instead - Union considered Employee's circumstances, provided him with advice, attempted to answer his questions, and scheduled meeting with Employee and its counsel for him to obtain further advice - Prior to meeting taking place, Employee tendered his resignation - Employee reflected upon his decision to resign as well as representation provided by Union, concluded he had been treated unfairly and filed duty of fair representation application - Board held Application did not disclose any arguable position that application would succeed, even assuming all facts were proven - Employee did not present facts which constituted arbitrary, discriminatory or bad faith conduct by Union and did not establish prima facie violation by Union of Section 20(b) of *The Labour Relations Act*- Application dismissed - Substantive Order.

DUTY OF FAIR REPRESENTATION - Employee accepted Employer's offer to resign his employment rather than being terminated - Employee reflected upon his decision to resign as well as representation provided by Union, concluded he had been treated unfairly and filed duty of fair representation application - Board noted "dismissal" not defined in *The Labour Relations Act* and concluded for purposes of Section 20(a) term refers to a "dismissal" in culpable or no just cause sense commonly understood in collective bargaining relationships - A resignation is not a "dismissal" as Board has interpreted the term and, as a consequence, Union's duty of fair representation of employee is set out in section 20(b) of *The Labour Relations Act* - Substantive Order.

Pursuant to *The Employment Standards Code*

S.V. trading as The Star Grill - and - R.C.

Case No. 203/11/ESC

April 13, 2012

WAGES - General Holiday Pay - Entitlement - Employer claimed Employee not entitled to general holiday wages for October 11, 2010 as her last day of work was October 9, 2010 - Board satisfied Employee attended work on October 12, 2010 and was entitled to general holiday wages for October 11, 2010 pursuant to section 22(1) of *Employment Standards Code* - Substantive Order.

WAGES - Reporting for Work - Employer appealed Order to pay two-days wages to Employee - Employer contended Employee not scheduled to work, but, as per her request, attended meetings on days in question to discuss tension which developed between herself and her supervisor - Held Employee reported to meetings as scheduled by Employer and was entitled to be paid for scheduled period as per section 51(2) of *Employment Standards Code* - Substantive Order.

NOTICE - Quit Alleged - Employer appealed Order to pay wages in lieu of notice to Employee, who was a cook, alleging Employee quit without notice - Employee testified Chef fired her at meeting with Employer to discuss tension that developed between Employee and Chef - Bookkeeper, who attended meeting, testified Chef tried to convince Employee they could work things out and Employee asked why they did not just fire her - Further, Employer offered her position working with different chef at Employer's other restaurant, but Employee just walked out of meeting - She did not return to work and did not return Employer's phone call inquiring if she wanted to accept alternate position - Board preferring evidence of Bookkeeper to Employee's, found Chef did not tell her she was fired - Board satisfied Employee formed requisite subjective intention to quit and then objectively carried that intention into effect when she walked out of meeting then failed to return to work or to respond to Employer's offer of alternate position - Held Employee quit her employment and not entitled to wages in lieu of notice - Substantive Order.

United Messenger Co-Op Ltd. - and - B.S.

Case No. 144/11/ESC

April 16, 2012

INDEPENDENT CONTRACTOR - Courier Driver - Employer appealed Order to pay vacation and general holiday wages submitting Employee was owner/operator and therefore *The Employment Standards Code* did not apply - Board determined Employer decided that drivers must use its dispatch system and

determined amount charged to drivers for rental of equipment; obligated drivers to wear, and pay for, uniforms; to affix company decal and signage to their vehicles; to use its weigh bills; set hours of work when it expected Employee to be available to make deliveries and he could not do deliveries for a rival business during those hours; set rates charged to customers; and, established commission rate paid - Beyond investment in personal vehicle, Employee had no significant role for investment and management - Board determined Employee was not performing services as a person in business on his own account and relationship between Employer and Employee was properly characterized as employer-employee relationship - Employer's appeal dismissed.

Canadian Linen and Uniform Service Incorporated - and - D.C.

Case No. 306/10/ESC

May 22, 2012

WAGES - Overtime - Managerial Exemption - Employer appealed Order to pay \$14,287.81 in wages, overtime wages and general holiday wages submitting Employee fell either within definition of "employer" under *The Employment Standards Code*, or within managerial exemption in section 2(4) of the *Code* and was not entitled to overtime - Board did not accept argument that Employee fell within definition of "employer" as accepting that argument would result in inconsistency and lead to absurd consequences that employee who met management criteria would be an employer and not entitled to protection of the *Code* yet at same time be entitled to some protection under section 2(4)(a), the management exclusion clause - Board satisfied Employee had responsibility and high degree of independent decision-making authority to operate and manage Employer's business in local area - Employee had authority to perform key management functions, including hiring, scheduling vacations, assigning and authorizing extra time, and taking steps and authorizing expenditures - Employee had ability to affect income of customer service representatives through sales to customers on their routes and reorganization of delivery routes - Employee argued he tried to perform managerial position but did very few of functions expected of him which indicated he understood his position to be managerial - He did not submit overtime hours for himself even though he did so for other employees, or seek approval or payment from Employer for any such hours which further supported conclusion he was of view that he was in managerial position and not entitled to overtime wages - Board satisfied Employee did not fall within definition of "employer" under the *Code*, but determined Employee performed management functions primarily and fell within managerial exemption in section 2(4)(a) and was exempted from overtime under the *Code*, but not from other protections of the *Code* - Given Employer did not challenge Order for amounts for regular wages and general holiday wages and Employee did not appeal Order, Board accepted those amounts as reflected in Order - Substantive Order.

