THE LAW AND THE ALBERTA LABOUR RELATIONS SYSTEM:

PERSPECTIVES, EVALUATIONS, AND RECOMMENDATIONS

PREPARED FOR

THE INSTITUTE OF LAW RESEARCH AND REFORM

BY

THE LABOUR-MANAGEMENT RELATIONS PROJECT

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PREFACE

The process of interaction between organized labour and employers setting out the terms and conditions under which employees work, and administering the employment relationship generally is a perennial topic of interest, comment, discussion, and debate. In Alberta, and indeed in Canada as a whole, this labour-management relations system, or labour relations system for short, maintains a high profile and importance within our economic, political, and social life and its functioning frequently touches the lives of all Albertans. Labour relations is a very controversial subject, with some supporting our contemporary system while others do not. It has been the subject of numerous enquiries often by investigators charged with the monumental task of not only articulating its alleged faults and shortcomings but also advocating changes and reforms in the system, particularly in its legal foundations.[1] One of the best known and more comprehensive studies was commissioned by the Government of Canada in 1966 and resulted in the 1968 publication of Canadian Industrial A of the Task on Labour Relations. Ottawa: Privy Council Office. 1968. This study resulted in the publication of the most comprehensive review of labour relations in Canada, and some of its recommendations were implemented in various Canadian jurisdictions.

The builders of our labour relations system built it well.[2] Despite its 40 years of age and its critics and reformers, the basic foundations of the system remain in place. To be sure there have been changes. However, by and large they represent modifications or a "retro-fit" of the system rather than fundamental changes in the logic and foundations of the system itself.

There is a logic to our system of labour relations. The foundations of freedom of association, certification, negotiations, grievance arbitration, work stoppages, and our system of dispute settlement collectively constitute a system designed to lead to the establishment of the terms and conditions of work and the administration of the employer-employee relationship in a way not only acceptable to the principal parties but also in a relatively harmonious, co-operative, and peaceful

manner and still offer the greatest amount of freedom and self-determination to the parties.

The fundamental structure of our labour-management relationship is a system of interactions established in the law. It is the law that has not only selected the instruments within which the parties shall interact but also attempts to define the responsibilities of the parties to the system as a whole.[3]

The principle classes of critics consist of organized labour, employers, the public, and government. Understandably, given the fact that the relationship is one of law, criticism is of the law and the reforms and changes urged are in the law. The thrust of complaint by labour and employers is primarily on how the system does or does not protect their respective interests in the relationship. The public, while not privy to all aspects of the relationship, is well aware of the possibility of a work stoppage and its concomitant impact on the consumer and our economic and social life generally. To government, an institution traditionally charged with the care and nuture of the labour relations system as a whole, falls the task of responding to the concerns of the interested parties, assessing the system as a whole, and deciding what if any reforms and changes to introduce to it.

Accordingly, and given the role of law in the labour relations system and its continuing controversial nature, it was quite appropriate that in January of 1975 the Institute of Law Research and Reform commissioned a study of the labour-management relationship in Alberta. The funding for this project was provided by the Alberta Law Foundation. The project proposed by the Institute far exceeded in magnitude any work previously commissioned by the Institute outside its own staff. However, the Institute considered that the value of the research itself would be very substantial, and, while the results were difficult to forecast, it expected that the public interest of Alberta would be well served by a new look at the field of labour relations conducted by an inter-disciplinary group and with the benefit of extended consultations with interested groups in Alberta and of a consideration of the situation generally in this province.

The initial terms of reference set out for this study called for the following:

1. A comprehensive survey of the law relating to labour-management relations, particularly the resolution of disputes, and a review of all jurisdictions where the experience was considered relevant namely Canada, United States, Europe, and Australia.
2. An analysis and assessment of the effectiveness of types of laws dealing with labour-management relations.
3. An assessment of the Alberta environment with consideration given to what legislative structure, whether new or tried elsewhere, would likely be most suitable for Alberta.
4. Recommendations for reform of the law.
5. The preparation of a legal survey and the preparation of a critical and comparative summarization and analysis thereof.
6. The preparation of an annotated bibliography dealing with all topics within the labour-management relations system.
7. A program of consultation, probably by personal interview, with all interested parties including trade unions, management, and government in order to consider specific problem areas in Alberta and to obtain reaction to specific proposals.
8. A social-economic study of Alberta to identify the factors which have to be taken into consideration and their relationship.
9. The preparation of a final report with recommendations.

The institute commissioned a research team consisting of two lawyers and two labour economists. The former category includes Mr. Anton M.S. Melnyk, Q.C., B.A. (Alberta), L.L.B. (Alberta), L.L.M. (Harvard) of the Edmonton firm of Melnyk, McCord & Meiklejohn, labour-management arbitrator and until 1980 an Associate Professor of Labour Law in the Faculty of Business, University of Alberta. He also served as Project Director. Mr. Peter Freeman holds the B.A. (Manitoba), L.L.B. (Manitoba) and M.L.L.S. (Washington) and until July, 1980 was a Professor of Law in the Law Faculty, University of Alberta. He is currently Law Librarian, Supreme

Court of Canada, Ottawa and Librarian Designate to the University of Alberta. The labour economists consisted of Dr. S.M.A. Hameed and the late J. Douglas Muir both of the Faculty of Business at the University of Alberta. Dr. S.M.A. Hameed holds the B.A. (Punjab), M.A. (Punjab), and Ph.D. (Wisconsin) and was a senior research economist with the Canada Department of Labour, Ottawa from 1964 to 1968. He subsequently joined the Faculty of Business at the University of Alberta and is currently the Chairman, Department of Industrial and Legal Relations, and Professor, Industrial Relations. The late Dr. J. Douglas Muir B.Com. (UBC), M.B.A. (Berkeley), Ph.D. (Cornell) joined the Faculty of Business in 1963. He was active as a labour-management arbitrator and was a research contributor to the 1968 Federal Task Force Study into Labour-Management Relations in Canada. From 1971 to 1974 he was Dean of the Business School at the University of Nairobi, Nairobi, Kenya. At the time of his passing on April 11, 1976 he was a Professor of Industrial Relations in the Faculty of Business at the University of Alberta and the Dean Designate of that Faculty. Subsequent to his passing, he was replaced in 1981 by Associate Professor Edward G. (Jed) Fisher, who joined the Faculty of Business, University of Alberta's Department of Industrial and Legal Relations in 1977 and was awarded the following degrees: B.A. (Colorado), M.A. (Indiana) and Ph.D. (UBC). Dr. Fisher also is a labour-management arbitrator.

Subsequently, as research needs were identified and as additional manpower resources were required, other individuals were retained to work on either project research or to assist in the preparation of this report. They include: Dr. M. James Dunn, Associate Professor of Statistics, Faculty of Business, University of Alberta; Dr. Mordehai Mironi, at one time a visiting Professor of Labour Relations at the University of Alberta and now a Professor of Law in the Faculty of Law, Tel Aviv University, Tel Aviv, Israel; Ms. Christina Gauk, Edmonton lawyer; Timothy J. Christian, Assistant Professor of Law in the Faculty of Law at the University of Alberta; W. Laird Hunter, originally a graduate student in International Law and subsequently associated with the firm of Wright, Chivers, and Company in Edmonton and currently a student on the L.L.M. program at Queen's University; Robert Philp, the solicitor, Alberta Labour Relations Board; R. Neil Tidsbury,

originally a graduate student in labour-management relations and now employed with the Construction Labour Relations-Alberta; Dr. E.G. (Jed) Fisher, Associate Professor of Labour-Management Relations, Faculty of Business, University of Alberta; and Dr. C. Brian Williams, Professor of Labour-Management Relations, Faculty of Business, University of Alberta.

Although the labour-management relationship maintains a high profile and is a subject of comment from many differing circles in Alberta society, it is not an activity that is properly understood except by the labour-management relations community itself. Even within that community there are those who, regrettably, do not understand it as well as membership in the community would suggest. Greater understanding of the system by a broader community would alone improve the effectiveness of the system itself. Likewise, uninformed comment can be detrimental to the system and indeed further compounds an already difficult situation.[4] The issues within a labour relations system are complex. Indeed the system itself is complex. The point of departure is to understand the system and how it does or does not work. It is only after doing so that one can truly assess and evaluate a given proposal for reform and change in the system. To illustrate, within recent years we have witnessed the growth of specific legislative prohibition against the right to strike affecting certain classes of employees but at the same time the introduction of the negotiating process to these same classes of employees. Such action was based on the belief that the introduction of a specific prohibition would lead to the absence of the work stoppage, and the consequences that such an act has for the continuation of services, and that the negotiating process could effectively function in a no strike right environment. The desired effect was the latter. The method selected to obtain that effect was the former. The consequence, in effect, the replacement of the legal conduct of a work stoppage with the conduct of an illegal work stoppage and virtual ineffectiveness in the negotiating process, was not quite what the reform advocates had in mind. It was and is an example of a reform undertaken without a true and complete understanding of what the labour-management relationship is truly all about and specifically the relationship between effectiveness in the

negotiating process and the work stoppage right.[5]

Finally, we wish to offer the following observations on the character of the report itself. First, the central focus of this report is on the law of the Alberta labour-management relationship. As will be pointed out later, the law is only a part of the labour relations system. Further, the labour relations system in turn is only a part of the much broader industrial relations system of Alberta. We do not claim to report on the totality of the Alberta industrial relations system. It is in this sense that we adopt a rather narrow focus in this report. Second, this report assumes a readership that is reasonably familiar with not only the Alberta labour relations system but also the Alberta industrial relations system. It is our intention in this report to get at the issues quickly with a minimum of introduction and preparation. We believe that there is ample background material already in print and we urge it be consulted by the more uninformed reader.[6] In effect it is our intention to speak to those who make up the contemporary Alberta labour relations community regardless of the role or function served within that community. Third, and possibly of the utmost importance, we will focus not on matters of modification nor instruments of "retro-fit" but on the basic foundations upon which the Alberta labour relations system is built, i.e., freedom of association, certification, negotiations, grievance arbitration, work stoppages, and dispute settlement. Unlike many who have gone before us we will call in for review many of those foundations and will argue that some do not serve the contemporary labour relations system well. In addition, we will argue that in other areas we have basic foundations that in our opinion are basically sound but their effectiveness has been eroded by more recent modifications and instruments of "retro-fit". In this area we call for a return to the first and basic foundations. Fourth, given these basic foundations and given the nature of contemporary life in Alberta we believe the existing system functions about as well as one could ask of it and no amount of "tinkering" would likely improve upon it. Real improvement, in our opinion, lies in review and reconsideration of the basic first foundations of the system. That is what we have done. Finally, it is our hope that this report will stimulate discussion and debate in not only the

local labour relations community of Alberta but also throughout Canada. We have deliberately prepared it to do so. It is not our wish that this report be filed and that it quietly take its place within the silent environment of the many that have gone before it. We urge discussion, debate, and commentary.

The report of the Alberta Labour-Management Relations Project follows. It was originally contemplated that this report would be available during the year 1977. Clearly, this report is a good five years late. This delay is in part the result of circumstances that prevented the original four principal investigators from giving to the project the commitment originally contemplated and in part the result of the unusually active legislative programs from 1976 through 1981 affecting Alberta labour relations. In April of 1976 we learned of the loss to this project of our dear friend and colleague Dr. J. Douglas Muir. We do not use his untimely passing simply as an excuse but as a measure of the loss to this project of his leadership, vigour, vitality, and inspiration. During 1977 The Alberta Labour Act, 1973 was placed under extensive review and numerous amendments to it followed. The year 1977 also saw the passage of The Public Service Employee Relations Act and with it the introduction of a rather extensive labour relations system to new areas within the public sector fields of employment in Alberta. In early 1980 The Alberta Labour Act, 1973 again was opened up for review which subsequently led to The Labour Relations Act of 1980. In a very real sense this extensive legislative activity meant to us that our labour relations system was almost continuously changing and, in effect, considering the focus of this project, represented a frequently moving target. Although not by design, we believe that with most of this activity behind us the year 1982 offers a comparatively stable labour relations environment and thus an appropriate time for the release in this report of our findings and recommendations. To the Institute authorities who repeatedly granted our request for additional time we extend our deepest appreciation.

Anton M.S. Melnyk, Q.C.
Edmonton, Alberta
April 10, 1982

REFERENCES

PREFACE

1. A number of studies and inquiries into labour-management relations were conducted during the period covered by this report, 1975-1981. They are presented in Part A - Bibliography.

2. For a review of the evolution of our labour-management relations system and of its law see: C. Brian Williams, "Notes of the Evolution of Compulsory Conciliation in Canada". Industrial Relations (Laval) Volume XIX, No. 3, July, 1964, pp. 300-324 and Chapter 3 of John Crispo, The Canadian Industrial Relations System, Toronto: McGraw-Hill Ryerson Limited, 1978, 570 pp.

3. For an overview of the role of the law in our systems see: A.W.R. Carrothers, Collective Bargaining Law in Canada, Toronto: Butterworth, 1965, 553 pp. and H.W. Arthurs, D.D. Carter, and H.J. Glasbeek, Labour Law and Industrial Relations in Canada, Toronto: Butterworths, 1981, 291 pp. and Paul C. Weiler, Reconcilable Differences: New Directions in Canadian Labour Law. Toronto: Carswell Company Limited, 1980, 335 pp.

4. It is our opinion that the quality of labour-management relations reporting by the Alberta media is neither accurate nor reliable. Its efforts do not serve the system well.

5. Two recent studies conducted by labour-management relations students at the University of Alberta are noted in support of this view: David Thomas Robottom, Revivification of Labour Strike Utility: A Study of the Incidence, Declining Effectiveness, and Alternatives to Strike Action, Edmonton: Faculty of Business, University of Alberta, (MBA Thesis) Fall, 1978, 194 pp. and Frank Molnar, "Should Public Sector Employees be Granted the Right to Strike?-An Examination of the Alberta Situation." Edmonton: Faculty of Business, University of Alberta, (Mimeo.) July, 1981, 98 pp.

6. To be of assistance we have assembled a bibliography of literature on topics within this report. It is presented in Part B - Bibliography.

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INTRODUCTION

THE ISSUES

1. There are three factors central to the question of Alberta's future economic growth and its social and political stability. They will also determine the quality of life to be enjoyed by all Albertans as well as the form and degree of their participation in our economic, social, and political affairs. These factors are: (i) the optimal use of our material, technological, and intellectual potential, (ii) development of work settings that will ensure high productivity and self-actualization and, (iii) through social and legal efforts, the channelling of aggressive and conflict-oriented behaviour into economically, socially, and politically acceptable avenues in order to enrich the day to day life of all Albertans.

2. The joint contribution of labour and management in all three areas mentioned above is vitally important as both directly influence economic, social, and political affairs and directions. However, it appears that labour relations considerations do not feature prominently in the formulation of broad public policies, particularly economic and social policies. If the current issues in our labour relations system and our work environment are not effectively responded to, the dream of Alberta's economic prosperity, social harmony, and improved quality of life may not be realized.

3. In spite of Alberta's economic growth, its social and political stability and the contributions of labour and management to each, the fact remains that to some observers our contemporary labour relations system does not seem to serve us well.[1] Without change there is little reason to believe it would serve us better in the future. There is no shortage of suggestions of what is wrong and why. We have reviewed many and the following represents to us the current major issues in the functioning of our labour

relations system.

4. a) Incidence of Work Stoppages. During the last 10 years Canada has lost the second highest number of man-days due to work stoppages of all industrialized countries.[2] This loss is very real both in economic terms and to those affected by them either as participants or consumers of the unavailable product or service. Work stoppages are of three types: first agreement stoppages, agreement renewal stoppages, and stoppages during the term of the collective agreement. According to one authority, first agreement stoppages account for 10%, agreement renewal for 65%, and stoppages during the agreement term for 25% of all strikes.[3] The first and second types are usually legal stoppages. The third type, by definition, is illegal. The incidence of stoppages in Alberta is not as high as other jurisdictions relative to the number of agreements negotiated in any given year.[4] Further, there does not appear to be a noticeable trend in our stoppages other than to note that, with increased economic activity and extension of the labour-management relationship to new occupations and industries, stoppages are increasing. We are also experiencing increased growth of the stoppage in the public sector fields of employment. Given the expansion of the labour-management relationships both of these observations are to be expected. Alberta's work stoppage record from 1975 to 1980 is set out in Table 1.[5] In order to give these statistics some perspective we point out that in 1980 225,000 man-days were last due to industrial injuries and over 900,000 were lost due to employee illness.

b) Nature of Service Affected by Work Stoppage. There is concern not only with respect to the number of man days lost in recent years but also with respect to the kind of services which have been shut

TABLE 1

LEGAL STOPPAGES IN ALBERTA, 1975-1979

Year	Number	Man-Days Lost
1975	31	380,158
1976	26	106,910
1977	12	66,810
1978	51	447,340
1979	27	62,560
1980		

down. In several instances strikes by professional groups or by groups of employees which were traditionally viewed as providing an essential service have shocked the public. Added to these developments is a growing public awareness of labour relations brought out by the nature of reporting in the mass media. Generally speaking crises and mishaps, such as the failure of the negotiating process, tend to pre-empt the reporting of less significant but peaceful events such as the negotiation of an agreement. In essence, the cumulative effect of all of these developments can be a generally held questioning and loss of confidence in the usefulness and validity of the negotiating process as we view it.

c) Failure of the Negotiating Process. Our labour relations system is committed to the institution of periodic labour-management negotiations with the view of arriving at a collective agreement setting out the negotiated terms in that agreement. This negotiating process is distinctly adversarial in nature. It is also true that our system, with one or two exceptions, does not dictate what is to be in that agreement nor comment on the quantitative dimension of the terms negotiated. The substantive terms and the economic impact of the agreement are determined within the negotiating process. It is our opinion that the effectiveness of the negotiating process is a function of its success in bringing forth a collective agreement. Failure to produce an agreement, and the occurrence of a subsequent work stoppage, represents a failure of the negotiating process. Some

people believe that the effectiveness of the negotiating process is rapidly decreasing particularly with its more recent introduction into the new fields of employment such as the professions and the public sector. There are those who explain this on grounds of lack of negotiating skills on both sides. Recognizing that it does indeed take skill to negotiate a collective agreement, but no skills whatever to arrive at a work stoppage, there is probably merit in this explanation. Others argue that the degree of difference in the expectations of the parties in negotiations is so great that the negotiating process simply cannot handle it. Others point out that without a commitment to reach an agreement there will be no agreement. This is certainly true. It is argued that the commitment simply and more frequently does not exist. Again, given such a situation no amount of negotiating will bring forth an agreement. Moreover, some observers point out that lack of ability to induce commitment or to resolve divergent expectations often stems from the extent to which work stoppages impose costs on either or both sides. It is imperative that work stoppages impose costs on both sides in order to generate concessions either prior to or after the stoppage commences. Generally speaking, the higher the costs for both sides together the greater is their commitment to settle their differences without resorting to the strike weapon.

d) Diminished Effectiveness of the Work Stoppage. The raison d'etre of a strike or lockout right is its potential as a catalytic agent in bringing the two negotiating parties closer to an agreement. The strike or lockout potential speaks to the costs flowing to the parties upon the failure of the negotiating process to bring forth an agreement. As noted above, the effectiveness or utility of this primarily economic sanction is related to the extent of its perceived ability to penalize the parties for failing to agree. Several

technological and institutional changes have provided a degree of protection to both labour and management against the penalizing effects of a strike or lockout. Some managements have increased their capability of inventory buildup and catchup production, as well as their ability to continue production due to automation and supervisory staff. Moreover, a few employers participate in strike insurance schemes and many public sector employers have received fiscal year revenues through taxation. Employees, by contrast, will reduce their vulnerability to the extent that they can depend for a longer time on personal savings, loans, strike pay, social assistance, or alternative employment. However, such things as double-digit interest rates clearly reduce the abilities of both labour and management to engage in or withstand strikes. Canadians, and to a somewhat lesser extent, Americans have a reputation for striking long and hard which is reflected in statistics on the duration of strikes. The average duration of work stoppages each year depends upon the breakout of stoppages in that year according to contract status: first agreement, agreement renewal and during the term of the agreement. In Canada and Alberta first agreement strikes last the longest, roughly seven to ten work weeks, agreement renewal strikes have an intermediate length, between five and seven work weeks, and strikes during the term have the shortest duration, one to two work weeks. These durations may be reflective of what some observers perceive as the diminished effectiveness of the strike.

e) Labour-Management Negotiations and Inflation. Although inflation has been described as a world-wide phenomenon, many critics cite the alleged monopoly power of trade unions as the cause of negotiated inflationary economic settlements. Public understanding of the situation is confused because of the circularity; namely, is it inflation that causes the trade unions to demand high wages or is it the high

wage settlements obtained that cause inflation? Moreover, economists have not developed a single all-embracing theory of inflation but point instead to various sources of inflation such as government spending, the prices of imports as inflated by currency devaluation, interest rates, rate of expansion of the money supply, cartel prices for oil, price setting especially in industries buttressed by tariff walls, and competition for scarce resources in expanding industries, in addition to wage settlements. Even though there is no conclusive evidence, the public often tends to blame trade unions.

f) Adversarial Processes and the Labour Relationship. Our labour relations system embraces processes that are distinctly adversarial in nature. We noted earlier the adversarial nature of the negotiating process. In addition, our system of law is an adversarial system. The certification and grievance arbitration processes, which tend to be quasi-legal processes, especially the latter, are also adversarial in nature. It is our opinion that many observers of the labour relations system of Alberta neither truly understand the significance of the adversarial nature of our system nor appreciate why the system is necessarily adversarial in nature. Often the existence of the adversary relationship and adversarial processes are cited as faults within the system and it is argued that they per se are the generators of industrial conflict. It is argued that the system should be purged of its adversarial nature and its adversarial processes. We do not agree with this view as to us it denies the fact that the labour-management relationship itself is inherently adversarial in nature. It is predicated upon the "resolution of conflict through conflict." The former conflict pertains to the competing or conflicting but sometimes coinciding interests, goals and objectives of labour and management. It focuses on such things as wages, hours and working conditions as well as the so-called management's rights. The

latter conflict relates to the use of the economic sanction or strike to resolve the former conflict. The point we wish to make is that the existence of the former conflict does not mean that the latter conflict will occur automatically. Indeed, over 90% of all collective agreements that come open for renegotiation are reached without resort to the lawful work stoppage. In such instances, the threat of the latter type of conflict presumably induced labour and management to resolve their differences and consummate a collective agreement. The labour-management relationship also is inherently adversarial in nature in that labour and management do not equally and jointly, as of one mind, welcome and accept the emergence of what we call the labour-management relationship.[6] For example, in our opinion it is a gross error to encourage an adversarial process such as the negotiating process, which is based on economic rather than argumentative conflict as in law or arbitration, when for one reason or another the work stoppage possibility has been removed, or is likely to be removed, and in so doing prevents the negotiating process from fulfilling and following its designed course. Not to recognize such an error or to underestimate the consequences of such intervention on the labour relations system is, in our opinion, one of the fundamental failures in the administration of our contemporary labour relations system. The public, however, should not be denied services or products which are highly essential to its health, safety or welfare. We will speak further to these views in later sections of this report.

g) <u>The Public Interest and Labour Relations.</u> The fact of the matter is that the labour relations system of Alberta functions without a good deal of regard for the public interest. This fact is quite understandable as there is no vehicle for representing a public interest in our labour relations system. As is often said, the

labour-management relationship is basically a private relationship. However, there are others who argue that the private relationship has in fact gone public and, as such, calls for a definitive public interest vehicle within the relationship. We believe this point is well taken. Our labour relations system functions in an environment its designers did not dream of. This is the age of big business and big labour participating in big negotiations and upon its failure of big work stoppages. The decisions taken in the negotiating process are big decisions that naturally affect our economic and social functioning. In addition, we have a labour relations system functioning in new industries, new occupational classes, and in distinctly different fields of activity all of which function in a close proximity to the public interest. Bigness and newness have brought the system face to face with the profile of a public interest. We do not believe that the system can continue to fail to recognize or fail to respond to this reality. Labour relations in Alberta is no longer a private affair.