Sterling O & G International Corporation - and - A.B.

Case No. 175/11/ESC

May 25, 2012

CONSTRUCTION INDUSTRY - Rate of Pay - Employer appealed Order to pay \$2,186.02 in wages owing to Employee claiming Employee was hired as construction labourer and was only entitled to applicable wage rate established for Industrial, Commercial and Institutional Construction Sector (I.C.I. Sector) - Board found Employee worked some hours as labourer in I.C.I. Sector and other hours performing snow removal work as equipment operator under Heavy Construction Sector - Heavy construction sector defined in *The Construction Industry Wages Act* to include removal of snow from and blading of highways, roads, railroads, runways or parking lots - Board's determination Employee worked, from time to time, in both I.C.I and Heavy Construction Sectors, and that threshold for overtime and wage rates vary depending upon applicable sector, reflected in Board's calculations of wages owing - Substantive Order.

PRACTICE AND PROCEDURE - WAGES - Employer's Statutory Obligations - Record Keeping - Subpoena - Board satisfied Employee worked hours as determined by Employment Standards - Employer did not produce records to refute Employee's evidence to support his contention he worked those hours or that some hours consisted of snow removal using heavy equipment - Board denied Employer's request to issue subpoena to access Employee's cellular phone records which it claimed contained details of hours Employee worked - Employer failed to comply with its responsibilities to keep

and maintain employment records at principal place of business in accordance with section 135 of *The Employment Standards Code* - Substantive Order.

WAGES - Unauthorized Deductions - Employer claimed Employee had several accidents while operating its equipment and sought to recover cost pertaining to damage sustained - Employee's mother issued cheque to Employer - Board satisfied Employer's demand of money from Employee and his parents arising from allegedly faulty work or damage caused by Employee was contrary to section 19(2)(5) of Employment Standards Regulation, Man. R. 6/2007 - Substantive Order.

REMEDY - Costs - Board found Employer made baseless accusations against Employee and his family during hearing and he failed to provide employment records in support of positions advanced in his appeal - Board determined Employer's conduct was unreasonable and having matter referred to Board was frivolous and vexatious - Board awarded \$400 in costs to Employee pursuant to section 125(5) of *The Employment Standards Code* - Substantive Order.

Money in Motion (Manitoba) Inc. - and - L.K.

Case No. 401/11/ESC

June 20, 2012

NOTICE - Wilful misconduct - Employer appealed Order to pay wages in lieu of notice asserting Employee, employed as Corporate Account Officer, committed gross misconduct by being dishonest and breached his employment agreement by assisting business competitor - Therefore, his employment was terminated for cause and pursuant to section 62(1)(h) of *The Employment Standards Code* wages in lieu of notice were not owed - Employer assumed Employee had given business competitor access to confidential information based on screenshot of Employee's e-mail account - Board satisfied that Employer was upset with Employee and said words to effect of "...Keys; Phone; Out" - Employer did not give specific reason to Employee for dismissal, did not show screenshot to Employee, did not do any independent investigation and did not ask Employee for explanation and relied upon circumstantial evidence - However, Employee provided explanation, under oath, and explanation did not reveal Employee engaged in wilful misconduct, wilful neglect of duty or dishonesty, as those terms have been defined in Board's jurisprudence for purposes of Section 62(1)(h) of the *Code* - Abrupt manner in which dismissal was carried out led Board to conclude dismissal reflected Employer's disappointment in Employee's response to share offering and did not reflect any conduct which could objectively be characterized as wilful misconduct or wilful neglect of duty within meaning of Section 62(1)(h) of the *Code* - Appeal dismissed - Employer ordered to pay wages in lieu of notice - Substantive Order.

EVIDENCE - Post termination - Employer testified that subsequent to termination of employment, Employee solicited Employer's clients and was in breach of Employment Agreement - Board noted whether or not Employee breached covenants in Agreement after his dismissal was not before Board - Substantive Order.

Brousseau Bros. Ltd. t/a Super Lube - and - S.P.

Case No. 210/11/ESC

July 11, 2012

APPEAL - PRACTICE AND PROCEDURE - Notice of Appeal - Employment Standards Division ordered Employer to pay wages in lieu of notice but determined no overtime wages were owed - Employee appealed Order regarding overtime - At commencement of Board hearing, Employer made application for leave to appeal Order in favour of wages in lieu of notice - Board denied application because Employer failed to file written Notice of Appeal specifying grounds for appeal and because allowing Employer to appeal could cause substantial prejudice to Employee, who had come to hearing not knowing he would be required to deal with issue of entitlement to wages in lieu of notice - Substantive Order.