OBJECTIVES OF THE PROJECT

5. Earlier in the Preface to this report, we outlined the specific terms of reference assigned and adopted by this labour-management relations project. It was our hope and expectation that within these terms of reference we could fulfill the following objectives:

a) To encourage a better understanding of the functioning of the Alberta labour relations system generally.

b) To articulate the role of the law in the functioning of this system specifically.

c) To clearly identify the content of the law within the system, its purpose and objective, and to assess and evaluate its functioning and appropriateness.

d) To identify weaknesses in the functioning of the Alberta labour relations system generally and of the law within the system

specifically.

e) To determine the causes of weaknesses in the functioning and law of the system and to advocate reform and changes in functioning and in the law.

f) To generate discussion, dialogue, and debate with respect to the functioning of the Alberta labour relations system generally and the functioning of the law within the system specifically.

6. It was our opinion that the fulfillment of the above objectives could best be achieved by critically examining the present system of labour relations in Alberta and the role that the law plays in it. By analyzing the environment surrounding the labour relations system, by probing the structure, functions, and philosophy of the participants in the system, by evaluating the effectiveness of the mechanisms for conflict resolution, and by understanding the attitudes, processes, and governmental intervention techniques at the time of negotiations, we learn much not only of the system but also of its strength and weaknesses. We are convinced there are, to say the least, inadequacies. Certainly, our labour relations system is not working as people expect nor as they hoped for. In later sections we will elaborate our reasons for thinking so. But as a starting point, concern regarding the functioning of the system is enough justification for undertaking this enquiry.

METHODOLOGY

7. We recognize that the body of knowledge relating to our labour relations system extends beyond the boundaries of a single discipline. In recognition of this fact, as illustrated by the composition of the project team, we adopted a multi-disciplinary research methodology. The specific methodological techniques included the following.

8. a) <u>Survey and Review of Relevant Literature.</u> Realizing the dearth of

literature on Alberta's labour relations system, the project's staff undertook an extensive search for relevant material from other published sources. Topics discussed in leading industrial relations journals in Canada, United States, United Kingdom, and Australia were examined at length. Other sources included Federal and Provincial government publications, bulletins and documents of the International Labour Organization, recent books and articles published both within and outside of Canada, research reports commissioned by the 1968 Federal Task Force on Labour Relations, and publications prepared by industrial relations centres in leading Canadian and American universities. All published and unpublished materials consulted have been compiled and referenced in the bibliography of this report. Several of the studies were reviewed for their relevance to Alberta's situation and the views expressed are undoubtedly reflected in our analysis and recommendations.[7]

b) Collection of Statistics from Public Sources. Published statistics from the Alberta Labour Relations Board were used for the analysis of the types of transactions handled, collective bargaining structures, and work stoppage incidence in Alberta. Labour force, employment, and wage and salary statistics were obtained from the Alberta Bureau of Statistics, which also assisted in the development of a labour market profile. Statistics Canada and Canada Department of Labour publications were used for supplementary data.

c) Public Opinion Survey. Recognizing the growing involvement of the public as observers in labour relations and having witnessed its consequences, it was decided that primary data should be generated on how Albertans view certain aspects of labour relations such as management, trade unions, the negotiating process, the right to strike, and the proper role of government in labour relations. A comprehensive questionnaire was developed for this purpose.

Representatives from the Alberta Federation of Labour, Alberta Union of Provincial Employees, Alberta Manufacturing Association, Alberta Mining Association, Alberta Construction Association, Alberta Department of Labour, and Department of Treasury were invited to comment on the questionnaire. As a result of this consultation, a revised questionnaire was prepared. A carefully selected sample of Albertans, tested for its representativeness, was approached through household mail questionnaire supplemented by door-to-door interviews. A technical note on the statistical technique used for developing the sample, survey details, as well as survey results were published in M. James Dunn, Survey of Individual Attitudes Towards Labour-Management Relations in Alberta. Edmonton: Institute of Law Research and Reform (1978) 154 pp.

d) Legal Research. The thrust of legal research efforts centred on a review of the written decisions rendered since 1970 on a) references to Alberta's two labour relations boards, The Alberta Labour Relations Board and The Public Service Employee Relations Board, b) agreement administration references to arbitration or adjudication and c) judicial review of both series of decisions. These efforts included the acquisition of the written decisions in question and subsequently led to the preparation of an annotated subject index entitled Judicial Review and the Alberta Labour Act, 1973 -- An Annotation prepared by Robert Philp and the preparation by Peter Freeman of a subject index entitled Alberta Grievance Arbitration Decisions -- Index, Annotation, and Statistics. Recognizing the importance of this type of information to the Alberta labour relations community, these efforts were continued in 1980 by L-M Reporting Services Ltd. and led to its offering of a full text and decision abstract service covering all labour board, arbitration, and adjudication decisions rendered in Alberta on a non-profit basis.

e) Meetings and Consultations. Project members held several meetings with representatives of trade unions, management, and government to exchange ideas and to develop an understanding of their concerns and views on current labour relations issues. In addition, we took the opportunity to introduce many of the views and recommendations contained in this report and, although we did not necessarily obtain their concurrence nor agreement, their reactions and comments were extremely valuable. From time to time, we consulted with officials of a variety of labour tribunals as well as leading industrial relations and labour relations authorities throughout Canada. During the final stages of our deliberations we met with the cabinet committee on labour. A complete list of individuals formally interviewed by project members follows: Paul Weiler, former Chairman, The British Columbia Labour Relations Board; Jim Matkin, former Deputy Minister of Labour, Province of British Columbia and now Deputy Minister of Inter-Governmental Affairs; George Saunders, Economist, Department of Labour, Government of Canada; John Crispo, Professor of Labour Relations, University of Toronto; Reg Basken, former President, Alberta Federation of Labour and currently Field Representative, Energy and Chemical Workers Union; Eugene Mitchell, former Executive Secretary, Alberta Federation of Labour; the late Roy Comston, Representative, Canadian Manufacturers Association; the late Robert Mullins, formerly President, Alberta Construction Labour Relations Association; Gerry Lucas, Representative, Labour Relations Committee, Edmonton Chamber of Commerce; J.H. Chesney, Representative, Alberta Chamber of Mines; H.D. Woods, Professor of Labour Relations, McGill University and the University of New Brunswick; James E. Dixon, Public Service Commissioner, Government of the Province of Alberta; William Broad, formerly President, Alberta Union of Provincial Employees and formerly President, National Union of Provincial Government

Employees; Don Gardiner, formerly Deputy Minister of Labour, Government of the Province of Alberta; Robert D. d'Esterre, formerly Assistant Deputy Minister of Labour, Government of the Province of Alberta and currently Labour-Management Arbitrator and Mediator; Jake Finkelman, Q.C., former Chairman of the Public Service Staff Relations Board; and Gordon Wright, Director, Labour Research, Department of Labour, Government of the Province of Alberta.

f) Submission of Briefs. Originally we intended to invite and receive briefs from a large number of concerned groups and individuals. We believed that the ideas and views set out would be helpful in generating new ideas, reinforcing our observations, and give to us a backdrop against which our own views and ideas could be assessed and evaluated with respect to similarity with others, likelihood of acceptance, and practicality. However, subsequent circumstances dictated that we would not be able to proceed as originally intended. On the other hand, we were given access to submissions entered before the Minister of Labour as a result of his 1980 call for a review of the Alberta Labour Act, 1973. These submissions proved to be invaluable and meant that our original purpose in this activity could be more than satisfied. We proceeded by way of a complete content analysis in order to identify what the concerns were, what changes were advocated and why, and the degree to which the concern and change advocated was generally held within the labour relations community. This project was conducted by Professor E.G. (Jed) Fisher of the Department of Industrial and Legal Relations at the University of Alberta and resulted in the project report entitled The 1980 Submissions Regarding The Alberta Labour Act, 1973: An Analysis.

SCOPE AND LIMITATIONS

9. Although the methodology employed was extremely broad, as noted earlier,

the scope of this project was described in somewhat narrow terms and holds to the central mandate to review the functioning and law of labour relations in Alberta. We are cognizant of the fact that some of our analyses, conclusions, and recommendations will be not only controversial but also challenged. We have knowingly undertaken this direction because our intention is to generate an extensive debate and examination of the structure, attitudes, and policies in labour relations in this province, particularly by all who participate in our labour relations system.

10. On the other hand, in some aspects of the labour-management relationship a broader scope was adopted. For instance, a total and comprehensive approach was considered advisable in identifying problem areas in both public and private sectors. The unavoidable comparison and spillover effect from one to the other, required that we examine labour relations in the private sector as well as the case of municipal and provincial employees, hospital employees, school employees, police, and firemen. Furthermore, the borderline separating professional and non-professional employees and supervisory and managerial positions is, in a large number of situations, either undefined or becoming redefined in view of changing organizational structures or social values. Hence, we decided to examine the status of various professional groups, including engineers, doctors, architects, university professors, and lawyers. We are also aware of the dilemma faced by the foremen and other supervisory personnel. Should they have the right to organize? Should they form separate bargaining units and separate unions? What about their right to strike? We would be remiss in our undertaking, if we did not address ourselves to these questions.

11. The greatest limitation of this study arises because of the scarcity or non-availability of background research on the many aspects of Alberta's labour relations system. To illustrate, in many instances statistics do not

go beyond the last five years. The breakdown of data for certain kinds of statistics such as union membership by industry or the extent of voluntary recognition by employers is simply not available.

PUBLISHED AND UNPUBLISHED REPORTS

12. The following is a listing of the studies commissioned by the project that resulted in either a published report or an unpublished working paper. Copies of both are available.

A. Published Reports

Dunn, M. Jim, Survey of Individual Attitudes Towards Labour-Management Relations In Alberta, Edmonton: Institute of Law Research and Reform (1978) (154 pages).

Mironi, Mordehai, The Arbitration of Interest Disputes in Alberta. An Analysis and Evaluation, Edmonton: Institute of Law Research and Reform (1977) (174 pages).

Tidsbury, R. Neil, Labour Relations in Alberta -- A Profile, Edmonton: Institute of Law Research and Reform (1978) (162 pages).

B. Unpublished Working Papers

Christian, T., Judicial Review v. Judicial Restraint and Labour Relations Boards (1978) (52 pages).

Fisher, E.G., The 1980 Submissions Regarding The Alberta Labour Act, 1973: An Analysis (1981) (11 pages).

Freeman, Peter, Alberta Grievance Arbitration Decisions -- Index, Annotation, and Statistics (materials assembled, classified, and filed).

Gauk, C., Enforcement Powers of Labour Relations Boards: Cease and Desist (1979) (48 pages).

Gauk, C., Legislative Status of Labour-Management Cooperation (1978) (50 pages).

Gauk, C., Persons Employed in a Confidential Capacity in Matters Relating to Labour Relations: Exclusion from Collective Bargaining (1979) (19 pages).

Gauk, C., Persons Employed in a Managerial Capacity: Exclusion from Collective Bargaining (1978) (55 pages).

Gauk, C., Review of Public Sector Labour Legislation (1978) (48 pages).

Gauk, C., The Duty to Bargain (1977) (38 pages).

Hameed, S.M.A., Structure in Labour Relations (1977) (45 pages).

Hameed, S.M.A., The Role of Conflict in Labour Relations (1976) (12 pages).

Hunter, Laird, A Survey of the Position of Private Sector Employees with Respect to Collective Bargaining Rights (1977) (16 pages).

Philp, Robert, Judicial Review and The Alberta Labour Act, 1973 -- An Annotation (1978) (199 pages).

Philp, Robert, The Use of the Courts in Labour Relations -- Survey of Disposition of Actions Before the Courts (1979).

FORMAT OF REPORT

13. The observations, findings, and recommendations of this labour-management relations project follow. In order to give perspectives, we start in Chapters I and II with a detailed review of the Alberta labour relations system. Initially, in Chapter I, the central focus is on participants, goals, and context. In Chapter II we focus on processes. In Chapter III we examine the relationship of our labour relations system with the industrial relations system in order to give perspectives on the broader industrial relations system of Alberta and relate the labour relations system to this broader context. Chapter IV presents an in-depth statement on the laws governing the Alberta labour relations system. We seek to set out clearly what the law is and its role and function within the system. Chapter V is devoted to the expression of our views on the functioning and law of the labour relations system. We focus on matters of evaluation, and issues. Finally, in Chapter VI we set out and argue the case for reform and changes in selected aspects of the functioning and law relating to our labour relations system. However, first we turn to the matter of perspectives.

REFERENCES

INTRODUCTION

1. For examples see: John Crispo, The Canadian Industrial Relations System. Toronto: McGraw-Hill Ryerson Limited, 1978, 570 pp. particularly Chs. 4, 15, 16, and 17 and Paul C. Weiler, Reconcilable Differences: New Directions in Canadian Labour Law. Toronto: Carswell Company Limited, 1980, 335 pp.

2. S. Creigh, N. Donaldson, and E. Hawthorne, "Stoppage Activity in OECD Countries," Employment Gazette, November, 1980, pp. 1174-1181.

3. E.G. Fisher, "A Cross Jurisdictional Analysis of Strike Activity in Canada: 1974-79," Papers and Proceedings of Canadian Industrial Relations Association's 18th Annual Meetings, Halifax: 1981, pp. 5, 7-9.

4. Ibid., p. 24.

5. Source: Labour Canada, Strikes and Lockouts in Canada, 1979.

6. For a most dramatic portrayal of the differences in labour and management views see: Crispo, Ibid. c. 5 and 6.

7. We are particularly indebted to: R.N. Tidsbury, B.N. Thompson, I. Hanshard, S.M.A. Hameed, D.R.B. Dunlop, N. Hodge.

See pp. 23-24 and pp. 34-36

CHAPTER I

THE ALBERTA LABOUR-MANAGEMENT RELATIONS SYSTEM: PARTICIPANTS, GOALS, AND CONTEXT

14. In the introduction to this report we identified several issues that to some observers represent contemporary shortcomings in Alberta's labour relations system. Our subsequent task, in Chapter V and especially Chapter VI of this report, is to set out the case for what we believe are the major issues and to advance recommendations designed to deal with each and for incorporation into the functioning and law of labour relations in this province.

15. However, before turning to matters of criticism, reform, and changes we turn first to an identification and understanding of the Alberta labour relations system. In taking this direction our approach will be quite different from other previous endeavours which, like this one, are oriented towards criticism, reform, and change. It is our position that in labour relations matters criticism, reform, and change cannot be properly understood without first having a thorough understanding of what the system is and how it functions. To achieve this we shall examine the institutional structure of the Alberta labour relations system within a broadly based integrated conceptual framework. We start by identifying the variables or components that together make up the labour relations system of Alberta. They consist of Participants, Goals, Context, Processes, and Law. In turn, within each component we identify its elements. For example within the component of Participants we can identify Employees, Trade Unions, Employers, Labour Boards, Arbitrators/Adjudicators, Government, Legal Counsel, Consultants, and Courts. In terms of Goals, meaning the objectives and purposes that the participants bring to the system, we will focus on Trade Unions, Management, Government, Labour Relations System,

and Society. Context refers to the character of the relationship particularly the attitudes and values that the participants bring to the process as well as the "facts of life" surrounding the nature of the labour-management relationship. Processes include the transactions within which the participants interact and consist of Organization of Trade Unions, Labour Board Transactions, Negotiations, Dispute Settlement, Work Stoppages, Grievance Arbitration, Interest Arbitration, and Reference to the Courts. The Law includes a study of the substantive provisions of The Labour Relations Act, Statutes of Alberta, 1980, c. 72, The Public Service Employee Relations Act, S.A., 1977, c. 40 and The Firefighters and Policemen Labour Relations Act, Revised Statutes of Alberta, c. 143 as well as determinations of the Courts. A complete portrayal of this conceptual framework is given at page 22. In the sections that follow we look at each element and set out the basic body of knowledge on each and upon which an overall understanding of the system and its functioning must be built. It is our opinion that this approach will meet our fundamental objective of addressing the question: What is the labour relations system of Alberta and how does it function?

THE ALBERTA LABOUR RELATIONS SYSTEM

FRAMEWORK OF ANALYSIS

ARTICIPANTS	[WITH]	GOALS
MPLOYEES RADE UNIONS MPLOYERS ABOUR BOARDS RBITRATORS/ADJUDICATORS OVERNMENT EGAL COUNSEL ONSULTANTS OURTS		TRADE UNIONS MANAGEMENT GOVERNMENT LABOUR-MANAGEMENT RELATIONS SYSTEM SOCIETY

INTERACT IN A]	CONTEXT	[AND IN GIVEN]
ROCESSES		[AND IN A FRAMEWORK OF THE LAW]
ORGANIZATION OF TRADE UNIONS LABOUR BOARD TRANSACTIONS NEGOTIATIONS DISPUTE SETTLEMENT WORK STOPPAGES GRIEVANCE ARBITRATION/ADJUDICATION INTEREST ARBITRATION REFERENCE TO COURTS		LABOUR RELATIONS ACT PUBLIC SERVICE EMPLOYEE RELATIONS ACT FIREFIGHTERS AND POLICEMEN LABOUR RELATIONS ACT COURTS

TO SET WAGES, HOURS, AND WORKING CONDITIONS IN A COLLECTIVE AGREEMENT AND A SYSTEM FOR ITS ADMINISTRATION.

16. By using this approach it is our hope that we will be able to not only accurately and completely portray the system to the reader but also identify the sources contributing to much misunderstanding over the nature and function of Alberta labour relations. These sources of misunderstanding, which reside in all of us associated with labour relations in this province are a product of the following three observations:

a) the participants, goals, processes, context, and law of the labour relations system are neither well defined nor clearly understood, even by the members of the Alberta labour relations community,

b) the absence of a comprehensive conceptual framework for understanding and analyzing the relationship between the functioning of the labour relations system and the rest of the society and,

c) industrial conflict and its resolution is frequently studied within the context of only a part of the labour relations system, more precisely within our dispute settlement system. We believe that the final and permanent solution lies within the functioning of the labour relations system as a whole.

17. To illustrate, certain observers of the Alberta labour relations system, primarily those who are not direct participants in the system, frequently focus concern on a) the level of wages, hours and working conditions obtained through the negotiating process and b) the consequences of a work stoppage should the negotiating process fail. Two measures could be implemented in order to eliminate public concern over these two matters: wage controls for the former and the withdrawal of the established legal right to a work stoppage for the latter. However, is each solution appropriate or desirable? Generally speaking the answer is no because of the consequence of the solutions on the equally appropriate and desirable commitment to the processes of self-determination, self-help, and freedom

of action within the labour relations system. The point is that given any particular concern over the functioning of the labour relations system we do have, technologically so to speak, a quite adequate response capability. The problem with this simplistic view and approach is that the solution may well affect other equally desirable qualities within the labour relations system. We conclude therefore that our system functions within a delicately established balancing of interests in the relationship and reform and change can only be properly assessed by attempting to consider the consequences of each cause and effect or trade-off choices before us. This state of a delicate balancing or trade-offs is inherently part of the nature of our labour relations system. In effect, the labour relations system is continually bombarded by a host of transactions both within and without the system and to be effective it must have the capability of responding to each without risk of destroying the system itself. Direct participants, government action, and the expectations and demands of society on the system are all separately or collectively quite capable of destroying our labour relations system. It is our opinion that this fact is not generally appreciated, as evidenced by the actions of some, and these actions often do not serve the labour relations system well. We believe that these actions are the result of a generally held lack of understanding of what the system is all about and a seeming lack of priority to improve upon that understanding. It is our belief that the greatest threat to Alberta's labour relations system resides within this lack of understanding of what the system is all about by participants, government, and society as a whole. For our part, we will attempt to do something about it.[1]

18. The study of labour relations in the Province of Alberta often becomes a study of pluralism.[2] Alberta, the fourth largest province in Canada, is characterized by diverse ecology. The work force is derived from a

population of some two million residents of diverse ethnic, racial, religious, and social origins. The work force is employed in enterprises engaged in a variety of economic endeavours. These enterprises range from small family farms, family businesses, and partnerships employing one or two workers, to large corporations employing more than one thousand workers. These enterprises are controlled both from within the province and from other areas of Canada, North America, and the world. About one quarter of Alberta's one million employees are organized into about 750 locals of about 125 unions. Some local unions are independent. Others have national and/or international affiliations. The federal, provincial, and many local governments are increasingly involved in the regulation of private sector enterprises, and in the provision of goods and services in addition to their public administration activities. Collectively, the three levels of government now employ about one-seventh of the province's work force.

19. The study of the pluralistic phenomenon of labour relations is further frustrated by a dearth of specific, comprehensive quantitative information with which to describe or define the phenomenon. Statistics concerning many aspects of labour relations have been published in a variety of forms and by various authorities, ranging from the more comprehensive publications of Statistics Canada and Labour Canada, to the treatment by the media of individual problems. However, the publication of quantitative information of interest to those who study and practise in labour relations and those who are affected by the labour relations scene has often lacked specificity with respect to the Alberta sphere of interest and activity, and has often lacked the comprehensive features desired by those whose practice and interests revolve around labour relations.

The focus of this section of this chapter is to identify, describe, and quantify the pot pourri of participants in the labour-management

relationship in this pluralistic environment.[3] Having done so we will turn to the matters of their goals and the context of the systems functioning. The statistical information that follows was generated from three principal sources. Some of the information was extracted from authoritative bulletins and reports. Other statistics were provided by administrations, institutions, and public and private services. Finally, some statistics were derived from the documents, records, and accounts of institutions and services. Published information and that provided by administrations, institutions, and services, has been accepted as published or provided. In the case of the information that was derived from documents, records, and accounts, considerable effort was expended to ensure that such information was factual. However, absolute accuracy cannot be guaranteed, and the investigators apologize for any errors or omissions that may have occurred.

PARTICIPANTS

20. Employees. Total employment in Alberta increased from 889,000 in July, 1976 to 1,128,000 in July, 1981, an increase of 27% over the 5 year period. Employment in agriculture declined 28% from 132,000 to 95,000. Employment in non-agriculture industries increased 37% from 752,000 to 1,032,000. In July of 1981 the industry distribution of non-agriculture employment was as follows: manufacturing, 98,000 or 9.5%; construction, 126,000 or 12.2%; transportation, communications, and utilities, 94,000 or 9.1%; trade, 193,000 or 18.7%; finance, insurance, and real estate, 59,000 or 5.7%; service industries, 315,000 or 30.5%; public administration, 79,000 or 7.7%, and other primary industries, 69,000 or 6.7%. The three largest employers are the service, trade, and construction industries and together account for 61.4% of total employment. Manufacturing ranks fourth and provides only 9.5% of employment. The four fastest growing industries in terms of employment are other primary industries, finance, insurance, and real estate, transportation, communications, and other utilities, and

construction. Statistics giving employment by industry are presented in Table 2. The foregoing statistics confirm four significant features in Alberta's industrial and employment profile: relatively low employment in manufacturing, relatively high employment in the fields of construction and service, a high rate of overall growth in employment, and highest rates of employment increases in energy-related primary industries and its infrastructure support industries such as finance, transportation, utilities, and construction.

TABLE 2

EMPLOYMENT IN ALBERTA BY INDUSTRY
1976 - 1981 (JULY)

INDUSTRY	EMPLOYMENT (000) 1976	1977	1978	1979	1980	1981
Agriculture	132	94	94	92	86	95
Non-Agriculture	752	785	885	931	1008	1032
Other Primary Industries	34	37	53	65	67	69
Manufacturing	80	70	82	85	104	98
Construction	87	93	106	120	109	126
Transportation, Communication and Other Utilities	62	79	91	90	99	94
Trade	157	171	169	176	190	193
Finance, Insurance and Real Estate	38	44	48	56	56	59
Service	231	227	268	276	307	315
Public Administration	63	64	69	64	75	79
Total Employment	889	880	985	1024	1099	1128

21. In July, 1981, the level of employment by occupational groups and its percentage of total employment was as follows: Management and professional, 270,000 or 23.9%; clerical, 183,000 or 16.2%; sales, 117,000 or 10.4%; service, 138,000 or 12.2%; primary occupations, 118,000 or 10.5%; processing, 107,000 or 9.5%; construction, 109,000 or 9.7%; transportation, 47,000 or 4.2%, and materials handling and other crafts 40,000 or 3.5%. The three largest occupational groups were management and professional, clerical, and service, which together accounted for 52.3% of total employment. The four fastest growing occupational groups were transportation, managerial and professional, service, and construction. Collectively the three levels of government employed about 150,000 Albertans and represented 13.3% of total employment. Provincial government departments, administrative and regulatory agencies, institutions, and enterprises collectively employed about 8% of total employment. Statistics giving employment by occupational groups are presented in Table 3.[5] We note from the foregoing statistics the high concentrations of employment in occupational groups not traditionally known for a high level of labour relations activity such as management and professional, clerical, sales, and services.

TABLE 3
EMPLOYMENT IN ALBERTA BY OCCUPATIONAL GROUP
1976 - 1981 (JULY)

OCCUPATIONAL GROUP	EMPLOYMENT (000) 1976	1977	1978	1979	1980	1981
Managerial and Professional	188	171	219	221	235	270
Clerical	136	153	154	164	185	183
Sales	92	104	100	106	108	117
Service	100	107	118	125	142	138
Primary Occupations	147	112	119	120	116	118
Processing	81	83	90	98	114	107
Construction	79	94	101	108	98	109
Transportation	32	34	44	46	59	47
Materials Handling and Other Crafts	29	23	33	35	37	40
Total Employment	889	880	985	1024	1099	1128

. Trade Unions. In the first quarter of 1977, union members comprised approximately 26% of the employed non-agricultural labour force in Alberta.[6] They currently make up somewhere between one-quarter and one-third of it. During the three year period prior to January, 1977, membership in labour organizations increased 22.5%, from 162,000 members in January, 1974 to 200,000 members in January, 1977. Membership in unions in public administration increased 34% during that period, while membership in construction-related unions increased 28%. Public administration trade union membership has not grown as dramatically since then. It must be born in mind that there was a build-up in construction at this time with regards to the Syncrude mega-project. Membership in unions in transportation, communications, and other utilities increased 24%. Industrial sectors with high proportions of union membership as of January, 1979, were public administration (90%), transportation, communication, and other utilities (47%), construction (42%), and manufacturing (32%).

3. The three largest labour organizations in Alberta in January, 1977, were the Alberta Union of Provincial Employees (34,000 members), the Alberta Teachers' Association (25,000 members) and the Canadian Union of Public Employees (19,000 members). All bargain predominantly with governments or with establishments at least partially dependent on the public purse. Collectively, these three organizations comprised about 40% of union membership. Four of the ten largest unions are at least partially associated with the construction industry. Almost one-half of union members, excluding the Alberta Teachers' Association, are located in the Edmonton-Camrose area.

24. Fifty of the labour organizations in Alberta, comprising 41% of the union

membership of January, 1977, were affiliated with the AFL-CLO and the CLC. Thirty-nine organizations comprising 36% of union members were affiliated with the CLC only and three organizations of less than 1% of union members in the province were affiliated only with the AFL-CLO. Twenty-seven labour organizations were not affiliated with either national body. These organizations claimed 23% of union members. One small organization was affiliated with the CCU.

25. Employers.

26. Labour Boards. The Alberta labour legislation enacted prior to World War II protected employee freedom of association and provided for compulsory recognition of and collective bargaining with trade unions.[7] While this legislation recognized a need for an effective labour policy beyond the mere intervention in disputes, it suffered from a flaw which rendered it largely ineffective. This was the absence of administrative machinery for enforcing the statutory provisions, specifically with regard to union certification, determination of the appropriate bargaining unit, and the prevention of unfair labour practices.[8] The general administration of the statutes was delegated to the Minister of Labour. But the scope of intervention into labour relations matters greatly increased the administrative burdens on the Minister. In 1944, the Wartime Labour Relations Regulations were proclaimed as part of the emergency measures legislation. The administration of the Wartime Labour Relations Regulations was founded on the concept of the War Labour Board.[9] The Wartime

Labour Relations Board proved to be the prototype of most of the Labour Boards in Canada.[10] In 1947, the jurisdiction over labour matters normally falling to the provinces but assumed by the federal government with its emergency legislation during the war was returned to the provinces. The legislation enacted in Alberta established the Alberta Board of Industrial Relations which was to share with the Minister of Labour the responsibility of enforcement and administration of the Act.[11] It was an "administrative" tribunal in the sense that the legislature had delegated to it power to determine matters of policy relating to both the substantive and to the procedural operation of the Act, to promulgate rules which it could amend, to police the statute in certain areas through its staff, and to sit in judgement on the rights, duties and powers of parties coming within the scope of the legislation.[12]

17. The jurisdictions of labour law in Alberta are divided both by the constitution (The British North America Act of 1867) and its judicial interpretations, and by public policy relating to labour relations. Very generally, the federal jurisdiction includes inter-provincial and international communications and transportation, defence, atomic energy, and industries and public administration activities owned or closely regulated by the federal government such as banking. The Canada Labour Code generally applies to all employers and employees within the federal jurisdiction except those involved in federal public administration and defence.[13] The Canada Labour Relations Board is charged with sharing with the Minister the responsibility of administering and enforcing the Code, as well as considering questions of the federal/provincial division of labour relations jurisdictions.[14] Basically, The Public Service Staff Relations Act applies to federal civil servants, and is administered by the Public Service Staff Relations Board.[15]

28. The lion's share of employment relationships in Alberta falls within the provincial jurisdictions. While there are acts of the Alberta Legislature which deal in part with labour relations matters in specific areas of Alberta's industries and services, there are two basic acts which pertain to labour relations in provincial jurisdictions. The Labour Relations Act, S.A. 1980, c. 72 (LRA) applies to employees and employers in the "private sector" of Alberta, which includes local government administration.[16] The Act has established the Labour Relations Board (LRB) to share the administration and enforcement of the statute with the Minister of Labour. The Public Service Employee Relations Act, S.A. 1977, c. 40 (PSERA) applies to the provincial "public sector", and deals with labour relations in the provincial public sector.[17] This Act establishes the Public Service Employee Relations Board (PSERB), and it is charged with the responsibility of administering and enforcing that statute. These labour relations boards are similar in that they are all administrative tribunals, created by their respective statutes, but they have, sometimes subtle, differences in duties and functions in their respective jurisdictions. Both the LRB and PSERB are creatures of the legislation by which they are established. They derive from the law, and their functions and responsibilities may from time to time be altered, extended, or even terminated by the legislature.[18] The boards are quasi-judicial and autonomous administrative tribunals.

29. Both boards are composed of persons appointed by the Lieutenant Governor in Council. The number of members on the PSERB is stipulated by statute as five, one of whom is designated as chairman, and in addition, an alternate chairman.[19] However, the size of the LRB is not specified. Presently, the LRB consists of seventeen members, one of whom is designated as chairman and two of whom are designated as vice-chairmen. While it is not specified by statute as in some other jurisdictions, it has been the practice that appointments to these boards be

from each of the "labour" and "management" camps, in recognition of a value in having representative members. The persons appointed to these boards are not necessarily schooled in the practice of administrative labour law. They are considered to have expertise by way of their experience in labour relations matters. A quorum for board deliberations is three people, including one neutral and sometimes there are simultaneous hearings in Calgary or Edmonton or both.[20] The LRB is centered in Edmonton with a regional office in Calgary. The PSERB is located in Edmonton.

30. The scope of the jurisdictions of these boards are defined in terms of the applications of their respective acts. The PSERA applies to all employees of the Crown in right of Alberta and of commissions, corporations, boards, councils, and other bodies whose members or directors are designated by an Act of the Legislature or appointed by either, or a combination of, a Minister of the Crown in right of Alberta and the Lieutenant Governor in Council.[21] The LRA applies to all other employees and employers in the provincial labour jurisdiction, with the exception of employees engaged in domestic work in private dwellings and their employers, employees engaged as farm labourers in "non-commercial" farming and their employers, and employees to whom other acts specifically apply, such as The Police Act, 1973.[22]

31. The LRA places the responsibility of administering to disputes between labour and management with the Minister of Labour. It is the Minister who may appoint a mediator and selects and appoints members and chairmen to boards of arbitration should the parties fail to do so. However, pursuant to the PSERA the PSERB administers to these matters within the scope of its jurisdiction. The PSERA, in effect, precludes certain matters from inclusion in collective agreements. For example, the organization of

work, job evaluation, allocation of individual jobs and positions, selection, appointments, promotions, training, transfers, and pensions are all matters which are not arbitrable and, in effect, not negotiable.[23] However, the parties must avoid not bargaining in bad faith on such matters. The PSERB is empowered to decide whether a particular matter in dispute is arbitrable.[24] The major role of the LRB and, to a lesser extent, the PSERB, due to statutory recognition, is to act as administrative arbiters of issues affecting the establishment of bargaining units and the recognition of unions as bargaining agencies.[25]

32. In general, the LRB is granted broad powers to conduct any inquiry and make any decision it finds necessary in the execution of its duties. The LRB is empowered to make or issue any orders, decisions, notices, directives, declarations, or certificates as it considers necessary. It may receive and investigate complaints. It may make its own rules of procedure for the conduct of its business and for hearing and conducting inquiries and for any other matters as it considers necessary.[26] The LRA empowers the LRB and its officers to inspect, and take extracts from the documents, records, and accounts of an employer, and to require the employer to produce the documents, records and accounts.[27] The LRB may summon witnesses and enforce their attendance, administer oaths, and use its own discretion in accepting evidence.[28] In connection with its duties in the administration of labour relations, the LRB is empowered to, for example, determine whether a person is an employer, whether an organization is an employers' organization, whether an organization of employees is a trade union, whether a trade union is a proper bargaining agent, whether an organization has been given the authority to bargain, whether a collective agreement has been entered into, the scope of application of a collective agreement, whether a unit of employees is appropriate for collective bargaining or should be altered, and whether an

employer is affected by the registration certificate of a registered employers' organization. In deciding these questions, the Board may conduct any inquiry it considers necessary.[29] All decisions, orders, directives, declarations, rulings, and proceedings of the LRB are final and binding, and may not be questioned or reviewed in any court except by way of application for certiorari or mandamus.[30] The Board may alter its own rules of procedures and reconsider its decisions at any time.

The PSERB is granted powers that are very similar to those of the LRB. Generally, the PSERB has broad powers to conduct any inquiry and make any decision if finds necessary in the execution of the duties assigned to it by the Act. It may make, and subsequently amend, its own rules of procedure for the conduct of its business. The PSERA indicates confidence in the PSERB through its privative clause, which limits judicial review of Board awards, proceedings, and decisions to application for ceritorari and mandamus. The LRB and PSERB are granted powers by their respective acts which are calculated to match the duties assigned to them.

Arbitrators/Adjudicators. A uniquely Canadian aspect of labour relations in Alberta, which had its origins in the policy document, P.C. 2685 (1940), and the subsequent Wartime Labour Relations Regulations, P.C. 1003 (1944), is that every collective agreement must provide machinery for the final settlement, without stoppage of work, of all differences which arise during the term of the collective agreement concerning its interpretation, application, operation, or alleged contravention. Since 1960, Alberta statutes have provided model clauses which were deemed to be in effect where the collective agreement was silent with respect to the settlement of such differences. In Alberta, such differences, when formalized, are referred to as "grievances". Although there are many variations in the machinery used, the procedures normally involve a sequence of successive appeals through

the hierarchies of the organizations of the union and employer, beginning with the "grievor" (the employee directly affected by the substance of the difference) and his immediate supervisor.[31] Each appeal within the organizations usually involves increasing degrees of representation and counsel. This process is known as the grievance procedure. Where the parties exhaust the grievance procedure without settling the difference to their mutual satisfaction, the difference may be referred to a third party for a final and binding determination. Under the Alberta LRA this third party is called an arbitrator. Under the PSERA the third party is called an adjudicator. The terms are synonymous.[32] The arbitration/adjudication can involve the use of a single arbitrator/adjudicator, as is presently contemplated by the statutes, or a three member arbitration/adjudication board. While it is intended that the parties to the difference select and appoint those persons to act as arbitrators, the Minister, or, in the case of the provincial public sector, the PSERB, will make the selections and appointments on their behalf.[33]

35. The arbitrator/adjudicator or arbitration/adjudication board is empowered by statute to summon and enforce the attendance of witnesses and to compel those witnesses to give evidence and to produce documents or other such recorded or physical evidence, to administer oaths and take affirmations of witnesses, to conduct an inquiry or investigation at any site in connection with the difference, to authorize other persons to conduct such inquiries, and to correct in any award any clerical mistake, error, or omissions. Upon hearing and determining the difference, the arbitrator or arbitration board issues an award which is final and binding, and is reviewable by the Court only by way of an application for certiorari or mandamus.[34] Upon making the award the arbitrator or arbitration board is instructed to file a copy of the award with the appropriate administrative authority -- the Director of Mediation Services or the Public Service Employee Relations Board.[35]

There are no accurate statistics on the number of arbitrators practicing in Alberta nor the volume of cases handled by each. However, we have located two information sources that give some insights albeit incomplete. First, during the years 1974 to 1977 there were a total of 188 written awards of sole arbitrators or chairmen filed with the Director of Mediation Services pursuant to the LRA. The 188 arbitration awards were chaired or arbitrated by 51 different arbitrators or chairmen. However, 3 individuals acted as chairmen of the arbitration boards or sole arbitrators in 63 or 33.5% of the 188 awards filed. Seven of the 51 individuals who acted as chairmen of arbitration boards or sole arbitrators during this 1974 through 1977 period accounted for more than one-half of the awards filed during that period. Second, since October, 1980 L-M Reporting Services Ltd. has received all arbitrator/adjudicator written awards issued and filed with the respective authorities pursuant to the LRA and the PSERA. To date a total of 217 awards have been received of which 105 were for 1980, 107 for 1981, and 5 for 1982. Awards issued pursuant to the LRA totalled 81, 88, and 5 for each of the 3 years under review. Awards issued pursuant to the PSERA totalled 24, 19, and 0 respectively. The 217 awards were written by a total of 44 sole arbitrators/adjudicators or chairmen of arbitration or adjudication boards. The largest number of written decisions issued by a single arbitrator/adjudicator or chairman was 25. Six arbitrators/chairmen accounted for over one-half of the written awards issued and approximately 60% or 26 arbitrators/chairmen had issued 2 or less written awards during the years under review. It would appear that the vast majority of Alberta arbitrators are trained in the law. Only 1 Alberta arbitrator holds membership in the National Academy of Arbitrators, a United States based accrediting organization certifying the professional competence of labour-management arbitrators. It would appear that there are no "full-time" labour-management arbitrators in Alberta (50 cases is considered to be a full-time practice) but we do have arbitrators

with substantial practices and are virtually working at it full-time. Most if not all Alberta arbitrators combine the practice of arbitration with a second activity such as the practice of law, an appointment with an Alberta University, or a consulting practice in labour-management relations.

36. Government. Generally speaking, governments play five roles in the labour-management relationship. One is as "custodian of the public interest," another as "regulator" or "maker of the rules," a third as "employers," indeed often as major employers, as noted above, a fourth as "intervenor," and a fifth as "facilitator." Municipal governments tend to be more limited in their role as "custodians of the public interest" and "regulators" or "makers of the rules" than either provincial and federal governments since the latter have much wider powers for promulgating legislation. In other words, local governments primarily act as employers in the labour-management relationship and promote the public interest and influence the making of rules through lobbying and consulting higher level governments who possess broader jurisdictions. As "custodians of the public interest" and "regulators" provincial and federal governments enact the legal framework in which the labour-management relationship takes place. In the latter roles they also provide for the indépendent administration of laws in large part to provide for industrial peace, an objective they deem to be "in the public interest." As "intervenors" they appoint third parties to intervene in both agreement negotiation and agreement administration disputes. As "facilitators" governments financially support or provide information, educational and training services, and research which is intended to make the labour relations system function smoothly and efficiently.

Significantly, the provincial and federal governments, in their regulatory roles, determine whether or not employees will be permitted to engage in lawful work stoppages. The distinction customarily is drawn between

employees who are "essential" and will not be permitted to lawfully participate in a work stoppage and those employees who will be permitted to do so. "Essential employees" are those employees whose work is necessary for the health, welfare, or safety of the public. Occasionally, general labour relations legislation permits partial or controlled lawful strikes in which essential employees provide essential or "emergency" services.

Governments at the federal and provincial levels retain the right to legislate or order striking employees back to work, but they typically invoke such powers as a "last resort" and often claim to use the test that the "cost to the public outweigh the benefits of permitting the parties to privately resolve their differences." Both this cost-benefit test and the test for essential employees clearly involve subjective elements and, consequently, their application may be tempered by political outlook. Governments exercise this "work stoppage-stopper" function primarily in their custodial role.

It often is argued that governments face a fundamental conflict of interest in those situations where they as a major employer also are responsible for enacting and amending the "rules" that apply to their own employees. It is pointed out that this conflict of interest frequently is reflected in differences between public sector labour relations acts and their private sector counterparts, especially with regards to differential treatment as to the work stoppage right. Governments typically assert that the essential nature of the services that their employees supply vindicates these legislative distinctions. The customary counter argument is that government such services generally are not essential to the public and, moreover, that the impact of work stoppages on governments, as compared to the private sector employers, is diminished because governments collect revenues at the outset of fiscal years through taxation, whereas private sector

employers lose revenues through work stoppages as their revenues flow in over time. This "cash flow" argument means, however, that quasi-public agencies like Liquor Control Boards and crown corporations such as ferry corporations, who charge for their products or services on a customer or user basis, will incur economic losses if work stoppages close their operations. It is not surprising, therefore, that many public sector work stoppages have been directed at these kinds of operations.

This study will return below to the conflict of interest positions that governments face as labour relations participants and the argument that employees are employees regardless of whether their employers are in the public, quasi-public, or private sectors.

37. Legal Counsel.

Legal counsel brings to the labour-management relationship expertise, experience, and assistance which can be used by labour and management in making judgements with respect to their legal rights. Lawyers provide advice and counsel the parties on possible courses of action they can take in pusuing or promoting their lawful rights. Naturally, legal counsel represents their clients' interests in legal transactions, hearings before administrative tribunals, and court proceedings as well as actively lobbying government for legislative changes in support of their clients' interests. There are some lawyers who participate in agreement administration or negotiate collective agreements on behalf of their clients. In short, legal counsel are a resource that the parties can draw upon in the labour relations systme, a system highly regulated by the law. It is in the latter sense, in particular, that legal counsel can be a very valuable resource to the principal parties.