EXCLUSIONS - WAGES - Overtime - Rate of Pay - Employment Standards Division ordered Employer to pay wages in lieu of notice but determined no overtime wages were owed - Employee, hired as manager of one of Employer's locations, appealed Order regarding overtime - Employer submitted Employee would

be working 50-hour week, and paid 40 hours at \$15 per hour, and 10 hours at time and a half - Employer referred to "rounding off" resulting sum to \$1,500 every two weeks - Board found Employer's explanation implausible and arithmetically flawed - Payroll Register noted Employee paid \$1,500 bi-weekly at hourly rate of \$18.75 - Board rejected Employer's contention that Employee's remuneration included at least 10 hours of overtime per week - In addition, Employer submitted Employee was performing management functions primarily, and exemption in section 2(4)(a) of *The Employment Standards Code* with respect to overtime applied - Board noted mere supervision of other employees not determinative of managerial status - Absence of evidence that Employee met with senior managerial personnel about issues such as hiring and firing practices, human resource policies, long term business planning, budgeting or marketing - Employee was not manager of all business conducted from his work location as another individual was designated as manager of tire and brake store which operated from same location - Board accepted when business conducted from several locations, person may perform management functions primarily only at one location, but may still fall within exception in section 2(4)(a) of the *Code* - Board satisfied Employer had not established Employee performed management functions primarily - Employee entitled to receive \$1,500 wages in lieu of notice and \$8,325 overtime wages - Substantive Order.

Federated Co-Operatives Limited - and - B.M.

Case No. 107/12/ESC

July 31, 2012

NOTICE - Exception - Wilful misconduct - Employer appealed Order to pay \$7,593.60 wages in lieu of notice to Employee - Board determined Employee consciously and deliberately engaged in acts or omissions which he knew, or ought reasonably to have known, were wrongful or forbidden including: refusing to stop to discuss an issue with manager; initiating physical contact with manager; issuing invitation to engage in physical confrontation with manager off of Employer's property and/or verbally intimidating manager; and engaging in workplace harassment by telling manager he should retire - Employee acted in manner not condoned by Employer as per section 62(1)(h)(i) of *The Employment Standards Code* - Appeal allowed - Substantive Order.

4354311 Manitoba Limited - and - G.H.

Case No. 89/12/ESC

August 2, 2012

WAGES - Commissions - Calculation - Employer and Employee appeal Order to pay \$95.68 in wages owing - Employer asserted no commissions were owed - Employee asserted \$324 in commissions and bonuses were owing - Board determined Employee entitled to receive \$324 for commissions and bonuses plus \$12.95 in vacation wages - Board took into account commissions Employee earned during two pay periods immediately preceding two pay periods at issue; admitted volume of business; and that amounts for commissions were posted on bulletin board at workplace by Manager/Supervisor at or near end of each pay period - Board accepted purpose of postings were to advise employees of commission earnings - Employer's Appeal dismissed and Employee's Appeal allowed - Substantive Order.

T.E.T. o/a Toomey Construction - and - J.M.

Case No. 83/12/ESC

August 10, 2012

EVIDENCE - Admissibility - Original hearing date adjourned at request of Employer - When hearing reconvened, Employer requested opportunity to file supporting and additional evidence by way of Affidavit or Statutory Declaration, after hearing - Board denied request as such evidence only admissible in extraordinary circumstances which did not exist and particularly when original hearing date adjourned based on Employer's request - Substantive Order.

WAGES - CONSTRUCTION INDUSTRY - Overtime - Rate of Pay - Employer appealed Order to pay Employee \$4,506 for wages owing - Board satisfied Employee was hired as Construction Worker within the meaning of Part 3 of Industrial, Commercial, and Institutional (ICI) Schedule to *The Construction*

Industry Wages Act (CIWA) - Parties had agreed to hourly rate of \$15 - Employee, based on experience and hours worked for Employer not entitled to a top rate of \$20.89 for a General Construction Labourer under Part II of the ICI Schedule as no evidence Employee completed necessary hours as Trainee 1 and Trainee 2 in the General Construction Labourer classification - As work performed fell within ICI Sector, Employee entitled to overtime after 10 hours per day or 40 hours per week - Employment agreement parties signed that Employee to be paid for hours worked at his regular rate and overtime hours to be banked at regular hours unenforceable, as provisions contrary to Sections 14(1) and 14(2) of the CIWA - Employee entitled to \$1,348.65 in wages - Appeal allowed in part - Substantive Order.

WAGES - CONSTRUCTION INDUSTRY - Unauthorized deductions - Employer not entitled to deduct \$40 from wages owing for damages Employee allegedly caused to skid steer as deduction of that nature prohibited by section 19(2)(5) of *Employment Standards Regulation* - Substantive Order.

McEwen Bros. Ltd. - and - D.B.

Case No. 124/12/ESC

September 6, 2012

NOTICE - EVIDENCE - Quit Alleged - Witness Credibility - Employer appealed portion of Order to pay \$676 wages in lieu of notice arguing Employee quit his employment and was not entitled to wages in lieu of notice - After assessing credibility of witnesses, Board accepted evidence of Employer that Employee announced "I quit" and immediately packed up his personal tools in his vehicle and left Employer's premises - Employer met onus, on balance of probabilities, that Employee quit his employment - Employee not entitled to wages in lieu of notice - Appeal allowed - Substantive Order.

A.B. Transit t/a Complete Car - and - A.H.

Case No. 143/12/ESC

October 22, 2012

WAGES - Overtime - Rate of Pay - Employee appealed Dismissal Order alleging that overtime wages were not paid upon termination of employment - Board concluded Employer varied and adjusted Employee's rate of pay for regular hours downward, when overtime was worked, so that rate of pay for all hours worked averaged \$15 per hour - Manner of payment did not comply with section 17(1) of *The Employment Standards Code* - Any confusion or ambiguity with respect to manner Employee to be paid was responsibility of Employer, given lack of documentation evidencing agreement - Employee entitled to receive additional wage payments with respect to overtime hours which he worked, but for which he was not paid, at the rate of 150% of his regular wage rate - Appeal allowed - Substantive Order.

WAGES - Entitlement - Travel Time - Employee, who was Handi-Transit driver, appealed Dismissal Order alleging he was not paid for time spent traveling from garage to first pickup and for travel time spent returning to garage at end of each shift - Run sheets introduced as evidence provided only sketchy information as to travel time to various locations and did not establish Employee spent travel time returning to garage - Moreover, Employer made scheduling allowances for Employee's activities as a taxi driver, including periodically sending a driver with taxi driver's license, in Employee's taxi, to Employee's last drop off destination in order that Employee's taxi would be immediately available to him - Board unable to conclude Employee entitled to additional wage payments in relation to travel time - Claim for wages for travel time dismissed - Substantive Order.

WAGES - Breaks - Employee appealed Dismissal Order alleging that breaks were not provided as required by subsections 50(1) and 50(2) of *The Employment Standards Code* - Based on testimony of Employer and another driver, Board satisfied that drivers, including Employee, were given flexibility when to take breaks and were encouraged to take breaks and were not expected or required to adhere to times outlined on daily run sheets - Claim for wages for breaks not taken dismissed - Substantive Order.

NOTICE - Employee appealed Dismissal Order claiming he was entitled to receive one week's pay pursuant to section 77 of *The Employment Standards Code* - Employer advised Employee of termination for sleeping in Handi-Transit van, for perpetually running late, and for complaints which had been

received about him - Employer provided notice orally in dispatch office and had deliberately left office door open so other employees could overhear conversation - Based on Employer's evidence, including testimony of employee who overheard conversation and office calendar bore notation that March 18th would be Employee's last day, Board concluded Employee given notice on March 1st - Claim for one week of pay in lieu of notice dismissed - Substantive Order.

Car World Inc. t/a Car World Superstore - and - B.C.

Case No. 120/11/ESC

November 13, 2012

WAGES - Overtime - Exclusion - Employer ordered to pay Employee \$7,252.48 for wages owing - Employer appealed Order arguing Employee was not entitled to overtime as he was finance manager, was in control of his own hours, and made twice Manitoba Industrial Wage - Board satisfied Employee, by his own account, had ability to and did organize his schedule, and had substantial control over his hours of work - Further, Employee's annual regular wage was more than two times Manitoba Industrial Average Wage - As both requirements under section 2(4)(b) of *The Employment Standards Code* were met, standard hours of work and overtime provisions of *Code* did not apply to Employee - Substantive Order.

WAGES - Entitlement - Employer ordered to pay Employee \$7,252.48 for wages owing - Employee appealed Order on basis he was also entitled to wages for monthly base salary of \$5,000 - Appeal based on written contract for sales manager position which Employee no longer occupied - Contract stated Employee, as sales manager, would be paid monthly base salary of \$5,000 and \$75 per all vehicles sold - When Employee became finance manager, no other written contract was entered into at that time - Board noted spreadsheets detailing commissions that Employee received as finance manager were varied and in excess of fixed commissions of \$75 per vehicle contemplated under written contract - Also, pay stubs show Employee had not been paid monthly base salary for last 2½ years of his employment - Employee failed to establish he was entitled to receive monthly base salary during applicable period of time under section 96(2)(a)(ii) of *The Employment Standards Code*, being last six months of his employment - Board satisfied Employee was paid all wages to which he was entitled - Substantive Order.

NOTICE - Resignation - Employer ordered to pay Employee \$7,252.48 for wages owing - Employee appealed Order on basis that he was also entitled to wages in lieu of notice - Employee, who was finance manager, submitted that conversation with sales manager regarding his concerns that he was being replaced became heated and sales manager said to Employee if he did not like it, "there's the door" - Employee testified that, believing he was fired, he took home his personal items and later returned Employer's key in drop box - Board satisfied Employee could not reasonably have believed that sales manager, whom Employee had hired, had fired him, or that he would have had authority to do so - Evidence did not show Employer hired new sales manager to replace Employee - Employee demonstrated an intention to quit when he left work taking his personal items with him - Having had time to reflect on and reconsider his position, he confirmed his intention to quit by putting key in drop box - Employee did not attempt to speak to owner - Board satisfied that Employee had requisite subjective intention to quit and his conduct objectively demonstrated that he quit - Employee terminated his own employment and was not entitled to wages in lieu of notice - Substantive Order.