Lawyers participate in the labour relations system in both a non-representational as well as a representational capacity. They serve as

neutrals, that is, as chairmen or vice-chairmen of administrative tribunals and occasionally as mediators, either appointed by government under a labour relations statute or in an extra-legal capacity at the parties' request. It is the lawyer's knowledge of the law and legal concepts, combined with his ability to deal with questions of law in particular as well as questions of fact that induces the primary parties as well as government to call upon the legal profession to serve as neutrals. Of course, some lawyers also participate in drafting labour statutes.

The participation of the legal profession in labour relations is not without some controvesy. The primary parties, often upon losing a case, sometimes strike out at what they view as unnecessary legal complexities and criticize lawyers for their preocccupation with technicalities. It is argued that this preoccupation detracts from resolving the real issue or the underlying problem. However, when lawyers argue the finer points of the law, they typically are instructed by their client(s) to do so. In addition, it is sometimes argued that lawyers, because of their participation in an adversarial legal system, find it in their best interest to perpetuate conflict. We set out below our observations on the value of having legal counsel involved in labour relations matters.

38. Consultants.

Consultants, like lawyers, also bring to the labour-management relationship expertise, experience, and assistance to labour and management. They typically are former practitioners who offer their services to the primary parties with respect to activities such as agreement negotiation, agreement administration, as well as various personnel transactions, including the recruitment and selection of employees, performance appraisal, and compensation management. Consultants may also be appointed as the parties' nominees to grievance arbitration or adjudication boards.

Consultants, like lawyers, are a potentially valuable resource to the parties. From a trade union point of view, the most controversial consultants are those who assist employers in resisting the entry of trade unionism into their job sites or work places. We will discuss below our belief that the primary parties, particularly management, may tend to rely too much on consultants with the result that they may neglect their rights, duties, and responsibilities in the labour relations system.

38a. Courts.

The Alberta Judicial System is composed of a number of Courts with varying jurisdictions which require their participation in the Labour Relations System. We turn to a brief description of these Courts and their roles.

Provincial Court

Provincial Courts are created by Provincial legislation and the Judges are appointed by the Provincial Government. Provincial Court Judges come from the ranks of the legal profession. In the past however, some Provincial Court Judges were non lawyers generally retired police officers.

Provincial Courts exercise initial jurisdiction over all summary conviction offences; and offences viewed as being less serious than indictable offences. Indictable offenses, such as theft, may also be tried by the Provincial Court particularly when the accused elects to be tried in Provincial Court.

Part 8 of the LRA provides for a variety of offenses. For example, section 155 provides if the trade unions, their officers, and employees participate in an illegal strike they are guilty of an offence and liable to fine. Section 156, a catch all section, makes failure to comply with the provisions of the LRA an offence punishable by a fine. Section 157 of the

LRA requires ministerial consent prior to a prosecution under the Act. If such consent be given, the accused would be tried accordingly in Provincial Court.

Criminal proceedings in Provincial Court in respect of the Part 8 offences, are subject to the strictures of criminal law requirements. Thus proof must be beyond a reasonable doubt and the accused is not a compellable witness. It would seem that because of the proof requirements, the use of criminal proceedings to enforce the rules of the labour relation system have not been effective. With unfair labour practices being handled by the Labour Relations Board as of 1960, the resort to the Provincial Court is now almost non-existent. Decisions of the Provincial Court are appealable to the Court of Appeal and thence to the Supreme Court of Canada.

Court Of Queen's Bench.

The Court of general jurisdiction in Alberta is the Court of Queen's Bench. By virtue of the BNA Act, it is created by Provincial legislation but the Judges are appointed and paid by the Federal Government. The unique position of Provincial Superior Courts under the Canadian Constitution came under review in Beauregard v. The Queen (1981) 2 F.C. 543. Appointees to the Court are generally senior and respected members of the Provincial legal profession. They are appointed to the age of 75 and on good behaviour. That is, they can only be removed by an address to both houses of Parliament. The Court of Queen's Bench functions as a Trial Court of general jurisdiction. It has a supervisory role over administrative tribunals, such as the Labour Relations Board, Arbitration Boards, and Adjudicators coming under Alberta labour legislation and also has an enforcement role in respect of certain administrative board Orders filed with the Court. As a Court of first instance, it tries both criminal law cases, those cases more serious than those heard in Provincial Court, and the bulk of the Civl Law cases. Small debt matters are held in Small

Debts Court.

By virtue of the existing law and the Court's jurisdiction in Civil Law matters which will be more fully explained in Chapter III of this report, the determination of the lawful ambit and limits of strikes, picketing, and related economic sanctions in negotiating disputes it is primarily the responsibility of this Court. Thus certain torts which frequently arise in labour disputes, such as nuisance, trespass, conspiracy, and inducing breach of contract are all litigated in this Court. In such cases the Court by way of remedy may award damages or injunctions. Procedures before the Court are comparatively formal, rules of evidence are applied strictly, although with the passage of the new Evidence Act, these may be relaxed somewhat, and proof is generally based on a balance of probabilities in civil matters.

The Queen's Bench also has a supervisory jurisdiction over administrative tribunals, specifically the Labour Relations Board, arbitration boards, and adjudicators. Certiorari may be issued in respect of an administrative decision based on jurisdictional defect, error of law on the face of the record, and breaches of natural justice. The procedure to be followed by a dissatisfied party is to issue a Notice of Motion in the Court applying for a review of the decision. Such a Notice of Motion is frequently suported by an Affidavit. The Notice of Motion, by virtue of the application of the Rules of Court, requires the administrative tribunal to file with the Court its record of proceedings. The record would include, for example, tape recordings of the proceedings before the administrative tribunal.

The Court at the hearing of the motion would consider the record as filed, any affidavits filed by the parties, and the parties arguments. If it then finds a jurisdictional error, error of law, or a breach of natural justice in the administrative Board's proceedings, it may quash the decision. If the administrative tribunal failed to carry out a duty that it

was supposed to carry out, a Mandamus Order may be issued requiring and compelling the Board to comply with its duty.

The Court may also be called to enforce, particularly by way of contempt proceedings, administrative Board Orders that have been filed with the Court and are treated as if they were Court Orders. This procedure is more fully explained in Chapter IV of this report. Appeals lie from the Queen's Bench to the Court of Appeal.

Court Of Appeal

This Court is also provincially created and the Judges are federally appointed and paid. The Court sits in panels of three, five, or even seven members in very important cases. No witnesses are called but the Court has before it the transcript of proceedings in the lower Court or, if it is an appeal from a certiorari application, the record filed by the administrative tribunal and normally the reasons for judgment of the Queen's Bench Judge. The Court reviews the lower Court decision to see if an error of law was made. It may thus allow or dismiss an appeal.

The Court also exercises a reference jurisdiction on requests from the Provincial Government to consider constitutional validity of Provincial legislation.

Finally, it may also exercise a supervisory jurisdiction over certain administrative tribunals. For example, decisions of the Development Appeal Boards and the Public Utilities Board are reviewable directly by the Court of Appeal. An appeal by leave of the Court or by leave of the Supreme Court of Canada lies to the Supreme Court of Canada.

Federal Court

Under the BNA Act, the Federal Government can create Courts. In this respect it has created the Federal Court composed of a Trial Division and

an Appeal Division. The Judges to this Court are federally appointed and paid.

The jurisdiction of the Federal Court is restricted to actions against the Federal Crown and in respect of certain specialized matters coming within the Federal legislative jurisdiction. Examples are patents, trademarks, income tax, and federal labour laws. Thus to the extent that there exist in Alberta provincial and federal labour relations legislation, we have two judicial systems operating in respect thereof. The Federal Court of Appeal hears appeals from the Federal Court Trial Division. In addition, it has a general supervisory jurisdiction over federal administrative tribunals. Thus the equivalent of certiorari applications in respect of federal tribunals is taken directly to the Federal Court of Appeal. Appeals from the Federal Court of Appeal may be taken to the Supreme Court of Canada by leave.

Supreme Court Of Canada

The Supreme Court of Canada is created by federal legislation and the Judges are federally appointed and paid. All final appeals come to this Court. To control its workload and screen out unimportant cases, although possibly involving considerable sums of money, the Court now has to grant leave to appeal before it will hear an appeal. The Court sits in panels of five, seven and nine members. The Court's preference is for a full court hearing. It may take many years, sometimes five to seven, before a case finally comes to the Supreme Court for final determination.

GOALS OF PARTICIPANTS, THE SYSTEM, AND SOCIETY

39.

Goals may be defined as those predetermined ends towards which various activities are directed. The labour relations system itself has goals. In addition, the participants in the system have goals. The goals of the system and goals of the participants are not necessarily the same nor are

the goals of the system and goals of the participants necessarily compatible with one another. With respect to the functioning of the system and participants these goals can be identified at at least four levels: those relating to (1) individual employees, (2) major participants in the labour relations system, namely trade unions, management, and government, (3) the labour relations system as a whole, and (4) the society at large. It is possible that the participants may not share the goals of the labour relations system nor the goals of the labour relations system may not be in harmony with those of the total society. The discord or conflict within and between the goals at these four levels could be, among other factors, due to lack of public policy guidance, perceptual problems, or inadequate efforts in reconciling and realigning of sub-components of the goals. However, in some instances, goals such as full employment, price stability, and free negotiations have posed a problem or irreconcilability. Professor Bakke has termed the above problem an "uneasy triangle" where any two goals are attainable but not all three.[36] We will also review at a later point various other conflicting goals within the labour relations system.

40. Individual Employee Goals According to Abraham Maslow, man is a wanting animal. His goals are to satisfy a hierarchy of needs and wants ranging from physiological needs to self-actualization.[37] This hierarchical concept of human needs is illustrated below in Chart I. It must be remembered that satisfaction of higher needs may be demanded before a lower need is completely satisfied. What is important from a labour relations point of view is that all five levels of needs can be partly or wholly satisfied through participation in work related activities. That is, the work place does contribute to need fulfilment in varying degrees at all levels although it is unlikely that it fulfills all needs at all levels of all employees. In an institutional sense, participants in the labour relations

system recognize these needs of employees and provide opportunities for their satisfaction. However, it is conceivable that in the pursuit of organizational goals, management, unions, or government may disregard individual employee needs, leading to problems with industrial unrest, industrial law and order, absenteeism, turnover, poor morale, and lower productivity.

41. Goals of Trade Unions. Historically, the goals of the trade union movement in North America have remained primarily economic. They seek to protect and enhance through the labour-management relationship the job interests of their members. The first recorded strike in Canada was called in 1794 by Quebec voyageurs to protest low wages. The first efforts to organize a union occurred in the early 1800's and for the purpose of improving "working conditions" among journeymen in the Town of Halifax. Early Canadian labour history provides ample evidence of workers' concern and interest in protecting their job interests. The prime objective for forming the Journeymen Tailors' Operative Society in Toronto in 1852 was to ensure that the Singer Sewing Machine, with all the inherent problems of mechanization for the workers, was removed from the shop. One of the most important components of working conditions, namely, shorter hours of work have remained at the core of union organization and

activity. In 1834 Montreal carpenters demanded an eleven hour day. The Amicable Society of Bricklayers, Plasterers and Masons, in the same year, set the working day from 6:00 a.m. to 6:00 p.m. with a two hour break for meals.[38]

42. Undoubtedly, the labour-management relationship and economic well-being is the primary concern of Canadian labour, but political goals continue to attract a large part of some union leadership and perhaps, to a lesser degree, union membership. Historically, we observe an interesting interplay between the job and political goals of the Canadian trade union movement.[39] While Gompers' theory of political non-alignment made practical sense within the political structure of the United States, where politicians enjoy greater political discretion, elected representatives in a British type parliamentary system in Canada are subject to stricter party discipline. Therefore, Gompers' motto of "rewarding your friends and punishing your enemies" at the polls, irrespective of party affiliation, was inappropriate in Canada. Accordingly, "...over the years Canadian labour leadership has leaned heavily toward supporting a moderately leftist party -- first the CCF and then the NDP -- but the membership has been slow to follow."[40]

43. There was no consensus on goals even within the Trades and Labour Congress. At the convention of 1907 there was a move to grant political autonomy to provincial groups, especially to grant legitimacy to the socialists in British Columbia and Alberta. The resolution was defeated and the differences on the political goals and objectives within the house of labour became serious. According to Jack Williams: "In the 1908 election the Canadian Labour Party ran four candidates, all of whom were opposed by socialists."[41] The policy and attitude of the Socialist Labour Party became seriously anti-union as it perceived in the economic goals of the

trade unionists a threat to the true cause of revolution. Williams states: "In Alberta the Socialist Party had its greatest strength in the mining camps. But factional fighting was also prevalent in that province, and the Alberta Federation of Labour, which had been founded largely on opposition to the conservative policies of the TLC, decided to take no firm political position."[42]

44. The mainstream of Canadian trade unionism has pursued a pro-lobbying non-partisan political policy. However, other factions were continuously lured by the idea of the Canadian labour party as a replica of the British labour party. At the 1960 convention of the Canadian Labour Congress, President Jodoin outlined a policy closer to the pro-political party position of the former Canadian Congress of Labour then the pro-lobbying position of the former and craft-oriented Trades and Labour Congress.[46] But, this relationship stops well short of the close alliance in Great Britain between the Trades Union Congress and the Labour Party.

45. With approximately 60 percent of the Canadian trade unions affiliated with the American Federation of Labour-Congress of Industrial Organization and the AFL-CIO's job-related goals, one can safely infer that the primary goals of the Canadian trade union movement are to protect and enhance job interests. However, the Canadian Labour Congress' support for the New Democratic Party gives an important political dimension to the goals or organized labour in Canada, particularly if the NDP is involved in a coalition government. Even if a labour-supported party forms a government, as currently is the case in Saskatchewan and Manitoba, the negotiating process remains immersed in job-centered issues, regardless of the policies or societal reforms these governments implement. Indeed, there was a kind of "falling out" between the British Columbia Federation of Labour and the New Democratic Government during the mid-1970's.

46. One industrial relations scholar perceives a hierarchy of union goals in which economic goals have the highest order or preference, followed by political and social goals.[43] He argues that whenever trade unions are unable to achieve economic goals through the labour-management relationship they resort to political activities. The Canadian trade union movement learned that calls for legislated shorter hours, equal pay for equal work, extension of the franchise, compulsory education, and employer liability in industrial accidents required a vehicle for political action, suggesting that the labour-management relationship was unable to respond to the call. At the 1894 Trades and Labour Congress convention, the committee studying President P.J. Jodoin's recommendation for active lobbying went further and argued for an independent labour party. It reported:

> We believe that the time has come to stop knocking at the government doors and that the time has now arrived to take such independent political action as will leave the doors open to us all the time through the formation of an independent party.[44]

Another student of trade unionism states the goals of trade unions as follows: 1) to seek improvements in wages, hours, and working conditions for their members, 2) to look after the perceived "rights" of their members vis a vis management, 3) to lobby for pro-labour improvements in labour legislation affecting their members or their members' interests, and 4) to promote social and political changes on behalf of their members and the disadvantaged of society such as the elderly and certain minority groups. He also suggests that trade unions differ with respect to the extent that they pursue or attempt to implement any of these objectives. He argues that part of the reason for this is because elected trade union officials may have objectives which differ from those held by the members who elected them.[45]

47a. In an attempt to reflect the goals of the Alberta trade union movement, we put the question of goals to the Alberta Federation of Labour. From

their response we can offer the following.

The Alberta Federation of Labour is the umbrella organization of the trade union movement within this province. By way of constitution it has the responsibility and the authority to pursue the following goals and objectives:

a. Promotion of the interest of affiliated unions.

b. Advance the economic and social welfare of Alberta workers.

c. Encourage all affiliates to extend union membership to the unorganized regardless of race, colour, creed, sex, sexual orientation, age or national origin.

d. Secure provincial legislation safeguarding and promoting the principles of free collective bargaining, the rights of workers, and the welfare of all people.

e. Protect and strengthen our democratic institutions and to secure full recognition and enjoyment of human rights and civil liberties and to perpetuate the cherished traditions of our democracy.

f. Promote the cause of peace and freedom and to assist and co-operate with free and democratic labour movements throughout the world.

g. Protect the labour movement from all corrupt influences and to promote the principles of free and democratic unionism.

h. Encourage workers to exercise their rights and responsibilities of citizenship and to perform their rightful part in the political life of municipal, provincial, and federal governments.

According to the Federation, the pursuit of the above goals and objectives often becomes a very frustrating experience because of Alberta's labour relations climate and the nature of the economic activity. The major industrial activity in Alberta centers around non-renewable resource development. It is an industry that is very difficult to organize because of the transient nature of the work force, particularly in oilfield drilling and exploration. In addition, the multi-national energy companies work very diligently at discouraging union organization. The Federation also stated that the labour relations climate in Ablerta is strongly influenced by pro-employer labour relations legislation, namely, The Employment Standards Act, The Labour Relations Act and The Public Service Employee Relations Act.

In addition, the policies pursued by government, such as wage guidelines, has served to provoke confrontation.[400]

47. Goals of Management. The goals and philosophies of business enterprise in Canada have evolved around the rationality of classical economics which demands maximum results at minimal costs.[47] It is envisaged that in order to make this rationality operative, managers of business enterprises will use resources at their disposal, as efficiently as possible, to produce those goods and services which consumers want at prices acceptable to them. The major premise in this calculus is laissez-faire which allows private employers to dominate the economy, albeit, preserving the autonomy of the market forces. In this view the goals of management are predominantly economic and seek the maximization of profits for the benefits of stockholders without much concern for social matters or human accommodation.[48]

48. The classical goals of profit maximization for business enterprises was modified in the 1930's when large corporations accepted the viewpoint that business decisions must be made to balance equitably the interests and claims of "stockholders, employees, consumers, suppliers and the general public."[49] Although the emphasis was on balancing the interests of several groups, not just promoting the interests of stockholders, it was believed that in the long-run profit maximization would be obtained. Another aim which may cause firms to be somewhat short of absolute cost minimization with regards to labour services is the firms' subsidiary aims of maintaining or enhancing production.

49. With a changing social environment in Canada, the goal of business organizations is further shifting from the pure logic of profit maximization to accepting "social responsibilities." This may be costly. It is argued that

such costs must be borne because society has given certain rights and concessions to corporations and therefore their orbit of concerns is not restricted to the market but to the entire society. In other words, part of the economic rationality and the emphasis on efficiency may be sacrificed for social and human accommodation. Alternatively, firms with highly skilled work forces tend to "invest" in their employees by providing such things as educational funds and recreational activities in order to recruit and retain capable and reliable workers.

50. The shift in managerial goals is neither sequential nor absolute. The classical profit maximization goal is undoubtedly more prevalent than the balanced interest or social responsibility goal, especially among the small business enterprises. However, managers of large corporations seem to accept their social responsibility and much more readily, as evidenced in areas of technological change and environmental control. The degree of competition that firms face in the markets they serve may explain much of the reluctance of smaller firms to engage in wide-ranging social programs for employees.

51. Goals of Government. As a participant in the labour-management relations system one of government's primary goals is to encourage and maintain industrial peace. Through various governmental agencies such as the Department of Labour and the Labour Relations Board, governments at the federal and provincial levels have provided conciliation, mediation, arbitration services, and related procedures. Other goals that governments have pursued, in differing degrees and with varying degrees of success, include the following: 1) education and training in order to promote greater productivity, 2) manpower planning and labour market intervention seeking to avoid foregoing economic growth potential, 3) provisions for safe and healthy work environments intended to avoid wastage of valuable human

resources, 4) fair employment standards and individual rights' protection aimed at avoiding exploitation of individuals in the workplace, maintaining minimum employment incomes, and striking down discrimination in the work place, 5) quality of working life programs to promote such things as job enrichment and some measure of self-actualization, and 6) universal health, workmen's compensation, unemployment insurance, and industrial restructuring programs oriented towards such things as reducing human suffering and sustaining the productive capacity of members of society.[50]

52. Goals of the Labour Relations System. As indicated earlier, the goals of the labour relations system remain largely undefined. On the other hand, to some observers government's goal of industrial peace, in its capacity as a neutral participant in the system, seems to become the reflected goal of the system. Similarily, to others the combined goal of both labour and management, namely a negotiated settlement on the allocation of rewards, is a goal of the labour relations system. An additional goal is to develop democratic collective decision-making as well as self-reliance and responsibility through the labour relations system.

53. It is our opinion the first and fundamental goal of the labour-management relations system is the establishment of wages, hours and working conditions of employees through the negotiating process and the embodiment of these terms into an enforceable collective agreement. Second, it commits itself to a number of system goal processes that collectively provide the context through which the first and fundamental objective can be realized. These goals include:

a) Preservation and protection of the right to organize trade unions and employee self-determination with respect to their organizing wishes.

b) Determination on the question of employer recognition of a trade union made by a labour relations board. This is the certification

process. There is a parallel process of registration of employers' associations on a single trade basis in the construction industry.

c) Upon receipt of recognition through the certification process, commitment to the concept of exclusivity in representation and negotiating rights upon trade unions and registered employers' associations.

d) Preservation of the negotiating process within the context of a duty to negotiate in good faith and, as a corollary,

e) The right to a work stoppage upon failure of the negotiating process to achieve agreement.

f) To establish through the normal intercourse of the direct parties a system of agreement administration embodying the system of a grievance procedure and if necessary the grievance arbitration process.

g) Non-interference or involvement by parties outside of the direct labour-management relationship underscoring the private nature of the labour-management relationship.

Third, the preservation of the system goals as set out above. The foregoing review should underscore two essential points. First, the goals of our labour-management relations system are primarily self-serving. Second, while not completely insensitive, it does not place a great deal of weight on the goals of parties not directly involved in the relationship. The goals of the labour-management relations system and the goals of society are sometimes at odds, particularly as regards industrial peace. In addition, certain segments of society question the usefulness of the labour-management relations system.