D.G.L. t/a Portage Septic Tank Service (1994) - and - T.B.

Case No. 142/12/ESC

December 27, 2012

CONSTRUCTION INDUSTRY - NOTICE - Heavy Construction Sector - Definition - Entitlement - Employer appealed Order to pay wages to Employee arguing he was "heavy construction employee" as defined in *The Construction Industry Wages Act*, and pursuant to subsection 62(1)(d) of *The Employment Standards Code*, employees in construction were not entitled to receive notice of termination or wages in lieu - Subparagraph (g) of definition of "heavy construction sector" refers to construction and maintenance of water lines, sewer lines and underground service lines, but specifically excludes "contents thereof" - Board concluded subparagraph (g) to mean external work associated with water lines, sewer lines and underground service lines, such as excavation, trenching, and laying of pipe constituted "heavy

construction” - Employee involved with work with contents of pipe such as using cameras to locate blockages, flushing and cleaning of pipe which did not constitute heavy construction - Predominant nature of work Employee performed was regular employment work within regulatory ambit of the *Code* rather than the *Act* - Therefore, Employee entitled to receive two weeks’ notice or wages in lieu - Substantive Order.

CONSTRUCTION INDUSTRY - WAGES - Heavy Construction Sector - Overtime - Rate of Pay - Employer appealed Order to pay wages to Employee arguing he was heavy construction employee and pursuant to subsection 62(1)(d) of *The Employment Standards Code*, employees in construction were not entitled to receive notice of termination or wages in lieu - Employer also argued Employee not entitled to overtime wages because standard hours of work for heavy construction employees, pursuant to *The Construction Industry Wages Act*, were 50 hours of work per week, and Employee never worked in excess of 50 hours per week - Board found some work Employee performed was within heavy construction sector but vast majority of work was regular employment work within regulatory ambit of *The Employment Standards Code* and did not fall within heavy construction sector as defined in the *Act* - Board noted for period in question, Employer was paying Employee rate of \$12.00 per hour, whereas, for any heavy construction work performed, Employee entitled to receive wages at minimum wage rate of heavy construction sector of \$12.55 per hour - Board satisfied Employee entitled to wages, overtime wages, general holiday wages and wages in lieu of notice - Substantive Order.

NOTICE - Resignation - Employer appeal Order to pay wages in lieu of notice arguing Employee effectively resigned when he stopped attending work or calling in to determine if work was available - Employee admitted Employer would be expecting him at work on Monday following Canada Day but he had made unilateral decision not to attend work - Employer texted him over the next two days indicating no work was available - Further attempts by Employee to return to work met with response no work available - Eventually Employee ceased communications - Board concluded Employee entitled to treat repeated statements that no work available and absence of indication work would be available in future as termination of employment - Board concluded Employer failed to prove Employee resigned - Employee entitled to receive wages, overtime wages, general holiday wages, vacation wages, and wages in lieu of notice - Substantive Order.

WAGES - Adjustments - Garnishment - Board adjusts amount owing to Employee for wages, overtime wages, general holiday wages, vacation wages, and wages in lieu of notice for amount to be remitted to Maintenance Enforcement as per Notice of Garnishment served on Employee - Substantive Order.

T.F. t/a Scissors, Paper & Stone Hair Studio - and - L.S.

Case No. 195/12/ESC

January 21, 2013

NOTICE - Exemption - Wilful misconduct - Employer appealed Order to pay two weeks wages in lieu of notice asserting she was entitled to terminate Employee’s employment without notice when Employee, in spite of a previous warning, left work early without making any attempt to contact Employer, then failed to provide medical note following day - As stated in prior Board decision, for employer to discharge onus of proving an employee has acted with requisite degree of wilfulness as set out in subsection 62(1)(h) of *The Employment Standards Code*, it must satisfy Board that employee consciously and deliberately engaged in acts or omissions which he or she knew, or ought reasonably to have known, were wrongful or forbidden - Employer has not met its onus to establish, Employee’s conduct constituted wilful misconduct - Employer not exempt from notice requirements under section 61 of the *Code* - However, Employer did establish Employee was employed for less than one year and was only entitled to receive one week’s wages in lieu of notice - Substantive Order.

PRACTICE AND PROCEDURE - Legislative Change - Employer relied on exceptions in subsection 62(1)(h) of *The Employment Standards Code* - Board noted subsection was amended effective January 1, 2012 to provide that notice not required when employment is terminated “for just cause” - However, as Employee’s employment was terminated on November 3, 2011, case to be decided under provisions of the *Code* which were in effect prior to January 1, 2012 - Substantive Order.

North Perimeter Service Centre, Inc. - and - Director, Employment Standards Division - and - J.H.

Case No. 136/12/ESC

February 27, 2013

NOTICE - Just Cause - First case in which Board interprets just cause standard of *The Employment Standards Code* which came into force on January 1, 2012 - Standard of just cause founded upon principle of repudiation of contract which occurs where one party deprives other of substantial benefit of contract - When employee's conduct is incompatible with fundamental term of employment agreement, employer may terminate employment without notice or wages in lieu - Board employs contextual approach to just cause standard which requires consideration of: 1) the nature and extent of the employee's misconduct, if any; 2) the surrounding circumstances, including the circumstances of the employee and those of the employer; and, 3) whether termination is a proportional response to the misconduct having regard to all of the relevant circumstances - Once it has been established that employee was dismissed without notice, onus shifts to employer who seeks to take advantage of the exceptions.

DISCHARGE - NOTICE - Just Cause - Employer appealed Order to pay Employee wages in lieu of notice claiming it had just cause to terminate Employee's employment because his absenteeism detrimentally affected its operations and jeopardized its relationships with customers and other staff - Employer relied upon section 62(1)(h) of *The Employment Standards Code* - Board employed contextual approach to just cause standard - Board considered nature and extent of employee's misconduct; surrounding circumstances; and, whether termination was proportional response to misconduct - Board found, following Employee's return to work from parental leave, he left work early once and was absent once to look after his child, both times with express permission - Absences were limited, condoned by Employer, and Employee was honest at all times regarding reason for requesting to be absent - Occasional or isolated absence not generally regarded as sufficiently serious misconduct to justify summary dismissal - Employee's absences did not constitute misconduct and not indicative of neglect of duty, disobedience, or conduct that was incompatible with his employment duties - Employee was never warned that absences could lead to discipline or termination - However, given small number of mechanics and time sensitive nature of its business, absenteeism may have prejudicial effects upon Employer's relationships with its clients and morale of other employees - Notwithstanding potential effect of employee's absences, Employer did not have absenteeism policies - Board determined termination of Employee was disproportionate response to his absences - Employer did not satisfy Board that Employee was terminated for just cause - Employee entitled to wages in lieu of notice.

REMEDY - Costs - In addition to wages in lieu of notice, Board awarded costs, under section 125(5)(a) of *The Employment Standards Code*, to Employee in amount representing one day's wages at his current wage rate with his present employer - Costs awarded on basis that Employer's adjournment request, made one hour prior to start of scheduled hearing, on basis of nebulous "unforeseen circumstances" constituted unreasonable conduct by Employer.

Quick Auto Lease Inc. - and - G.Z.

Case No. 102/12/ESC

March 1, 2013

EVIDENCE - Onus of Proof - When determining cases concerning managerial exemption set out in section 2(4) of *The Employment Standards Code* onus of proof lies with party seeking to rely upon managerial exemption - Substantive Order.

WAGES - EXCLUSIONS - Overtime - Managerial Exemption - Employer disputed Order to pay overtime to Employee submitting she performed management functions primarily and was exempt from overtime provisions of *The Employment Standards Code* as per section 2(4)(a) - Mere supervision of employees not determinative of managerial status - Employee had limited role in hiring and firing, played no significant role in policy making or developing business plans; and, had no ability to purchase materials or to make financial commitments - Evidence fell short of demonstrating she performed meaningful management functions - Employee therefore not exempted from overtime provisions of the *Code* - Substantive Order.

WAGES - Overtime - Record Keeping - Employer disputed Order to pay overtime stating calculations were not correct because Employee did not work amount of overtime she asserted - Employment Standards Officer based overtime calculations on Employee's record of hours in personal agenda book - Board found record not reliable as it contained notations in inconsistent format; missing start times or end times; and did not indicate whether breaks were taken - Employer's documents were unreliable consisting of calendar printouts from intermittent periods with handwritten notations of when Employee arriving at and departing from work and with inaccurate notations suggesting Employee not working - Although Employee's records not accurate, it did constitute evidence Employee worked in excess of regular hours of work on consistent basis - Employer did not fulfill statutory obligation under Section 135 of *The Employment Standards Code* to keep reliable records - Employer cannot rely on that failure when challenging reliability of calculations of Employment Standards Officer - Employee entitled to receive overtime but amount adjusted to reflect daily unpaid meal break - Substantive Order.

WAGES - Salary - Overtime - Employers and employees may agree upon a salary that includes payment for specific amount of overtime - Employment agreement, whether oral or written, must set forth specific maximum hours of work expected of employee - Employee remains entitled to overtime for all hours worked in excess of specific hours agreed to be inclusive of the salary - Agreement cannot place employee in position whereby he or she is working for less than minimum wage - Substantive Order.

Pursuant to *The Workplace Safety and Health Act*

Burntwood Regional Health Authority - and - Director, Workplace Safety & Health - and – A.P.

Case No. 271/11/WSH

November 13, 2012

PRACTICE AND PROCEDURE - Hearings - De novo - Director of Workplace Safety and Health argued right to appeal to Board was an appeal merely "on the record" - Appellant disagreed and wanted to present fresh evidence to challenge validity of Director's investigation - Section 39(5) of *The Workplace Safety and Health Act* provides for Board to conduct hearing and accord interested persons right to present evidence and make submissions, which expresses legislative intent that Board conduct hearing *de novo* - Section 37(3) of the *Act* indicates Director "is not required to hold a hearing before deciding an appeal" - Fact Director has statutory authority to decide appeal without a hearing, provides further support that appeal of Director's decision must be *de novo* proceeding - Board directed hearing be conducted on *de novo* basis.