55. Goals of Society. Every contemporary industrial society has developed a set of goals which reflect its history and tradition. Canada's, and for that matter Alberta's goals, are to pursue free development of human needs,

facilities, and potentials. In terms of Maslow's need hierarchy, it is the freedom to satisfy all the five levels of needs, including the freedom of an individual to do what he or she can do best. In order to ensure this fundamental human freedom, Canada has accepted and implemented a democratic political system and a welfare capitalistic or free enterprise economic structure. Thus the mechanisms available to individuals within this political and economic framework are such that the satisfaction of basis human needs are recognized and protected as fundamental human rights. The Canadian Bill of Rights of 1960 safeguards a wide range of individual rights which include the rights to life, liberty, and property which can not be taken away without due process of law. Protection of fundamental human freedoms is also accorded in the areas of religion, speech, and assembly. Alberta's The Individual Rights Protection Act of 1972 reaffirms these basic individual rights. It may be observed that the goals of the society are to help individuals achieve their goals as described earlier and not, for example, be exploited. Thus, in a broad sense, there is no conflict between the goals of the individuals and the goals of the society. However, in various instances, goals of certain individuals or groups are in direct conflict with others. Consider, for example, the freedom of employees to organize and join unions which interfere with the property rights of the employers. Historically, conspiracy charges against unions for restraining trade, under the common law, were symbolic of the conflict between the goals of two groups. In a democratic society, conflicting goals need continuous reconciliation. For instance, freedom of contract is generally upheld but is compromised where it comes to regulating minimum wages. Free market enterprise as a valued goal of the capitalistic system is again compromised where it relates to controlling monopolies through anti-combine regulations.

CONTEXT

The context of the labour relations system means the attitudes, values, perceptions, traditions, and even the folklore that the parties bring to the functioning of the labour relations system. This context is very real and understanding of the labour relations system is not complete without a full understanding of this context. It is our purpose here to sketch out the essential elements of this context.

Adversarial Nature. By and large, the labour-management relationship functions within an atmosphere distinctively adversarial in nature and is to be contrasted with the qualities of accommodation and co-operation. In part, this adversarial quality is the result of the nature of the issues within the relationship and the parties' reliance on the law and the processes set in place to administer this law. With respect to the former, certain issues, such as certification, are incapable of accommodative or cooperative outcomes. Certification will either exist or will not exist. There is no half way or partial outcome. The latter processes function in a manner in which only one party will win while the other will lose. It does not encourage outcomes more accommodative or co-operative in nature. It also functions in a quasi judicial manner, sometimes embraces knowledge beyond the abilities of many of the parties, encourages the role of the legal profession in the relationship, and generally reinforces a litigation mentality. We are not suggesting that the labour-management relationship is totally adversarial in nature. The processes of negotiations, dispute settlement, and much of the day to day administration of the collective agreement can be and usually is essentially accommodative and co-operative in character. However, other transactions such as certification, unfair labour practices, and grievance arbitration are invariably approached from the adversarial point of view.

As noted above, we believe the adversarial quality is primarily the result

of the basic approach and processes adopted within Alberta labour law particularly the administrative apparatus we have adopted. While some reinforcement may arise from the parties themselves, we believe that left to their own devices greater reliance would be placed on more accommodative and co-operative solutions. However, this approach might encourage greater use of the work stoppage and other forms of industrial action. The greatest singular consequence of the adversarial system is that many of the central issues in the relationship, starting with the question of certification itself, is left to a win/lose solution directed by a third party such as members of a labour board, an arbitrator, or the courts. While it is probably true that the issues decided in such a manner are incapable of accommodative or co-operative solutions, the fact remains that the decision process builds and reinforces the adversarial quality. In addition, as the processes are distinctly legal in nature and embrace knowledge, procedures, and protocols frequently not held by the parties, they are forced to rely on the expertise of the legal profession. This pressure and the involvement of the profession further adds to the adversarial atmosphere. Further, the adversarial character once engaged discounts to some extent the use of more accommodative or co-operative solutions. Because of the nature of the processes adopted, the issues placed before the processes may not completely embrace the original issue that arose before the parties. It is equally true that once decided the original issue may in total or in part remain. In effect, the adversarial process may not in fact offer a complete solution to the originating issue. Finally, except for those matters that by law must be decided within an administrative process, the remaining aspects of the relationship can be as adversarial as the parties want them to be. This choice again emphasizes the variety of Alberta labour-management relationships, varying from extreme cooperation to unkindled hostility.

Differences in Commitments. It is quite wrong to assume that labour and

management approach their relationship with the same degree of commitment or enthusiasm. On the one hand, their relationship is the raison d'etre of the union organization and as such a fulltime commitment should come as no surprise. On the other hand, most employers neither look forward to the relationship nor extend substantial commitment to it. Our commitment in law to the compulsory certification process bears ample testimony to this observation. Because of varying commitments the resources, time, skills, and abilities directed to the relationship is markedly different. To labour the relationship is a fulltime activity calling for a fulltime commitment. Except for the largest of enterprises, most employers extend little in the way of commitment. In a very real sense, the relationship can become one of professionals (i.e., more committed) and amateurs (i.e., less committed).

It is our opinion that the vast degree of differing commitments by labour and management does not serve the Alberta labour relations system well. It has been said that the success of the relationship is directly proportional to the sum of the commitments offered by the two parties. It has also been said that we develop the labour relations system we deserve. The issues and functioning of the system have such widespread consequences that we can ill-afford a less than full commitment to the relationship by both management and labour once the relationship is established.

Differences in Skills, Abilities, and Expertise. It is our opinion that differences in the degree of commitment leads to differences in the skills, abilities, and expertise available to each of the parties to the relationship. It is our opinion that poor skills, abilities and expertise lead to a poor labour-management relationship. As has been said many times it takes great skills, abilities, and expertise to successfully negotiate a collective agreement but substantially none is needed to negotiate to a work

stoppage. Sound agreement administration also requires considerable commitment as well as great skills, abilities and expertise. It is our opinion that there are sharp differences in the degree of skills, abilities, and expertise available within the membership of the Alberta labour relations community. Recognizing the consequences of the system both in social and economic terms, it is not in the best interests of Albertans to leave the system to persons who know little of what they are doing. We find it quite surprising to see the system run by persons ill equipped to do so.

Political Processes. The behaviour of both management and labour, but particularly the latter, are frequently influenced by political considerations within their respective organizations. To under-estimate this influence is to badly misunderstand the nature of the labour-management relationship. Virtually all of trade union officialdom hold position of elected office. They have a constituancy and continued office follows only upon approval of that constituancy. Union staff, although without a constituancy as such, hold position at the will of the organization's officialdom. We are reminded that trade unions are constitutionally governed organizations and with it comes politically influenced behaviour. We also frequently observe politically motivated behaviour within the enterprise. While the labour-management relationship often involves issues economic in character, the parties to that relationship do not follow the precepts of economic rationality invariably because politically it may not be appropriate to do so. Similarly, even though the issue may be economic, behaviour towards the issue is dictated by political considerations. It is this political influence that often explains the seemingly economic irrationality of both labour and management. It is equally true that the economically rational observer will have great difficulty understanding the behaviour of the parties within the labour-management relationship.

Role of Time and Timing. Time and timing play a major role in the functioning of the labour relations system particularly with respect to the transactions of negotiations and dispute settlement. In addition, the administrative apparatus of our law can and frequently is used to manipulate the element of time. Both parties when faced with an outcome not to their benefit will purposely seek to postpone the outcome through the manipulation of time. Similarly, in those transactions involving accommodation or co-operation, such as the negotiating process, the timing of the move to accommodation or co-operation is crucial. The parties move to accommodation or agreement when they are prepared to do so and when, in their opinion, it is in their best interests to do so.

Posturing. There is a great deal of posturing within the labour-management relationship. By posturing we mean the taking of positions, actions, and modes of behaviour that are not reflective of reality and truth. For example, communications between the parties and outsiders during the course of agreement negotiations seldom reflect reality or truth. The communication more frequently is staged in the hope of eliciting support for the party's cause or provoking a reaction from the other party. Posturing also takes place in grievance arbitration, unfair labour practices, work stoppages, and dispute settlement transactions. Because of posturing it is frequently extremely difficult to discern reality and truth. Posturing builds up a facade which denies to the observer the true state of affairs. Probably one of the best examples of posturing takes place in the communication vehicle between the labour relations system and the media and hence to the public at large. The content of most reporting of Alberta labour relations is nothing more than posturing. Seldom is the Alberta media sufficiently astute to recognize posturing and seldom does it attempt to penetrate the facade it presents in search of reality and truth. Posturing, theatrics, and staging are part and parcel of the labour relations scene.

Games Playing and Forked Tongue. One of the major consequences of the contextual characteristic of political processes and posturing is the emergence of games playing and expressions of the forked tongue. Games playing consists of a line of conduct and behaviour designed primarily to create concern, anxiety, and frustrations to the other party or to others who are part of the relationship. The game is called "give the opposition a bad time." It emerges when the commitment to the process associated with some transactions exceeds the commitment to accommodation or settlement. For example, the commitment to play out the grievance arbitration process to its fullest may exceed the commitment to obtaining a settlement or accommodation of the substantive grievance. The game is played by making much of technical irregularities, frustrating the establishment of the arbitration tribunal, refusing to agree to hearing dates or offering meaningful proposals, delaying the fulfillment of the process, and proceeding in a manner totally irrelevant or immaterial to the substantive matter at hand. In short, the process, in the example of the arbitration process, becomes an end in itself. The resolution of the substantive issue is quite secondary. The forked tongue characteristic refers to the fact that in labour relations we frequently do not say what we mean nor believe nor do we speak to the whole truth. There is a great deal of misrepresentation of the truth in labour relations. In terms of honesty, truth, and integrity, labour relations does not rank as one of the more exemplary relationships in our industrial society. However, we hasten to add, there are other relationships in industrial society that rank even lower in the exemplary scale.

Inherent Distrust. Unlike most of the labour relations systems in the industrialized world, our system displays inherent labour-management distrust. The source of this distrust is twofold. First, we perceive sharp philosophical differences in each party towards the other as it relates to their legitimacy. This philosophical difference is greatest in the view of

management towards labour. Philosophically, management generally questions the propriety, appropriateness, motives, and functioning of trade unionism. It equally questions the transactions and processes that come within the labour-management relationship. Second, the conduct of each party to the other raises in each mind serious issues of credibility, integrity, and honesty. It is the result of the functioning of a relationship which has not always been built upon the qualities of honesty, integrity, and good faith. In short, both parties have become adept in leading the other party down the garden path. These philosophical differences and modes of conduct have marked the context of labour relations since its very inception. As noted earlier, they are qualities that distinguish our system from the systems found in the bulk of the industrialized countries of the world. It is also because of their presence and the distrust that they generate, that we find such a major role played by the law in our labour relations system. Again, the major role of law in our system is a characteristic not found in many other labour relations systems throughout the world. This material distrust and their principal causes have been the subject of numerous studies not only on the question of why do they exist but, more importantly, why do they persist. While their presence is well established these studies can offer little on what to do about it. The fact remains that the elimination of labour-management distrust still remains elusive and one of the major impediments to the effective functioning of our labour relations system. This is because it often only takes one incident where one side perceives that the other has been dishonest or exhibited a lack of integrity or good faith to generate a good deal of distrust for quite some time in the future.

Private Nature of Relationship. Traditionally, both labour and management have considered their relationship to be a private affair and the intervention by any third party is labelled as "interference." However, in truth, tolerance for the third party interference depends upon whose side

the third party's interference tends to support. In any case, with certain exceptions like police and firefighters, both labour and management generally have not accepted the view that their relationship does have third party consequences and as such they should accept responsibility for it, or alternatively, take into account third party interest in the course of their relationship. Virtually all labour relations processes and transactions are insulated from outside observers. Likewise, third party communications from outside of the relationship are not viewed as proper nor is the message granted effective consideration.

Forward Looking Perspectives. The primary perspective brought by the parties to the labour-management relationship is not of the past nor the present but of the future. The primary transaction of certification, negotiation, and interest arbitration are all processes of current decision-making that shape and determine the future dimensions in the relationship. Even the grievance arbitration process, although ostensibly reviewing factual circumstances from the past, frequently has as its real agenda the determination of how the future is to unfold. Because of this forward perspective, decisions and positions taken in the present frequently have as their determinants a forecast of what will be in the future as viewed by the respective parties. It is equally true that position and decisions are invariably made in the present but have consequence and application in the future. Hence, a true understanding of present positions and decisions cannot be appreciated unless they be reviewed and interpreted in the consequences of the future's unfolding.

Self-Interest. One of the qualities brought by a commitment to the western democratic free enterprise economic and social tradition is a strong commitment to self-interest. As offensive as it may be to some, the fact remains that this quality is firmly established in much of our economic and social affairs. By self-interest we mean the commitment to

rewards to one self in either economic or social terms, even in the absence of rewards to others. Self-interest is firmly established in the Alberta labour relations system. It is our opinion that, despite its general acceptability in much of economic and social affairs, our unrestricted commitment to self-interest does not serve our labour relations system well. Increasingly, as we witness the gradual but dramatic shift in labour relations from the once "private" to a "public" relationship, as the system comes under ever increasing scrutiny and review, we witness repeated confrontations between the concepts of "self-interest" and the general good frequently referred to as the "public interest." It is our view, as history so ably demonstrates, that such a confrontation inevitably leads to greater and greater regulation by government. We do not believe that it is appropriate that the system be increasingly regulated by government. It also seems to us that to date the central issues in "self-interest" and "public interest" confrontations are the economic outcomes of the negotiating process and the exercise of the work stoppage right. It is our view, that the future degree and kind of government regulation in these areas will depend upon how well the system can manage and indeed discipline itself with respect to its self-interest commitment. The days of an unbridled commitment to self-interest have passed and with it the future of a free self-determined labour relations system must rest upon the contextual quality of prudent self-discipline.

Coarseness and Irrational Behaviour. Attitudes, and indeed all aspects of human behaviour, are inextricably intertwined with the functioning of the labour relations system. Indeed, these behavioural dimensions in the relationship are as much determinants of the nature and quality of the relationship as the substantive terms of employment in the workplace. Labour relations is not an activity committed to protocols nor pre-determined appropriate manners of conduct. There is absolutely nothing that prevents the parties from behaving any way that they feel like

behaving. There are many issues that arise in which, although the substantive content is not great, parties have very strong emotionally determined positions. These positions are quite removed from what would be dictated under a rationally determined approach. As a result, it is not uncommon to see quite a free expression of emotion and feeling seldom observed in any other field of industrial activity. At times, a blind and raw emotional response is the singular determinant of behaviour and with it comes coarseness not only in vocabulary but also in conduct. Likewise, and quite understandably, with behaviour dictated by blind and raw emotion irrational behaviour follows. In labour relations, behaviour is as much dictated by the heart as by the head. Labour relations is not an activity in which participants approach positions and decisions solely on the basis of a well-disciplined, cool, calculated, and rational logic.

Scarcities and Difficult Choices. Unfortunately, scarcities are part and parcel of the realities in the condition of mankind. A world with abundance and an absence of scarcity remains the singular domain of the utopian. It is not part of the world of labour relations. Invariably, for each benefit available within the system there are at least two parties competing for it. Scarcity breeds competition. Competition is cruel, unrelenting, and unforgiving as it does not dictate equal benefits to all. Negotiations for a wage increase, reduced hours of work, longer vacations with pay, and greater pension benefits all involve competition in the use of a limited income stream within the enterprise. It is a scarce resource and is simply incapable of satisfying all demands placed upon it. Clearly, it means that both labour and management will be faced with difficult choices. There is nothing in the labour relations system that suggests easily determined choices. Scarcity is a fact of life and competition remains the instrument for the distribution of benefit. Just as competition rightly and properly performs its role in allocating scarcities in the marketplaces of our economy, so competition plays its right and proper

role in our labour relations system. Likewise, competition is a quality to be protected and preserved. It is our opinion that recent intervention into the system may have the consequence of reducing the functioning of this much needed competition. The case for intervention is a traditional one; that is, it is to reduce or eliminate the consequences of the free unrestrained functioning of competition. Clearly, we are faced with a difficult choice. On the one hand, we can accept the decision competition places before us or, on the other hand, we can intervene to avoid the consequences of that decision. It is our opinion that in labour relations it is best to accept the decision that competition renders over intervention to reduce its consequences. Such a preference calls for accountability, determination, courage, and above all, confidence in the functioning of the labour relations system. These are all much needed qualities in Alberta labour relations. Given options, the system will make its difficult choice decisions and they will be the right decisions for all of us. A decision flowing from the functioning of competition is vastly preferable to a decision resulting from an act of intervention solely justified on the basis of avoiding the consequences that the right decision may bring. The time has come for us to stop looking for simplistic solutions of difficult issues.

Openness, Vulnerability, and Volatile Nature. As noted earlier in this report, the Alberta labour relations system is an open system and highly vulnerable to influences and developments outside the system. It is quite capable of responding to these influences in a most abrupt and volatile way. Developments in our economic and social affairs and condition have a direct impact on and influence the system's functioning. Linkages between the system and the world outside it are direct and immediate. In addition, this openness and vulnerability results in a scrutiny and examination of its functioning seldom encountered in other economic and social institutional structures. Consequently, it is imperative that the

openness of the system should not give rise to commentaries on the system which, due to its vulnerability, engage the system in unproductive activities for which it was not designed to handle and is ill-equipped to respond to. Openness and vulnerability translates into fragility and delicacy. An awareness of openness, vulnerability, fragility and delicacy is indispensable to any constructive commentary on the system and sensitivity to the consequences that a given event will have on the system is a much needed quality in Alberta's economic and social affairs. The system functions within a fine balance and ill-advised and insensitive commentary from any quarter can destabilize the system. It is our opinion that many Alberta observers of the system as well as participants within the system lack this sensitivity and their activities and comments disrupt the system and harm or confuse the people of Alberta as well.

Dynamic Environment. The larger environment within which the Alberta labour relations system functions is extremely dynamic with continual changes occurring within our economic, social, and political condition. As a result, the agenda of the system is in continual change in an attempt to influence the direction and character of the dynamic that it finds itself confronted with. The issues in the system of 1981 are not the issues of 1982.

Microcosm of the Macrocosm. In summary, the context of the labour relations system is in effect a microcosm of the macrocosmic characteristics of Alberta's industrial society and of the economic, social, and political systems that comprise it. It is a system that absorbs and reflects essentially the same qualities and characteristics of these larger systems. However, within the labour relations system these same qualities and characteristics take on a more dramatic and highlighted nature because of the kinds of substantive issues within the decision-making domain of labour relations and the consequences these decisions can bring forth. In

effect, the contextual characteristics reviewed above represent simply highly focussed and more dramatic dimensions of Alberta's industrial society. Thus, it is our opinion that, in the longer term, changes in the contextual characteristics of labour relations and in the effectiveness in the system's functioning must be preceded by corresponding changes in the contextual characteristics and effectiveness of our larger industrial society. Further, it is unrealistic to expect the dimensions of these contextual characteristics to be other than those of industrial society in general. In the final analysis, the march to effectiveness in our labour relations system will not be led by the system and its community but by individuals emerging from the larger industrial society who seek a reshaping not only in industrial society, but also in the labour relations system which is a part of that larger industrial society. In effect, the management of labour relations is a reflection of the management of Alberta's industrial society. Ineffectiveness in management of the industrial society spawns ineffectiveness in the management of our labour relations system.

REFERENCES

CHAPTER I

1. Our evaluation of the system and recommendations for change are set out in Chapters V and VI respectively.

2. It is quite wrong to assume that the thousands of labour-management relationships in Alberta function in an homogenious context. They do not and our system of labour relations law and its administration must recognize this fact. It does not now do so.

3. This pluralistic environment was a subject of a project study. See R. Neil Tidsbury, Labour Relations in Alberta-A Profile. Edmonton: Institute of Law Research and Reform, 1977, 174 pp.

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7. Freedom of Trade Union Association Act, Statutes of Alberta S.A. 1937, c.75.

8. Richard Martin Lyon (Ed.), The Labour Relations Law of Canada. Washington: BNA Books, 1977, 55 pp.

9. A.W.R. Carrothers, Collective Bargaining Law in Canada. Toronto: Butterworth, 1965, p. 106.

10. Ibid.

11. S.A. 1947, c.8.

12. Carrothers, op. cit. Note 3 at p. 105.

13. R.S.C. 1970, c.L1.

14. Lyon, op. cit. Note 2 at p. 25.

15. Ibid.

16. S.A. 1980, c.72, s.2.

17. S.A. 1977, c.40.

18. H.D. Woods, Labour Policy in Canada. (Second Edition) Toronto: MacMillan of Canada, 1973, p. 101.

19. S.A. 1977, c.40, s.3.

20. S.A. 1980, c.72, s.6.

21. S.A. 1977, c.40, s.2. A detailed schedule of persons to whom the Act does not apply is appended to the Act.

22. S.A. 1980, c.72, s.2.

23. S.A. 1977, c.40, s.48.

24. S.A. 1977, c.40, s.9(1)(m).

25. Woods, op. cit. Note 11 at p. 100.

26. S.A. 1980, c.72, s.8.

27. S.A. 1980, c.72, s.9 and 10.

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29. S.A. 1980, c.72, s.8.

30. S.A. 1980, c.72, s.18.

31. For a review of the evolution of grievance arbitration in Canada see: Jacob Finkelman, "Arbitration of Labour Disputes in Canada-A Historical Perspective." (A paper presented at a meeting of the Canadian members of the National Academy of Arbitrators, Saturday, September 27, 1980). Mimeo, 32 pp. For a recently proposed alternative see: Industry and Expedited Arbitration. Alternative to Traditional Methods. Ottawa: Labour Canada, 1977, Catalogue L82-32/1977.

32. The Public Service Employee Relations Act uses the term "adjudication" to avoid confusion with the process of interest arbitration which in that Act uses the term "arbitrator".

33. S.A. 1980, c.72, s.121 and S.A. 1977, c.40, s.38.

34. S.A. 1980, c.72, s.129 and S.A. 1977, c.40, s.42.

35. S.A. 1980, c.72, s.124(2) and S.A. 1977, c.40, s.44.

36.

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38. For a review of the history and goals of trade unions in Canada See: John Crispo, The Canadian Industrial Relations System. Toronto: McGraw-Hill Ryerson Limited, 1978, 570 pp, c.7 and 8, and Jack Williams, The Story of Unions in Canada. Toronto: J.M. Dent and Sons, 1975, 228 pp. For references to the Alberta scene see: Footnote.