DISCRIMINATORY ACTION - *Prima facie* - Employer suspended Employee for three days for failing to follow established organizational channels when he sent an e-mail to a member of Board of Directors regarding a large cellular bill incurred by a senior executive - Employee filed complaint with Workplace Safety and Health maintaining decision to discipline was influenced by health and safety concerns which he had raised - Director affirmed decision of Workplace Safety and Health Officer that suspension was not contrary to *The Workplace Safety and Health Act* - Employee appealed decision to Board - Board noted suspension without pay constitutes a "discriminatory action" defined in section 1 of the *Act* which includes an act or omission which adversely affects any term or condition of employment - Reference by Employer in discipline letter to previous occasions Employee failed to follow proper channels established Employee acted in manner not condoned and confirmed Employer had issued clear direction that such conduct was unacceptable - Fact that Employee raised health and safety issues year before was not sufficient to establish nexus between disciplinary suspension and one of the protected forms of conduct in Section 42(1) of the *Act* - Employee was not disciplined for raising those matters - Board satisfied Employee failed to establish *prima facie* case that reasonable and timely nexus between suspension and any conduct described in section 42(1) of the *Act* - Appeal dismissed.

Oakwood Roofing Sheet Metal Co. Ltd. - and - Director, Workplace Safety & Health

Case No. 216/12/WSH

November 22, 2012

TIMELINESS - Employer filed appeal of Notice of Administrative Penalty one day after time limit prescribed by Section 53.1(7) of *The Workplace Safety and Health Act* - Time limit is mandatory - Board does not have any authority to extend time limit to appeal - Appeal dismissed - Substantive Order.

SUMMARIES OF SIGNIFICANT COURT DECISIONS

Manitoba Government and General Employees' Union - and - Manitoba Labour Board, Western Regional Health Authority, Southern Regional Health Authority, Interlake-Eastern Regional Health Authority, Canadian Union of Public Employees and Manitoba Association of Health Care Professionals

Court of Queen's Bench of Manitoba

MLB Case Nos. 161/12/LRA, 185/12/LRA & 190/12/LRA

Docket No. CI 12-01-79716

Heard by Justice Greenberg

Delivered October 15, 2012

The Manitoba Labour Board issued three orders directing that representation votes be conducted for the bargaining units that had been created by the amalgamation of the health authorities. The Board determined that, as the employees in the bargaining units worked in a number of work sites spread over the province, the votes should be conducted by mail-in ballot. The Board requested the employers provide it with lists of the names and addresses of all employees. As part of the election process, the Board provided lists of employee names to the unions. Both the Manitoba Government and General Employees' Union (MGEU) and the Manitoba Association of Health Care Professionals requested that the Board provide them with lists of the employee addresses. The Board refused the request explaining that it was bound by *The Freedom of Information and Protection of Privacy Act (FIPPA)* which prohibited it from disclosing personal information. The MGEU filed an application in the court seeking declaratory and prerogative relief with respect to the decision of the Board to refuse to provide the mailing addresses. It also applied for an interlocutory injunction to prohibit the Board from conducting the representation vote until the court had reviewed the Board's decision regarding the release of employee addresses.

Held: While the court as a general rule had jurisdiction to stay an order of an administrative tribunal or grant an injunction to prevent the process from continuing, section 143 of *The Labour Relations Act* deferred the ability to do so until the case was complete. While the MGEU argued that the order of the Board regarding the release of employee addresses was a final order on that issue, the only "final" order in the context of the applications for certification would be the orders of certification. The intent of section 143 was to prevent the fragmentation of proceedings. The MGEU argued that the Board's decision misconstrued and/or misapplied the provisions of *FIPPA* and compromised the democratic process by preventing the distribution of information about the union to the employees, which information would help the employees make an informed decision when voting. Section 2(b) of the *Charter* prevented a government entity from interfering with a person's right to express himself, but the section generally did not require the government entity to provide the person with a means of expression. There was no suggestion that the Labour Board's order or decision has prevented the MGEU from communicating with the employees. The court found that the merits of the *Charter* challenge were weak. Finally, MGEU had not established how an injunction would assist it in the cases where two of the three votes had already taken place, nor had it established that a re-vote by an informed electorate would not provide it with an adequate remedy. Therefore, the motion for an injunction was dismissed.

STATISTICAL TABLES

TABLE 1
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT*
(April 1, 2012 – March 31, 2013)

Type of Application	Cases Carried Over	Cases Filed	Total	Disposition of Cases					Number of Cases Disposed	Number of Cases Pending
				Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Take Action		
Certification	10	36	46	24	6	8	0	0	38	8
Revocation	0	3	3	1	0	0	0	0	1	2
Amended Certificate ¹	4	27	31	15	0	0	0	0	15	16
Unfair Labour Practice	22	37	59	1	7	34	0	2	44	15
Board Ruling	24	10	34	3	1	5	0	0	9	25
Review and Reconsideration	4	4	8	1	5	0	0	0	6	2
Successor Rights	1	4	5	2	0	1	0	0	3	2
Termination of Bargaining Rights	1	3	4	3	0	0	0	0	3	1
Changes in Work Conditions (Sec.10(1)) ²	0	0	0	0	0	0	0	0	0	0
Changes in Work Conditions (Sec. 10(3)) ³	0	9	9	8	1	0	0	0	9	0
Duty of Fair Representation (Sec. 20)	8	19	27	0	10	4	0	0	14	13
Permit for Union Visit (Sec. 21(2))	0	0	0	0	0	0	0	0	0	0
Access Agreement (Sec. 22)	0	1	1	1	0	0	0	0	1	0
Ratification Vote Complaint (Sec. 69, 70)	0	0	0	0	0	0	0	0	0	0
Minister Requires Ratification Vote (Sec. 72.1)	0	0	0	0	0	0	0	0	0	0
Religious Objector (Sec. 76(3))	2	5	7	3	2	0	0	0	5	2
First Collective Agreement (Sec. 87(1))	1	4	5	4	0	0	0	0	4	1
Subsequent agreement (Sec. 87.1(1))	0	0	0	0	0	0	0	0	0	0
Appoint Arbitrator (Sec. 115(5))	0	8	8	6	0	2	0	0	8	0
Extension of Time Limit (Sec. 130(10.1)) ⁴	0	0	0	0	0	0	0	0	0	0
Disclosure of Union Information (Sec. 132.1)	0	0	0	0	0	0	0	0	0	0
Referral for Expedited Arbitration ⁴	15	90	105	-	-	-	-	-	81	24
Totals	92	260	352	72	32	54	0	2	241	111

1. Eleven of the cases filed were Amended Certificate/Board Ruling (AC/BR), but for statistical purposes have been reported as Amended Certificates. Eleven of the sixteen pending cases were AC/BR.
2. When an Application for Certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the Application is disposed of.
3. Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this section are for an extension of this period of up to 90 days.
4. Extension of Time Limit for expedited decisions.
5. See Table 3 for a breakdown of statistics relating to applications for referral for expedited arbitration.

TABLE 2
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES
(April 1, 2012 – March 31, 2013)

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending	Vote Conducted but not counted
Certification	13	1034	9	2	1	1	3
Revocation	2	51	1	0	0	1	0
Intermingling	5	8285	0	0	0	5	0
Displacement	1	6	0	1	0	0	0

TABLE 3
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION
(April 1, 2012 – March 31, 2013)

Cases Carried Over	Referrals Filed	TOTAL	Cases Where Mediator Appointed	Disposition of Cases					Cases Disposed	Cases Pending
				Settled by Mediation	Settled by Parties	Arbitration Award Issued	Declined to Take Action	Withdrawn		
15	90	105	25	19	25	6	2	29	81	24

TABLE 4
STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE*
(April 1, 2012 – March 31, 2013)

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
44	74	118	65	16	2	83	35

TABLE 5
STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY AND HEALTH ACT*
APPLICATION FOR APPEAL OF DIRECTOR'S ORDER
(April 1, 2012 – March 31, 2013)

Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
2	11	13	3	5	8	5

TABLE 6
STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT*
(April 1, 2012 – March 31, 2013)

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

TABLE 7
STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT*
(April 1, 2012 – March 31, 2013)

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

TABLE 8
STATISTICS RELATING TO BOARD HEARINGS
(April 1, 2012 – March 31, 2013)

During the reporting period, 209 matters were scheduled to be heard involving 223 applications. ¹	Scheduled Hearing dates	Actual Hearing dates that Proceeded	Percentage of Actual to Scheduled
Number of hearing dates ²	441	135	30.6

1 A "matter" may deal with one or more applications. For example, a matter could involve one application for unfair labour practice or a matter could involve an unfair labour practice and a related application for certification.

2 A hearing can be either a full or half day.

TABLE 9
FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1, 2012 – March 31, 2013)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<u>Pending from Previous Reporting Period</u>				
International Union of Operating Engineers, Local 987	Town of Lac du Bonnet	February 10, 2012	Board imposed first collective agreement	Expiry May 13, 2013
<u>New Applications from Current Reporting Period</u>				
Manitoba Nurses Union	Pinaow Wachi Personal Care Home	July 31, 2012	Board imposed first collective agreement	Expiry September 30, 2013
Manitoba Nurses Union	Norway House Cree Nation	October 5, 2012	Board imposed first collective agreement	Expiry December 2, 2013
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union	Russel Metals	December 28, 2012	Board imposed first collective agreement	Expiry March 27, 2014
International Union of Operating Engineers, Local 987	Rural Municipality of Glenwood	March 26, 2013	Pending	

TABLE 10
SUBSEQUENT AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1, 2012 – March 31, 2013)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<u>Pending from Previous Reporting Period</u>				
Nil				
<u>New Applications from Current Reporting Period</u>				
Nil				