39. For a review of trade unionism in politics see: Doris French, Faith, Sweat, and Politics. Toronto: McClelland and Stewart Limited, 1962, 229 pp, and Clifford Scotton, Canadian Labour and Politics.

40. Jack Williams, op. cit. p. 4.

41. Ibid. p. 104.

42. Ibid. p. 106.

43. Jack Barbash, "The Elements of Industrial Relations," British Journal of Industrial Relations. Vol. 2, No. 3, August, 1964, pp. 122.

44. Proceedings. TLC Convention, 1894 as reported in Clifford Scotton, op. cit. pp. 62.

45.

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47. Jack Barbash, op. cit. p. 122.

48. For a review of management goals see Crispo, op. cit. c.5 and Al Michalaski (Task Force Study).

49. George A. Steiner and John B. Miner, Management Policy and Strategy. McMillan: New York, 1977, p. 58.

50. For a review of the goals of government see Crispo, op. cit. c.3 and pp. 248-250 of c.9.

CHAPTER II

THE ALBERTA LABOUR RELATIONS SYSTEM: PROCESSES

ORGANIZATION OF TRADE UNIONS

56. Studies have repeatedly concluded that persons encourage the formation and belong to trade unions for a wide variety of reasons. They also conclude that the reasoning need not necessarily be related to the employee's view of the employer nor the terms under which he or she is employed. In short, there are a host of influences affecting the movement of employees to organize into a trade union organization.

56a. The organization of a trade union per se is not an activity heavily regulated by the law. Rather, the thrust of the law is on regulation of the conduct of the parties in the course of trade union organization, particularly employer conduct. The organization of employees is not an activity that goes unnoticed by most employers and frequently illicits quite a negative employer response. In fact, some of the most acrimonious and bitter chapters in Canadian labour relations center on employee efforts to organize trade unions and employers' counter-offensives designed to discourage or frustrate these efforts. The act of employee organization signals the start of what will become a labour-management relationship. As noted earlier, most employers do not welcome this relationship and will move to resist it at every opportunity.

56b. Most frequently, the organization of a trade union starts with an idea. Employees, for one reason or another, believe their interests would best be represented by a trade union organization. Alternatively, the initiative may rest with a trade union that seeks to bring or extend the organization to a new group of employees. From the initial idea springs forth discussion and debate over the originating fundamental question: Do

we wish to be represented by a trade union? From debate and discussion flows a full-fledged organization campaign in which debate and discussion recedes in favour of a positive endorsement in the form of a completed application for membership, execution of a petition, or other testiment to positive support. The objective is now a fifty percent or better positive endorsement from the employee group affected. Given a positive endorsement, efforts will now focus on development and adoption of the constitution and bylaws of the organization, election of officers, establishment of committees, and generally giving life and form to the newly born trade union organization. However, the formation of the organization does not a labour-management relationship make. The remaining essential element is a preparedness on the part of the employer to recognize the organization and to accept it as the representative of its employees. Seldom is an employer prepared to do this. As such and between these two parties the issue of recognition by the employer stands unresolved. It is on this issue that the law will be brought to bear and decide the question once and for all. Our system calls for the question to be decided by a labour relations board within an administrative law process known as "certification." This application for certification by the infant labour organization marks the start of a heavy involvement of the law in Alberta labour relations.

LABOUR BOARD TRANSACTIONS

57. The Labour Relations Act, S.A. 1980, c. 72 (LRA) established the Labour Relations Board (LRB) to share the administration and enforcement of the statute with the Minister of Labour. Although the Act primarily applies to employers and employees in the "private sector" of Alberta, it includes within its scope local government administration, several public services, and some public enterprises.

58. Transactions Before the LRB. Given finality and conclusiveness with respect

to its decision and armed with substantive and wide ranging powers of inquiry, the LRB undertakes to investigate and make rulings concerning transactions as listed in Table 5.[51]

TABLE 5

TRANSACTIONS BEFORE THE LABOUR RELATIONS BOARD 1975-1981

(LABOUR RELATIONS ACT SECTIONS NOTED)

	1975	1976	1977	1978	1979	1980
Certification (sections 33-41)						
Applications Received	305	331	416	264	274	364
Issued	214	242	291	185	156	231
Refused	91	89	125	79	97	91
Revocation of Certification (sections 42-44)						
Applications Received	33	49	26	33	23	35
Issued	26	35	19	19	14	18
Refused	7	14	7	14	9	9
Registrations (sections 50-58)						
Applications Received	10	15	8	6	10	0
Issued	1	11	3	4	6	4
Refused	8	2	5	2	3	0
Unfair Labour Practices (sections 136-143)						
Applications Received	22	22	31	31	32	81
Illegal Strike/Lockout (section 113)						
Applications Received	16	30	5	28	14	21
Reconsiderations, Determinations, Declarations, and Variances						
Applications Received	157	273	382	273	119	430
Total Applications	543	720	868	635	472	931

Certification (LRA., s. 33-41). The concept of certification of bargaining agents in Canada was derived from the American experiences under the National Labour Relations Act of 1935, now commonly referred to as the Wagner Act. As the Canadian industrial community revived following the Depression, and as Canada intensified her efforts to fulfill her role in the war effort as a producer of food and the instruments of war, new impetus was seen for mass organization by the labour community. Some employers were hostile towards unionization, and attempted to frustrate organization activities. They would refuse to recognize unions as bargaining agents. The industrial sector was marred by disputes over questions such as the recognition of unions and the discharge of workers for union activity or membership. A policy document, Order-in-Council P.C. 2685, was tabled in the House in 1940. Among the policy principles included in this document was the establishment of the freedom of organization without interference, and the freedom of negotiation through the representatives of a trade union of the terms and conditions of employment. The subsequent Wartime Labour Relations Regulations of 1944 included the concept of certification of a trade union by an administrative tribunal. The certification system was to replace the deciding of the recognition issue through direct economic confrontation between the parties. The Regulations provided that a certified bargaining agent could serve notice on an employer requiring the employer to recognize the union as the bargaining agent for his employees and to negotiate with the union with a view to entering into a collective agreement. Public policy was thus very clear that the question of recognition would be taken from the parties and decided by an administrative tribunal. Disputes over the recognition of unions, and the imposition of sanctions to impose recognition were no longer necessary. Once the bargaining agent was certified, recognition was compulsory. The concept of certification and the

processes and machinery for its administration were carried over into post-war legislation. Certification issues now comprise a large part of the activities of the Labour Relations Board.

59. Applications for certification accounted for 47% of the transactions before the LRB during the five-year period examined in Table 5. The annual number of applications for certification rose sharply during the 1975-77 period, from 305 applications in 1975 to 416 applications in 1977, but subsequently declined to 364 in 1980. In 70% of these applications, the Board chose to issue the certificate to the applicant. The statute contains certain bars to application for certification.[52] These bars reconcile the conflicting goals of allowing employees to be represented by a union supported or selected by a majority, and of bringing continuity and stability to the labour-management relationship.[53] Accordingly, the application may be made where no collective agreement is in force and no certification is in effect with respect to any of the employees in the unit. If no collective agreement is in force, and a bargaining agent has been certified in respect of all or part of the unit, an application may be made after ten months following the date of certification. Where a collective agreement is in force for a term of two years or less, application may be made in the two months prior to the end of the term. Where a collective agreement is in force for a term of longer than two years during the eleventh and twelfth month of the second or any subsequent year of the term or during the two months prior to the end of the term. Where the certification of a bargaining agent in respect of any of the employees in the unit has been questioned or reviewed by the Court, application can be made after ten months following the disposition of the question or review. Consent of the Board is required before application can be made where a strike or lockout is in effect, or where the constitution or rules and by-laws of the trade union have been filed

with the Board for a period of less than 60 days. Upon receipt of an application for certification, the LRB first investigates the timeliness of the application with respect to these bars.

60. Before the certificate is granted to the applicant, the LRB is instructed to determine whether the unit of employees in question is an appropriate unit for collective bargaining, and whether the trade union has been selected by a majority of the employees in the unit and to inquire into any other question which, in the Board's opinion, is material in considering the application. (Section 37(1).) One such question is whether the trade union is dominated by an employer or influenced by an employer so that the organization's fitness to represent employees in contract negotiations or agreement administration is impaired. (Section 39(1).) Another such question is whether application for membership in the trade union directly resulted from picketing of the place of employment of the employees affected or elsewhere. (Section 39(2).) union for representation of the employees in question. In determining whether the unit of employees is appropriate for collective bargaining, the Board may consider, for example, the community or mutuality of interest with respect to wages, hours, working conditions, and other objects of collective bargaining of employees to be certified in the same bargaining unit, the homogeneity and separate group identity which makes the group capable of being distinguished from other employees or groups of employees in the working force, the prior history and pattern of collective bargaining of the unit in question, the desires of the employees as to the bargaining unit in which they wish to be included, the administrative setup, organization, and method of operation of the employer and the way the unit fits into the company's organization, the permanence of the unit, and agreement of the parties concerning the particular bargaining unit. Policy principles emerging from prior decisions of the Board may also be given attention.[55] Whether the trade union has

been selected by a majority of employees in the unit may be determined by evidence that the majority of employees in the unit are members in good standing in the applicant trade union, or have applied for membership prior to the application and paid a fee. A majority of the employees may also petition the Board for a certificate. In this case a majority of those voting (who also must be in the appropriate bargaining unit) must favour having a trade union represent them in a representation vote conducted by the board. Following any inquiry into these matters that it considers necessary, the Board may include or exclude employees from the bargaining unit or alter and amend the description of the bargaining unit to make it "more appropriate" for collective bargaining.

61. Where the LRB determines to its satisfaction, having given due consideration to the statutory criteria, that a certificate is warranted, it will certify the trade union as the exclusive bargaining agent of the unit of employees in question. Where a trade union becomes a certified bargaining agent it has exclusive authority to bargain collectively on behalf of all employees in the unit for which it is certified, whether or not they are members of the trade union, and to bind them by a collective agreement. The trade union immediately replaces any other bargaining agent in the unit for which it is certified, becomes party to existing collective agreement, and has the right to terminate the agreement on two months' notice in writing.[56]

62. Revocation of Certification (LRA., s. 42-44). The employees in a unit in respect of which a trade union has been certified, or the employer of those employees, may apply to the LRB to have the certificate of the bargaining agent revoked. The application must be timely. Application may be made by the employees where no collective agreement is in force after ten months following the date of certification of the bargaining

agent. Application for the revocation of the certificate of a bargaining agent that has been questioned or reviewed by the Court may be made by the employees after ten months following the disposition of the question or review, unless the Court quashed the decision of the Board to certify the bargaining agent. Where a collective agreement is in force, for a term of two years or less, the employees may apply for the revocation of the certificate at any time in the two months prior to the end of its term. If the collective agreement has a term longer than two years, such an application may be made at any time during the eleventh or twelth months of the second or any subsequent year of the term or during the two months prior to the end of the term. (Sec. 42(2).) The employer may apply for the revocation of the certificate where that employer and the certified bargaining agent have not bargained collectively for a period of three years from the date the union was granted a certificate, where no collective agreement has been entered into, or from the first fixed date for the termination of a collective agreement. No application for the revocation of a certificate may be made, without the consent of the LRB, where a strike or lockout is in effect.[57] Where the Board is satisfied, after consideration and possible inquiry into the merits of the application, that the majority of employees in the unit no longer desire that the trade union bargain on their behalf, there have been no employees in the unit for a period of three years, or the bargaining agent has abandoned its bargaining rights, then the Board will revoke the certification of the bargaining agent. (Sec. 43(1).) The effect of the revocation of the certification is that the employer is no longer required to bargain with the bargaining agent, and any collective agreement affecting the employer and his employees becomes void and of no effect. During the 1975 through 1980 period, the LRB considered 199 applications for the revocation of certificates. The Board chose to revoke the certificates in connection with 131 of the applications.

63. Reconsiderations (LRA, s. 18). The LRA contains a privative clause which displays some confidence in the LRB in terms of limiting judicial review.[58] In addition, the section provides, in part, that "...the Board may, at any time, reconsider any decision, order, directive, declaration or ruling made by it and vary, revoke or affirm the decision, order, directive, declaration or ruling." Such "reconsiderations" accounted for 19% of the matters brought before the Board during the six-year period examined in Table 5. Most often, these reconsiderations involved matters connected with the certification of trade unions as exclusive bargaining agents for groups of employees. They have included, for example, varying information on the certificate as to the name of the employer or union or varying the description of the bargaining unit.

64. Trade Union Successor Rights (LRA, s. 135). Due to the dynamic nature of the labour movement, provision is made in the statute for a union to claim that through merger, amalgamation, or transfer of jurisdiction, it is the successor of a trade union that was the bargaining agent for a group of employees prior to the transaction. On application, the LRB may inquire into the matter, calling for the production of evidence concerning the transaction and holding votes to determine the wishes of the majority of the unit of employees in question. Following the inquiries, the Board "...may declare that the successor trade union has acquired the rights, privileges and duties ... of its predecessor."[59] Applications concerning "successor rights" comprised 15% of the applications to the LRB during the six years examined in Table 5.

65. Registration of Employers (LRA, s. 50-61). Pursuant to Section 51 of the Act, an employers' organization in the construction industry may apply to the Board to be registered as the exclusive agent for collective bargaining on behalf of all employers in a specific territory and trade jurisdiction in

the construction industry in respect of which a trade union has established the right of collective bargaining. Upon receipt of such an application, the LRB is directed to inquire into whether the application is timely with respect to seasonal factors affecting work in the trade jurisdiction, and whether two or more unions have a common trade jurisdiction.[60] The Board is also directed to inquire into whether the employers' organization represents a majority of the employers in the territory or trade jurisdiction with whom the trade union has established the right of collective bargaining are members of the applicant employers' organization, whether the trade jurisdiction and territory are appropriate for collective bargaining, and whether the trade jurisdiction is part of the construction industry. It should be noted that many of these inquiries are analogous to those conducted in connection with an application by a trade union for certification. As a result of these inquiries, the Board may include in, or exclude from the territory or trade jurisdiction certain employers, or may alter or amend the territory or trade jurisdiction before issuing the registration certificate. On receipt of the registration certificate, the employers' organization has the exclusive authority to bargain collectively with the trade union(s) named in the registration certificate on behalf of all employees engaged in the particular territory and trade jurisdiction with whom the trade union has established, or subsequently establishes the right of collective bargaining. The registered employers' organization also bargains on behalf of any other employer engaged in the construction industry who is party to an agreement which provides that he shall comply with any of the terms of a collective agreement entered into by the trade union in respect of work in the territory and trade jurisdiction set out in the registration certificate.[61] During the 1975 through 1980 period, the LRB processed 49 applications for registration of employers' organizations in the construction industry. The Board issued registration certificates in 59% of the applications.

66. Unfair Labour Practice (LRA, s. 136-143). The LRB was called upon to rule in connection with 219 applications alleging unfair labour practices during the 1975 through 1980 period. Unfair labour practice has been described as "...conduct, usually lawful at common law, which is prohibited by the statute because it is calculated to interfere with the free course of collective bargaining."[62] The concept of unfair labour practice has been carried forward from the Wartime Labour Relations Regulations. The Regulations established the right of employees to form and join unions, and ensured protection against practices which, if allowed to continue, would result in discouraging the exercise of those rights.[63] They also established the right to negotiate and administer collective agreements and to lawfully strike. The administration of these matters was placed among the responsibilities of an administration tribunal. Section 32 of the LRA assures each employee the right to be a member of a trade union and to participate in its lawful activities, and to bargain collectively with his employer through a bargaining agent. Further, it provides that an employer has the right to be a member of an employers' organization and to participate in its lawful activities, to bargain collectively with his employees, and to conduct collective bargaining through an employers' organization. Unfair labour practices include those activities which interfere with the free exercise of rights granted under section 32. Employers are thus "...prohibited from interfering with the formation and operation of trade unions and from engaging in tactics prejudicial to union recognition and to the negotiation and administration of the collective agreement ... "Reciprocally, unions are prohibited from committing acts that "...invade and impede essential management functions ...," and from interfering with the formation and operation of employers' organizations.[64] Sections 136 through 143 of the Act list specific prohibited practices. These sections also list as unfair practices certain activities which pertain to the organization and the internal functioning of unions, and prohibit certain

conditions from being included in collective agreements.

67. Where the LRB receives a complaint alleging failure to comply with sections 136 through 140, the Board or a person designated by the Board may appoint an officer to conduct an inquiry into the matter and attempt to effect a settlement.[65] Some 13 of the 53 applications submitted to the LRB alleging unfair labour practices in 1976 and 1977 were settled in this manner. The Board may directly inquire into a complaint or it may do so after an appointed officer has failed to effect a settlement. In some cases (11 of the 53 in 1976 and 1977), the Board may refuse to inquire into a complaint where, for example, it is of the opinion that the matter could be referred to arbitration pursuant to a collective agreement. The Board may, at any time, reject a complaint if it is of the opinion that the complaint is without merit. Section 142 (5) lists the remedies available to the Board where it is satisfied that there has been failure to comply with the sections listing prohibited practices. These include reinstatement of employees suspended or discharged contrary to those sections, compensation for lost earnings due to such suspension or discharge, reinstatement or admission of a person as a member of a trade union, rescission of any penalty imposed contrary to those sections and compensation for such penalties. In addition, the Board may issue directives to the employer, employers' organization, employee, trade union, or other persons concerned to cease doing the act in respect of which the complaint was made. Section 142 (6) deals with the effect of a notice to commence collective bargaining. The parties, having served or having been served with a notice to commence collective bargaining, are instructed to meet and commence to bargain in good faith and to make every reasonable effort to enter into a collective agreement. In connection with failure to comply with this section, the Board may issue directives directing those concerned to bargain in good faith and attempt to conclude

a collective agreement. The Board may prescribe the procedures and conditons under which collective bargaining is to take place. It has powers of "general rectification" including the remedy of "making whole" parties who lawful rights have been breached under the statute.

68. Ruling on Differences (LRA, s. 21). The LRB may be called upon to settle differences concerning the application and operation of any of the provisions of the Act. The Board is instructed to make full inquiry and endeavour to effect a settlement between the parties in relation to such a difference. Upon failure to effect agreement, the Board may make recommendations as to what, in its opinion ought to be done by the parties. It may, subsequently, institute actions to ensure compliance with the provisions of the Act. In 1976 and 1977, the Board was called upon to rule on such differences in 16 applications.

69. Determinations (LRA, s. 8 (2). The Board is empowered to make "determinations" concerning, for example, whether a person is an employer, whether a person is an employee, whether an organization of employees is a trade union, whether a collective agreement has been entered into, whether a person is a part to or bound by a collective agreement, whether the parties to a dispute have settled the terms to be included in a collective agreement, whether a person is a member in good standing in a trade union, and whether an employer is affected by the registration certificate of a registered employers' organization. Such determinations are necessary in the course of the Board's administration of labour relations. The Board's decision in such matters is final and binding. In 1976 and 1977, the LRB was requested to make 84 such determinations.

70. Illegal Strike/Lockout (LRA, s. 113). A work stoppage is illegal where a collective agreement is in force. Section 113 provides that a party alleging

that a strike or lockout is illegal may refer the matter to the LRB. The Board may conduct an inquiry into the matter. If it is decided that the work stoppage is illegal, the Board may issue a declaration that the persons or organizations concerned cease and desist from doing anything to continue the strike or lockout. The Court may be called upon to enforce compliance with such a declaration. During the six-year period from 1975 through 1980, the Board received 114 applications alleging illegal work stoppages.

71. Revocation of Voluntary Recognition (LRA, s. 45-47). It is not necessary that a trade union be certified before bargaining collectively on behalf of a unit of employees. A bargaining agent may be voluntarily recognized by an employer. The employees in a unit bound by a collective agreement entered into on their behalf by a bargaining agent that is not certified may apply to the Board for a declaration that the bargaining agent is no longer entitled to bargain collectively on their behalf. If the Board is satisfied that a majority of the employees in the unit no longer desire the bargaining agent to represent them, the Board will issue the declaration. Upon revocation of the voluntary recognition of the bargaining agent, the employer ceases to be required to bargain with that bargaining agent, and a collective agreement in effect at that time becomes void. In the six years examined in Table 5, the LRB considered 9 applications for the revocation of the rights of a voluntarily recognized bargaining agent.

72. Consolidation of Certificates (LRA, s. 41). The Act provides for application to the Board by one or more certified bargaining agents for the consolidation of the certificates of one or more bargaining agents. This would create, in effect, a single certified bargaining agent. The Board may inquire into the matter, and may issue a consolidated certificate. This certificate would describe the unit which resulted from the consolidation.

A declaration may be required as to which, if any, of the collective agreements previously in effect should continue in force, and which should be terminated. The LRB received 14 applications for the consolidation of certificates during the 1975 through 1977 period.

73. Successor Employers (LRA, s. 132-134). A firm or business may choose to conduct some of its activities through seemingly independent business entities, and to shift a number of its employees to these seemingly independent "spin-offs" of its operation. Among the reasons for conducting business in this manner are attempts to frustrate the efforts of a trade union in organizing a group of employees, and attempts to avoid such responsibilities of the employer to the employees as are stipulated in a collective agreement. The Act, at sections 132 and 133, provides that a trade union may apply to the LRB for a declaration that these spin-off operations are under common control, and are one employer for the purposes of labour relations. In a case, for example, where a trade union is certified to exclusively represent all employees of a particular firm engaged in a specific craft, as in the construction industry, such a declaration would result in the employees of the spin-off firms engaged in that craft being included in the bargaining unit. During the 1975 through 1977 period, the LRB considered 11 applications concerning spin-offs.

74. Requests for Consent (LRA, s. 33). Trade unions must file their constitutions or their rules and by-laws with the LRB.[66] In part to prevent company-created unions from challenging an organizing union, a union may not apply for certification until at least 60 days after it filed its constitution or rules and by-laws with the Board, unless the Board consents otherwise. In 1977, the Board received 19 applications requesting that the Board waive the 60 day waiting period and permit an application for certification after a shorter waiting period. All of these applications

requesting consent for the submission of earlier certification applications were subsequently withdrawn.

75. Board Activities - General. Paralleling the general increase in labour relations activities over the five-year period examined in this study, the annual number of applications to the Board increased from 543 applications in 1975 to 931 applications in 1980. An average of about 110 days of board hearings was required each year to process the transactions. However, the 878 applications processed in 1977 required only 91 days of board hearings, while the 543 applications in 1975 required 135 days of board hearings.[67]

76. Transactions before the PSERB. The PSERB was established relatively recently, in September, 1977, when the Public Service Employee Relations Act, S.A. 1977, c. 40 was proclaimed. Initially, many of the Board's activities involved the administration of the transitional provisions of the new Act. While the LRB has limited responsibility in the area of intervention in disputes and differences concerning collective agreements, as stated in section 21 of the Act, the PSERB is responsible for the administration of mediation, arbitration, and adjudication activities within the scope of the application of the Public Service Employee Relations Act. Many of the duties and functions of the PSERB are very similar to those of its private sector counterpart. The origins of the issues, and the activities of the administrative tribunals are the same, or not significantly different for the purposes of this study as to require detailed explanation. Where the issues and the administrative activities of the respective boards are very similar, this similarity will be noted, and the reader is advised to refer to the preceding discussions of the activities of the LRB. The transactions of the PSERB from the time it was established until March 31, 1980, are shown in Table 6.[68] During this four-year period the PSERB

considered 216 applications, of which 212 were finalized. Seventy-two and one-half days of Board hearings were involved in these considerations.

77. Certification (PSERA, s. 25-31). The inquiries conducted by the PSERB in its consideration of an application for certification are analogous to those conducted by the LRB. The Board considers the timeliness of the application with respect to the time limits stipulated in the Act.[69] The Board inquires into whether the trade union is a proper bargaining agent, whether the unit of employees is appropriate for collective bargaining, and whether the trade union has been selected by a majority of the employees in the unit. The statutory provisions of the PSERA for certification differ from those of the LRA with respect to the determination of the appropriate bargaining unit. Under the PSERA, the employees of the Crown in right of Alberta constitute a single bargaining unit, except as otherwise determined by the Board.[70] The Board may determine the number of appropriate bargaining units of employees of the board of management of each Provincial General Hospital established by or pursuant to The Provincial General Hospital Act, the Provincial Cancer Hospital Board under The Cancer Treatment and Prevention Act, and the University Hospital Board under The University of Alberta Hospital Act.[71] The PSERB must satisfy itself that the unit claimed by the trade union to be an appropriate bargaining unit is a single bargaining unit, a unit of all employees of an employer, a unit comprising some of the employees of an employer, or an appropriate unit with respect to the provisions of the Act concerning hospitals.[72] All 17 of the certifications granted during the 1977 six-month period noted in Table 6 were deemed to be in effect by virtue of the transitional provisions of the Act. Pursuant to section 99, all bargaining agents which were certified under The Alberta Labour Act, 1973 in respect of units of employees to which the PSERA applied were deemed to be certified bargaining agents for those employees under the

PSERA. Further, with the coming into force of the PSERA, the Alberta Union of Provincial Employees was deemed to be the certified bargaining agent for each unit of employees on behalf of which it was party to an agreement under The Public Service Act or The Crown Agencies Employee Relations Act. Crown agencies include operations such as the Alberta Research Council. The University of Alberta's non-academic staff, for instance, is also covered under the PSERA.

TABLE 6

TRANSACTIONS BEFORE THE PUBLIC SERVICE EMPLOYEE RELATIONS BOARD 1977-1980

(THE RELEVANT SECTIONS OF THE PUBLIC SERVICE EMPLOYEE RELATIONS ACT ARE NOTED)

	1977	1978	1979	1980
Certification (section 25)				
Applications	30	19	9	11
Granted	17	12	2	4
Refused	1	16	8	9
Revocation of Certification (section 32)				
Applications	1	0	0	0
Granted	0	0	0	0
Refused	0	1	0	0
Reconsideration (section 11)				
Applications	6	2	0	0
Granted	4	0	1	0
Refused	0	2	0	0
Withdrawn	0	2	0	0
Consent to Waive (section 37)				
Applications	1	0	3	1
Granted	0	0	0	1
Refused	0	0	1	0
Withdrawn	1	0	0	2
Failure to Bargain in Good Faith (section 39)				
Applications	1	0	2	1
Granted	0	0	0	0
Refused	0	0	0	2
Withdrawn	0	0	1	1
Appointment of Mediator (section 46)				
Applications	2	6	4	5
Granted	1	5	4	4
Withdrawn	1	1	0	1
Establish Arbitration Board (section 49)				
Applications	2	12	9	9
Granted	2	4	1	7
Refused	0	0	3	1
Withdrawn	0	7	1	6

TABLE 6

TRANSACTIONS BEFORE THE PUBLIC SERVICE EMPLOYEE RELATIONS BOARD 1977-1980

(THE RELEVANT SECTIONS OF THE PUBLIC SERVICE EMPLOYEE RELATIONS ACT ARE NOTED)

	1977	1978	1979	1980
Appointment of Chairman or Member of Arbitration Board (section 52)				
Applications	1	0	1	4
Granted	1	0	1	4
Refused	0	0	0	0
Withdrawn	0	0	0	0
Appointment of Adjudicator (section 64)				
Applications	1	1	9	4
Granted	1	0	2	4
Refused	0	0	4	0
Withdrawn	0	1	3	0
Speeding Decision of Adjudicator (section 65)				
Applications	1	0	0	0
Settled	1	0	0	0
Continuation of Proceedings (section 96)				
Applications	22	0	0	
Granted	10	0	0	
Refused	12	0	0	
Unfair Practice Complaints (section 74)				
Applications	0	3	2	2
Granted	0	0	0	0
Dismissed	0	1	2	1
Withdrawn	0	2	0	1
Determinations (section 9)				
Applications	0	4	5	20
Granted	0	0	1	8
Dismissed	0	0	3	3
Withdrawn	0	4	1	4
Total Applications	68	47	45	57

78. Inclusion or Exclusion of Professionals (PSERA, s. 22-24). Under the LRA "employee" does not include persons who are employed in a professional capacity as members of the medical, dental, architectural, engineering or legal professions.[73] Such persons are thus precluded from collective bargaining under the provisions of that Act. However, the PSERA allows the Board to include or exclude these professionals in bargaining units subject to the wishes of a majority of the professional employees concerned, and subject to the opinions and arguments of interested persons.[74] To date, the Board has not received any applications for the inclusion or exclusion of professionals in bargaining units.

79. Revocation of Certification (PSERA, s. 32, 33). The provisions for employees and employers in the public sector to apply to the PSERB for the revocation of the certification of a bargaining agent are very similar to those provided by the LRA. The times in which applications may be made, and the effects of the revocation are virtually the same. During the September, 1977, through March, 1980 period, the PSERB received one application for the revocation of a certificate of a bargaining agent.

80. Reconsiderations (PSERA, s. 11). Like the LRB, the PSERB has within its jurisdiction the power to reconsider any order, notice, directive, declaration, certificate, or other decision made by it and vary or revoke it.[75] The Board received 8 such applications for reconsiderations during the four-year period examined in Table 6.

81. Successor Rights (PSERA, s. 91). The PSERA provides that a union may apply to the Board for a declaration that by way of merger, amalgamation, or transfer of jurisdiction, it has acquired the rights, privileges, and duties of its successor. The origins of the issues, the issues, and the considerations of the Board are very similar to those

discussed in connection with applications to the LRB for declarations of successor rights. No applications have been received by the PSERB.

82. Unfair (Prohibited) Practices (PSERA, s. 39 (3), 70-75). The concept of unfair practices and the origins of the issues were discussed previously. The Board has received seven applications concerning unfair labour practices. In four cases the application was dismissed and in three the application was withdrawn.

83. Determinations (PSERA, s. 9). The PSERB is empowered to make determinations of the type noted in the discussion of the LRB activities. The Board has received 29 applications affecting a significantly higher number of people. In nine cases the application was granted. The balance were either dismissed or withdrawn.

84. Strikes/Lockouts (PSERA, s. 93-95). The PSERA prohibits the use of economic sanctions by the employees and employers to which it applies. Further, attempts to cause strikes and lockouts are prohibited. There were no applications for inquiries by the PSERB into illegal work stoppages during the period examined in Table 6. However, some work stoppages did take place during 1980 under this legislation.

85. Revocation of Voluntary Recognition (PSERA, s. 34, 35). The provisions of the PSERA for applications for the revocation of rights of a voluntarily recognized bargaining agent, and the subsequent Board activities, are essentially the same as under the LRA. No such applications were received by the PSERB.

86. Consolidation of Certificates. Unlike the LRA the PSERA does not contain sections which specifically provide for applications for consolidation of

certificates, nor for applications for declarations in connection with spin-off operations. However, it does provide for declarations by the PSERB where an employer replaces, wholly or partially, another employer, or where employers merge their operations. Questions concerning the application of the Act, resultant bargaining units, representation rights of bargaining agents, and complications of collective agreement coverage are resolved by the Board.[76] The Board has not been required to rule in these matters up to this time.

87. Requests for Consent (PSERA, s. 37). Where an application for certification as a bargaining agent or revocation of the certification of a bargaining agent, or a declaration that a bargaining agent is no longer entitled to bargain collectively, has been refused by the Board, the applicant may not make the same or substantially the same application for three months unless the Board consents otherwise. The PSERB received five applications for consent to waive the three-month waiting period.

88. Appointment of Mediator (PSERA, s. 46, 47). It was noted earlier that the administration of intervention in disputes between labour and management to whom the LRA applies falls within authority of the Minister. However, the PSERB is charged with the administration of intervention in disputes in the provincial public sector. On application from both parties to a dispute, the PSERB may appoint a mediator to assist the parties to resolve the dispute.[77] During the first four years of its operation, the PSERB received 17 requests for the appointment of a mediator. In 14 cases the request was granted and withdrawn in the remaining three cases.

89. Establishing Arbitration Board (PSERA, s. 48-60). As the PSERA prohibits the use of the work stoppage, the Act provides for the use of arbitration boards for the final resolution of disputes which the parties were unable

to resolve.[78] Where one or both of the parties to a dispute request that the PSERB establish an arbitration board, and the Board satisfies itself that the parties to the dispute made every reasonable effort to resolve it, that the items in dispute may be referred to an arbitration board, and that it is an appropriate time to refer the matters to an arbitration board, the PSERB will establish a Board of Arbitration.[79] It is intended that the parties each nominate a person to the arbitration board, and that these nominees select a person to act as chairman. However, where the parties or the nominees fail to make the selections and appointments, the PSERB will do so on their behalf. During the period examined in Table 6, the PSERB established 14 arbitration boards, and appointed a chairman or member to six of those boards, in response to 32 applications.

90. Appointment of Adjudicator (PSERA, s. 64). It is intended that when an adjudicator or adjudication board is required to rule in connection with differences concerning the application, interpretation, operation or alleged contravention of a collective agreement, the parties choose the persons to decide the matter. However, the PSERB will, on application, select and appoint persons as adjudicators or members of adjudication boards where the parties are unable or fail to do so.[80] The PSERB appointed an adjudicator in connection with seven such applications during the period 1977 to 1980, out of a total of 15 applications.

91. Speeding Decision of Adjudicator (PSERA, s. 65). The Act provides that where a difference has been submitted to an adjudicator and in the opinion of one of the parties, the adjudicator fails to render an award within a reasonable time, the party may complain to the PSERB. After consulting the parties and the adjudicator, the PSERB will issue whatever directive it considers necessary in the circumstances to ensure the award is rendered without further undue delay. The PSERB received one such complaint during the September, 1977, through March, 1980 period.

93. The negotiation of a collective agreement is an institutional process which has many facets and uses a variety of strategies. It encompasses emotions as well as logic. Elements of rationality and non-rationality co-exist in this process. It involves the use of sophisticated statistics but at times it may also have undercurrents of power politics and bluff. The purpose of the work stoppage threat in this background is to exert pressure on concerned parties to change their positions. Thus, the effect of a work stoppage threat is to bring the parties closer together. In this sense, a strike is a catalytic agent. Once it is declared, it also tends to release emotions and may therefore be cathartic.

94. The negotiating process as defined by the LRA means "... to negotiate or negotiation with a view to the conclusion of a collective agreement or the revision or renewal of a collective agreement.[82] A.W.R. Carrothers, a noted author in the area of industrial relations and collective bargaining law, suggests, "The case for adopting collective bargaining as governmental and industrial policy is based on the philosophy that the labour of a human being is not a commodity or article of commerce. This philosophy, given legislative expression in the Clayton Act of the United States in 1914, became a moral commitment of Canada in 1919 through the Treaty of Versailles and a convention of the International

Labour Organization. On the proposition is built the thesis that through collective bargaining the individual employee may seek protection from material insecurity; that demands at the bargaining table may reflect needs and wants; and that to the extent the needs and wants are met through collective bargaining, their satisfaction need not be sought from the state. On the basis of this broad justification, collective bargaining may be described as an instrument of social justice."[83] Carrothers further suggests that from the point of view of employees, the requirements of an effective system of collective bargaining are that they be free to form themselves into organizations, that they be free to engage employers in bargaining with those associations, and that they be free to invoke meaningful economic sanctions in support of the bargaining.

95. The objective of negotiations is the concluding of a collective agreement. The LRA defines the collective agreement as an "... agreement in writing between an employer or an employers' organization and a bargaining agent, containing terms or conditions of employment."[84] The Act also stipulates that the collective agreement contain procedures for its administration and enforcement. The collective agreement is, by and large, a private instrument of the parties signatory to that agreement. Very little of the contents of the collective agreement is regulated either by law or by administrative bodies. Due to this lack of involvement of public policy in negotiations and the collective agreement, statistics concerning this aspect of labour-management relations in Alberta are incomplete. Section 82 of the LRA stipulates that "Each of the parties to a collective agreement shall upon its execution forthwith file one copy with the Director."[85]

96. Estimates of the number of negotiating relationships and collective agreements in Alberta are not readily available. The number of negotiating

relationships and collective agreements are not the same because through the use of an employers' association or registration in the construction industry a number of negotiating relationships can be embraced by a single collective agreement. Information on the number of collective agreements pursuant to The Labour Relations Act is reasonably reliable. However, information on the number of agreements pursuant to The Public Service Employees Relations Act and under Federal jurisdiction are sketchy. While both the LRA and PSERA provide for the filing of collective agreements with stated authorities, it is readily apparent that compliance is limited. We expect that many collective agreements are simply not filed. One estimate places the number of negotiating relationships between 1976 and 1978 at somewhere between 2,800 to 3,200.[86] This estimate includes some 1,900 to 2,100 negotiating relationships conducted through an employers' organization. The majority of these relationships are found in the construction industry where the craft union geographic form of organization is prevalent and the very large number of employers makes the employers' organization a convenient and expedient bargaining structure. The remaining negotiating relationships from 900 to 1,100 represented single employer/union relationships. In summary, these estimates suggest a total of somewhere between 1,400 and 1,600 collective agreements in Alberta covering somewhere between 2,800 and 3,200 negotiating relationships.

97. The Alberta Department of Labour Publication, Negotiated Working Conditions in Alberta Collective Agreements, 1980-81 edition[87] reports information on 1,028 of the 1,115 collective agreements on file and in force on August 1, 1980. The 1,028 collective agreements included in the study covered 240,874 or 90% of the 266,474 employees covered by the 1,115 collective agreements. The scope of this study is limited to agreements and a negotiating units pursuant to The Labour Relations Act. The industries affected, number of agreements, and number of employees

covered are set out below in Table 7.

TABLE 7

ALBERTA COLLECTIVE AGREEMENTS, AUGUST 1, 1980

Industry Division	No. of Agreements	No. of Employees
Mining	39	4,248
Manufacturing	377	28,425
Construction	83	45,272
Transportation Communications & Utilities	111	23,777
Trade	116	11,838
Service	225	47,410
Public Administration	77	79,904
Industrial Composite (Total of above)	1,028	240,874

The term of a collective agreement is one year or longer. Of the 1,028 agreements reviewed 330 expired in 1980, 438 in 1981, and 260 in 1982 or later and represent the number of negotiating sessions initiated in each year. In terms of geographical application most agreements fell within the urban centres such as Medicine Hat, 45; Lethbridge, 95; Calgary, 288; the Provincial Parks, 31; Red Deer, 49; Edmonton, 340; Peace River, 32, and Athabasca, 33. In addition, 44 agreements had inter-regional application and 71 were province-wide. The agreements were negotiated with some 63 different trade unions. Unions with the largest number of agreements were as follows: Canadian Union of Public Employees, 109; Teamsters, 107; Employers' Associations, 105; Retail Clerks, 55; Operating Engineers, 47; Iron Workers, 39; Driver Salesmen, 36; Steelworkers, 32; Butchers, 31; Electrical Workers, 29; Carpenters, 27; Alberta Union of Provincial Employees, 26, and United Food and Commercial Workers, 25. As expected, the employee bargaining units covered under these agreements were not large. Some 370 agreements or 37% of the total had less than 25 employees and 764 or 74% had less than 100 employees. Only 86 or 8.3% covered employee units of 500 or more employees. In terms of the occupational classes covered by the agreements 851 or 82.8% were non-office employees. Office employees were covered in 45 or 4.4% and professional employees in 27 or 3.6%. The remaining 95 agreements covered a combination of non-office, office, and professional employees.

Scope. One of the most remarkable characteristics of our labour-management agreement negotiating system has been its ability to function in very differing structures, industrial settings, and employee occupations. Today, we are asking it to perform in yet still different situations. Although born of the private sector and initially employed by unions representing employees in the traditional industrial occupations, today's applications are highly diverse.[89]

In its early days, and still even today, the vast majority of Canadian labour-management negotiations take place within the local plant level structure. The primary participants are members of the union's local plant negotiating committee and members of local management. Traditionally, it is a local or "grass roots" centred activity. However, against this traditional setting we have many examples of the activity structured in a setting involving several plants and several employee groups of the same employer. We also have examples of multi-employer and employee negotiations involving different employers and their employees. The former is often described as "company wide bargaining" and the latter "multi-employer bargaining." Although the structure of bargaining is more complex, the objective still is to negotiate an agreement covering all plants, employers, and employee groups within the given structure.[90]

In addition to differing structures, we also observe many differing industrial settings. The size of employer and employee groups range from the very small to the very large. The field of activity includes resource development, manufacturing, transportation, construction, agribusiness, and service. There is hardly a field of industrial activity that has not experienced the union-management negotiating activity. The dimension along which the activity has experienced its greatest growth is its extension into new and quite differing employment occupations. From the traditional employment occupations of trades, manufacturing, and transport, sometimes referred to as the "blue collar" occupations, we now include a large variety of "white collar" occupations such as school teachers, virtually all occupations in the health service field, employees of government and its agencies, commercial airline crews, university professors, and even physicians and surgeons. Today, the labour-management negotiating process purveys virtually all aspects of the Canadian industrial employment activity. As noted earlier, the employment of the system in such diverse settings is certainly testimony to the

acceptance, if not the confidence, that we have for the labour-management negotiating process.

In the pages that follow we will be examining the contemporary labour-management negotiating process in considerable detail. First, we will look at the process to try to develop a better understanding of why and how it works. That is, why and how does it bring the parties from a position of difference to a position of agreement? Second, we will look at the process from the view of the participating negotiator and focus on the way in which we go about the actual negotiating process in our attempt to bring about an agreement favourable to us.

Negotiating the Agreement - A Conceptual View. The negotiation of the labour-management Agreement is an essential part of the Canadian labour relations system. Despite its periodic nature, and the fact that the negotiation activity does not bulk large in terms of the time and effort given to transactions in the labour relations system as a whole, it is often viewed as the more glamorous, important, and probably best known activity within the Canadian labour relations system.

Despite its high profile and visibility some participants and nearly all observers of labour-management negotiations know little of how and why the negotiation process works. Unfortunately, there are no credentials needed by either side to sit at the labour-management negotiations table. Possibly, this is why the negotiating process sometimes does not work too well. Be that as it may, the purpose and objective of the following is to take an inside look into labour-management negotiations and to develop a more full and complete understanding of what the process is all about. We are going to look into the anatomy and physiology of the system and try to get a better understanding how and why it works or for that matter, why it fails to work. We will be exploring the system. We are not the first explorers. Commentaries on the workings of the

labour-management negotiating process has been the subject of study and scrutiny by a large number of labour-management relations scholars. However, we will be approaching our subject quite differently than many of our predecessors and we will be concluding with quite a different set of insights into this process.

Uncertainty. The negotiation of the labour-management agreement means that we will be making decisions in the face of uncertainty. Indeed, labour-management negotiations -- indeed, all forms of negotiations -- is the classical case of decision making in the face of uncertainty. The uncertainty in labour-management negotiations is troublesome to a lot of people. Often we feel uncomfortable with uncertain situations and some of us are more able to work in that environment than others. In labour-management negotiations we are uncertain of (1) how long negotiations will last, (2) will there be a settlement, (3) what will be the terms of a settlement, (4) will there be a work stoppage, (5) will we be able to achieve our objectives in negotiation and (6) what will be the performance of the (regional) economy, the industry or indeed the company(ies) covered by or participating in negotiations? Unfortunately, it is not until the process has been fully concluded that we can with certainty answer these questions. During the process we will have to rely on probabilities, assessments, evaluations, and our judgment. Sometimes we are right and other times we are wrong.

Uncertainty arises because in negotiations we do not, until the process is over, have full and complete information with respect to the position of the other side. This is because the parties to the negotiating process do not provide it. Nor do they want to provide it. We have to seek it out and the process of negotiations -- the dialogue and discussion -- is the source from which this more complete information comes. As a result, it is useful to view the negotiating process as a process of moving from

uncertainty and limited information towards greater certainty and more complete information. We will return to uncertainty and the information flow in the paragraphs below.

Certainty. We hasten to add that when we negotiate the labour-management Agreement we are not in a condition of total uncertainty and without any information at all. To be sure, we do have some certainty and some information but only a small portion of what we will have when the process has been concluded. For example, we may know whom we will be negotiating with, what the initial proposals of the parties are, about when the process will start, and each party has information to buttress its position, strategies, and arguments and has mapped out its approaches which are contingent upon the other side's position, arguments, strategies, and responses. It is only through the actual negotiating process itself that we will begin to learn of the same kinds of information but from their point of view. The parties arrive at the negotiating table with a game plan which has flexibility built into it because of the dynamic nature of the process.

A Model. Now having some appreciation of the role of uncertainty and information flow in negotiations, we will start to construct a model in which we (1) state what we know about the negotiating process, and (2) try to relate what we know to the functioning of the negotiating process itself. To start, let us assume that we are about to enter into the negotiation of a labour-management agreement. We shall also assume that the only issue to be negotiated is a wage increase. We will start to develop our model by specifying what we know for certain about the process we are about to carry out. Here are some of the certainties we need to consider:

1. The negotiations will have a starting point Often this is

specified with respect to the precise time, date, and place. We will call the starting point in our negotiations as time "t".

2. Our negotiations will have an end. It is extremely rare that negotiations once started do not come to an end at some point in time. We will call the end of the negotiating process "t + n" with "n" representing the length of time it takes to get from the start to the end.

3. We know that negotiations will end with either an agreement on the issue or a work stoppage. This condition is virtually built into the statutory framework within which labour-management negotiation takes place. Even in those cases where negotiations lead to a work stoppage we can still say with a high degree of probability that unless the relationship is abandoned, at some point of time we will have an agreement.

4. Unlike other forms of negotiations the parties to a labour-management set of negotiations are not free to transact with other parties. This further adds to our certainty that once negotiations start there typically is only one real end solution and that is in fact a collective agreement.

5. We know the proposals for negotiation Let's assume for illustration purposes that the initial position is a 5% wage increase while the union is requesting a 15% wage increase.

6. From the foregoing information we can say that the degree of difference between the parties at the point of their initial positions is 10%.

7. Each party knows the objectives, strategy, and negotiating techniques as well as their position as it relates to the wage increase. The true position represents what the parties would be prepared to settle for and would be considerably different from the 5% and 15% initial positions.

8. We know for most jurisdictions the nature and form of involvement of other parties in our negotiating process such as conciliation. That is we know from our public policy whether it will likely take place or not and we know that if it takes place it will take place some time after time "t" and towards the conclusion of the negotiating process itself.

From the certain information set out above we can now proceed to outline the initial construction of our model. It is set out below in Figure I. From a study of Figure I there are other elements of certain that we can now add to our model. They are as follows:

9. From a study of the initial positions of th parties at 5% and 15% and a 10% degree of difference we can say that if the parties hold to their initial positions throughout the negotiating process they will not reach an agreement and a strike will most certainly occur.

10. We can say that if there is going to be a settlement in negotiations the degree of difference of 10% must be reduced to zero. In fact, a useful way of thinking of an agreement or a settlement on an issue such as wages is not to focus so much on what is the monetary amount of the settlement but that a settlement or agreement is reached when the degree of

difference between the parties has been reduced to zero.

These additional certainties have been introduced into our model as portrayed below in Figure II. Figure II below tells us the following:

1. The position of parties A and B through time is shown by the broken line and is labeled (a) (b) (c), and (d) and represent each party's position path through time. Position paths (a) and (d) represent position paths when no reduction in the degree of difference takes place through time and the degree of difference of 10% is not reduced in the process of negotiation. If this set of position paths occur we can say with certainty that (1) negotiations will not lead to a settlement, and (2) a work stoppage will take place. In this case, as shown above, the degree of difference takes place and is reduced not during negotiations but during the course of the work stoppage.

2. Position paths (b) and (c) represent position paths when there is a reduction in the degree of difference through time. In this case, we are portraying the situation when the degree of difference is reduced to zero during the course of negotiations. In the situation before us the settlement position is represented by a wage increase of 10%. This means that party A moved from its initial position of 15% to 10% while party B improved its position from 5% to 10%.

Clearly, Figure II tells us quite a lot about the true objective of the negotiating process: to reduce the degree of difference on the issues during the period of time falling within the negotiating zone. If this degree of difference reduction is occurring then we can say that the

negotiating process is working. If this degree of difference reduction is not occurring then the negotiating process is a failure and it will leave the reduction of differences to the work stoppage.

There is a fundamental axiom in labour-management negotiations that says that anyone can take a set of labour-management negotiations to a strike but it takes skill, ability, and expertise to take a set of negotiations to an agreement. This is indeed a very fundamental truth. To arrive at a work stoppage is quite simple -- just get on position paths like (a) and (d) and a strike is inevitable. Of that we have complete certainty. On the other hand, to negotiate an agreement without a work stoppage means to have the degree of difference reduced to zero during the time within the negotiating zone. This is what takes skill, ability, and expertise in negotiations. To have this result come about is what labour-management negotiations is all about. It calls forth the full expression of all the abilities and skills of the labour-management negotiator. Significantly, it avoids the costs and pain of the work stoppage to both parties.

As demonstrated in Figure II agreement comes in negotiations through the reduction of the degree of difference to zero. This process of difference reduction is the engine that drives the negotiating process to agreement. If the engine is not working up to the load placed upon it, we will not have an agreement. A smooth, powerful, and well running engine is a pre-condition to any effectiveness in obtaining a labour-management agreement in negotiations. What then determines the effectiveness of the engine in reducing the degree of difference?

Clearly, the source of the reduction of the degree of difference is within the parties themselves, given that there is a divergence between their initial positions to ensure that they do not settle for less than what they might otherwise have achieved. In our model the reduction of the degree of difference comes from parties A and B who for some reason or

another elect or decide to move from their initial positions of 15% and 5% respectively. What causes A and B to move from their initial positions? To answer this question we must look at the role, determinants, and function of bargaining power in labour-management negotiations.

Bargaining Power. There is no shortage of definitions of bargaining power nor explanations for its role and function in the negotiating process. The literature setting forth the determinants of bargaining power is equally as great. For our purposes here, we define bargaining power as one's ability to resist the proposal of another in favour of a proposal more favourable to one's self. In our model, the bargaining power of A is the ability of A to resist the proposal of B in favour of a proposal more favourable to A. The bargaining power of B is likewise so defined. If the bargaining power of A was absolute, then it could force B to settle on A's terms. If the bargaining power of A was so low, B could force it to settle on B's terms. Seldom in labour-management negotiations is that the case. More often neither party is in a position to get its way absolutely and the settlement is somewhere between the positions of the two parties. This means that on each side we have to have compromise, that is movement from the initial position to something respectively greater than or less than the initial position. In Figure II position paths (b) and (c) demonstrate compromise. What then determines the ability of a party in negotiation to force the other party to compromise, or alternatively, what forces the parties in negotiations to want to move from their initial positions?

Writing in 1968, the Federal Task Force on Labour Relations made a statement although short in length is profoundly important in understanding labour-management negotiations and particularly the role of bargaining power in it. It wrote:

There is a basic characteristic of the collective bargaining system that is seemingly contradictory. Paradoxical as it may appear, collective bargaining

> is designed to resolve conflict through conflict, or at least through the threat of conflict. It is an adversary system in which two basic issues must be resolved: how available revenue is to be divided, and how the clash between management's drive for productive efficiency and the workers' quest for job, income and psychic security are to be reconciled. Other major differences, including personality conflicts, may appear from time to time but normally they prove subsidiary to these two overriding issues.[91]

What the Task Force has told us is that the parties to union-management negotiations move to settle by way of compromise because of the consequences that will surely follow if they do not. Let's go back to the basics and Figure II. We stated earlier that once negotiations start there are only two eventualities that can occur. First, a settlement. Second, a work stoppage. This is certain and built right into the system through public policy. Given that we negotiate hopefully for the first eventuality, the only alternative available if it fails is the work stoppage. The existence of this possibility, which as we move more closer to it becomes increasingly a probability, is the major but not the only determinant of our bargaining power. Returning to Figure II, if parties A and B are to insist on the maintenance of their initial positions of 15% and 5% respectively, they can only do so if they are prepared to enter into the work stoppage zone and to suffer the consequences that the work stoppage will bring to each of them. On the other hand, if they fear and work to avoid the consequences of the work stoppage then they must abandon their respective positions and move to reduce the degree of difference. They must move out in the context of their negotiations to search for a compromise. That is that A must reduce its position from 15% and B must improve its position above 5%. This movement in search of a compromise is what "to negotiate" is all about. If the parties are otherwise, that is no willingness to move out to seek a compromise then there is nothing to negotiate about. Rather than negotiations we have a "holdup". It is equally true that if the parties are not prepared to negotiate and to seek a compromise then no amount of negotiations will bring forward a settlement. To quote still another axiom in the

labour-management negotiations field: "You cannot negotiate a labour-management agreement if the parties are not prepared to negotiate."

The parties move to negotiate -- to seek a settlement -- because they want to avoid the consequences that follow if no agreement is reached. To some, the calculations of the parties are rational and primarily economically determined. That is, the parties look at the cost of disagreeing as well as the cost of agreeing. If the former is greater than the latter then they won't move to come to an agreement. To other students of the subject political, organizational, and indeed personality considerations are equally important inputs into the cost-benefit calculations. Whatever the consequences are we move to avoid them and the only way we can do that is to reach out and try to reach a settlement.

One of the major problems a negotiator has in assessing the bargaining power relationship is, once again, a formulation that has to be conducted again in the context of uncertainty. From our point of view we have very good knowledge on what the consequences of failing to come to a settlement will be to us and what the "costs" that will flow to us if we do not. On the other hand, we are not able to calculate total costs, as we do not know the length of a possible work stoppage. Likewise, we also know the extent to which we are prepared to "go" to avoid these costs and consequences. However, our ability to assess the bargaining power position and to determine the foregoing with respect to the other party is quite limited. Only they know that for sure. Again, that is where the negotiating skills, experience, and abilities come into play. Obviously a miscalculation or imperfect assessment can have most serious consequences such as getting us into a work stoppage when in fact, had we had full information, a settlement was available at the bargaining table in direct negotiations. Often our true position is hidden within the

labyrinth of bluff, overstatement, and in some cases positions and statements that in no way truly reflect our position in negotiations. There is much in the way of theatrics and outright misrepresentation in the field of labour-management negotiations. This is to be expected because we are working in a field where full disclosure of one's position is extremely rare. We can never be sure where the truth lies and in order to get the truth we have to play the process out to its very end.

Determinants of Bargaining Power. A detailed and exhaustive review of the determinants of bargaining power is beyond the scope of this report. It is a subject that has received extensive examination in the negotiations literature. However, what follows is useful in understanding its role in determining how and why the negotiating process functions. It draws upon and also draws together the thoughts and observations of a number of bargaining power analysts.

Bargaining power determinants are both economic and non-economic. Often, and regretably, analysts frequently stress the former over the latter. Such stress or emphasis has prompted Professor Harold W. Davy to comment:

> ... perhaps most important of all, the men and women directly involved in collective bargaining as a process know that what we gliby refer to as "bargaining power" is in fact a many-faceted entity embracing much more than economic strength or, as the economists often put it, the capacity or power to reach an agreement *on one's own terms.* The latter conception overemphasizes the economic strength component of bargaining power.
>
> Preoccupation with the word 'power' causes a tendency to forget or minimize the word "bargaining." There is also an implication that in any negotiation one party necessarily "wins" something and the other party "loses" something. This kind of reasoning rejects the view that the ultimate goal of management and union is the development of a *mutually satisfactory* contractual relationship.
>
> The preceding discussion is not merely playing with words. In sophisticated collective bargaining relationships there is a joint understanding that bargaining power is a composite of economic and non-economic factors.[92]

Both management and union negotiators are keenly aware of the importance of bargaining power. They understand fully that its presence or

absence can be an aid or limitation to their effectiveness in negotiations. They approach the matter quite pragmatically planning to make use of bargaining power when they have it and trying to minimize its relevance when they do not have it.

Practical labour-management negotiators do not experience a burning need nor desire to measure or weigh their own or opponent's bargaining power in a precise fashion before they shape and structure their strategies and approaches to negotiations. Their operational knowledge and judgments are regarded as sufficient for all practical purposes. Negotiators do not need to have bargaining power defined in precise quantitative terms to know where they stand.

Negotiators by using their experience, analysis, and judgment usually know a great deal about each other's bargaining strength or weaknesses without refining such knowledge into precise mathematical calculations. On the other hand, there are occasions where such estimates of the other parties' capacity to resist or to concede have proved wrong or have been far off the mark when put to the ultimate test of a work stoppage. The best informed negotiators can, on occasion, over-estimate or under-estimate the other party's staying in a particular situation. However, more often than not, experienced negotiators have a firm understanding of the many ingredients that come together to comprise each party's bargaining power in specific shortrun situations.

DISPUTE SETTLEMENT

The Alberta Labour Relations Act is designed to generate as much self-reliance and self-responsibility as possible on the labour and management sides of the negotiating table. Contract negotiations need not be protracted several months beyond the expiry date of the collective agreement, because the parties conceivably could have cleared all

prerequisites for a lawful work stoppage within approximately 7 days after their agreement expired. The threat of "no contract, no work" is intended to generate considerably less protracted negotiations than formerly and to promote more concessionary behaviour at the negotiating table prior to the expiry of the agreement. The Labour Relations Act also seeks to promote self-reliance and self-responsibility in the sense that government-supplied third party intervention is not compulsory. Unlike earlier statutory provisions, the completion of such intervention procedures is no longer a prerequisite to a lawful work stoppage. Under the current legislation mediation is essentially voluntary.

From the public point of view the purpose of dispute resolution is to assist the parties in negotiations to resolve their agreement negotiations either without resort to a work stoppage during pre-stoppage negotiations or with a work stoppage of a shorter duration during post-stoppage negotiations. From the parties' point of view, dispute resolution may assist them in overcoming impediments to a settlement, in reducing or avoiding the costs of a work stoppage to them, and in proposing face-saving solutions or in imposing solutions. Furthermore, it may assist an inexperienced negotiator in avoiding possible pitfalls. Essentially, two types of dispute resolutions are available to the parties: 1) those procedures that are provided by the government and are government supported and 2) those that the parties establish for themselves. Government-supplied or government-supported methods for resolving contract negotiations include mediation, Disputes Inquiry Boards (DIB) and Voluntary Collective Bargaining Arbitration Boards (VCBAB).

Government mediators employed by Alberta's Labour Mediation Services can be appointed either at the request of one or both parties or at the direction of the Minister of Labour.[96] The mediator does not have a stipulated term of appointment. In fact, it is envisaged that he will not

book off a case until a settlement has been reached. The mediator's main tool, of course, is persuasion, and his role is as an adjunct to the participants in the negotiating process. That is, he helps the parties in their negotiations, caucuses individually with them, attempts to alter their perceptions and priorities, and attempts to lead the parties to a common ground for settlement. The mediator necessarily should have sound knowledge of the negotiating process and preferably considerable experience in negotiating the collective agreement. The mediator's mandate under The Labour Relations Act is that he shall "...in any manner that he thinks fit, inquire into the dispute and endeavour to effect a settlement."[97] It also provides that in doing so he shall a) hear any representations made to him by the parties to the dispute, b) mediate between the parties to the dispute, and c) encourage the parties to the dispute to effect a settlement.[98] The Alberta Department of Labour maintains a complete file of expiring collective agreements so that the Minister can monitor potential disputes for which he might call for the appointment of a mediator or a Disputes Inquiry Board.

The Disputes Inquiry Board is appointed by the Minister of Labour, may be comprised of one or more persons, will have a Chairman if more than one person serves on it, and need not be tripartite in composition. If a DIB is established and notice of its establishment is served on the parties prior to the commencement of a strike or lockout, the parties cannot lawfully strike or lawfully lockout "...until 10 days after the Minister notifies the parties of the recommendations of the Disputes Inquiry Board."[99] In short, a "cooling off period" is associated with the establishment of a Disputes Inquiry Board, prior to the commencement of a lawful strike or lawful lockout. However, the appointment of a DIB does not result in a "cooling off period" if a lawful strike or lawful lockout is in progress.[100] Current administrative practice is to set up a DIB infrequently and in those instances involving a high degree of public

interest. A DIB, once appointed has a mandate to "...inquire into the matters in dispute" and to "...endeavour to effect a settlement."[101] In other words, it can exercise a fact-finding role on the one hand and a mediation role on the other hand. It has powers to compel the production of witnesses and documents in the course of conducting its fact-finding role.[102] The Board's term is 20 days from the date that the Board was established or "...any longer time that may be agreed by the parties to the dispute or fixed by the Minister."[103] The objective of a DIB is to produce a settlement during its term and, failing this, to recommend or propose a non-binding settlement upon the parties.[104] A lawful work stoppage can commence 10 days after the Minister notifies the parties of the recommendations of the Disputes Inquiry Board.[105] A maximum of one DIB may be appointed to any one contract negotiations dispute.[106]

A Voluntary Collective Bargaining Arbitration Board may operate very much like a Disputes Inquiry Board but there are at least four key differences between them. First, the trade union and the employer must jointly agree that a VCBAB be established and they must do so in writing. Second, only two VCBAB's were set up during 1974 through 1977. This presumably was due to the fact that most trade unions and employers are reluctant to relinquish the right to engage in lawful work stoppages, particularly in the private sector. The two VCBAB appointments took place in the public sector. Third, the VCBAB has a tripartite composition. Fourth, the decision of a VCBAB is binding. Arbitration takes place away from the bargaining table and involves court-like hearings with a written reasoned binding decision as its end result. By contrast, the VCBAB can exercise the same powers for compelling the production of witnesses and documents as a DIB, has the same mandate, and has a similar term of appointment. The mandate of the VCBAB may include mediation-arbitration as a technique for dispute resolution.[107]

The parties may privately arrange for mediation, fact-finding, voluntary arbitration, or voluntary mediation-arbitration. They must bear the expenses of whatever form of such extra-legal dispute resolution they establish. Partly because the government covers the cost of the forms of dispute resolution provided within The Labour Relations Act, the vast majority of employers and trade unions in Alberta opt for such dispute resolution as opposed to providing some system by themselves and using their own resources. The relatively infrequent resort to extra-legal dispute resolution probably is primarily due to their lack of desire to use it.

WORK STOPPAGES

The legal work stoppage or threat thereof is an important means by which a trade union or an employer can gain concessions at the negotiating table. The reason for this is that the work stoppage imposes costs on both sides in the form of foregone profits or income. The threat or actual imposition of such costs generates concessionary behaviour during negotiations. However, it should be pointed out that many employers in the public sector receive revenues for the fiscal year during which a public sector work stoppage takes place and therefore they may be relatively immune to the financial pressures normally associated with a work stoppage. The law distinguishes between two types of work stoppages: strikes and lockouts.

When classified by contract status, there are three types of stoppages: first agreement stoppages, contract renewal stoppages, and stoppages during the term of the collective agreement. The first two kinds of stoppages are subsequent to agreement negotiations whereas the last type takes place while the agreement is in force. First agreement and agreement renewal work stoppages clearly are aimed at reaching a collective agreement. By contrast, work stoppages during the term are intended to clarify or to re-establish certain rights under a collective

agreement. Regardless of contract status, the work stoppage is used as a means for attempting to induce concessions from or to punish the other side by imposing costs on him. Negotiating theorists speak of the use of the stoppage as an investment devise in attempting to gain concessions relative to pre-stoppage positions. The investments pay off if stoppage-induced benefits to a party outweigh the cost it incurred during the work stoppage.

"Legal status" refers to the fact that work stoppages can be either lawful or unlawful. Contract negotiation stoppages are lawful if certain procedural requirements have been met. In Alberta, the pre-conditions for a lawful work stoppage during contract negotiations include the following: 1) that notice to bargain was served between 30 and 90 days prior to the expiry date, 2) that the agreement has expired, 3) that a vote was conducted secretly and supervised by the Labour Relations Board, if requested, 4) that strike or lockout notice was served at 72 hours prior to the commencement of the work stoppage, and 5) that the work stoppage began 72 hours after the notice was served. Violation of these requirements renders a contract negotiations strike unlawful. Research indicates that 8% or more of such strikes in certain other jurisdictions tended to be illegal.[109] By contrast, all strikes during the term of a collective agreement are illegal.[110] The statutory prohibition against strikes during the term of the agreement is intended to promote peaceful resolution of grievances through the grievance handling mechanisms which must be included in a collective agreement. In the absence of such a provision, the model clause within The Labour Relations Act shall be deemed to apply.

TABLE 8

THE PATTERN OF STOPPAGE, CLASSIFIED BY CONTRACT STATUS FOR ALBERTA: 1974 - 1979

	First Agreement		Contract Renewal		During the Term	
Year	Number (b)	Average Duration (a)	Number (b)	Average Duration (a)	Number (b)	Average Duration (a)
1974	3	9.3	26	22.9	13	3.3
1975	1	65.0	27	29.1	3	20.3
1976	1	32.0	19	37.5	6	18.6
1977	2	104.0	10	42.7	0	0.0
1978	1	260.0(c)	46	24.8	4	3.0
1979	1	259.0(c)	23	35.1	3	10.0
	9	118.1	151	34.6	29	8.8

a) Calculated in working days.

b) Strikes which lapsed over from one year into the forthcoming year were counted as one strike in each year.

c) Due to a protracted first agreement strike which is lasting for many years.

Table 8 portrays the 1974-79 pattern in Alberta for first agreement strikes, contract renewal strikes, and strikes during the term.[111] At least five features of the data in Table 8 are noteworthy. First, the vast majority of these strikes were contract negotiation strikes. First agreement strikes accounted for 4.8% and agreement renewal strikes for 79.9%. Strikes during the term of the agreement comprised 15.3% of all work stoppages in Alberta during 1974 to 1979. This is a much lower percentage than is found in most other Canadian jurisdictions where more than one-quarter of all strikes took place during the term of the collective agreement.[112] Second, first agreement strikes generally lasted longer than agreement renewal strikes which in turn were of longer duration than strikes during the term of the agreement. These differences undoubtedly are due to the illegal nature of strikes during the term, the greater number of issues involved in contract negotiation strikes versus strikes during the term, as well as the precedential nature of first agreement negotiations. The Alberta pattern is similar to those found in other Canadian jurisdictions with regards to the duration of the three strike patterns.[113] Third, the number of strikes during the term and first agreement strikes generally dropped during 1974 to 1979. Strikes during the term attained their 1974 to 1979 maximum of 13 in 1974, which quite probably was due to the unanticipated double digit inflation of that year. Indeed, 9 of 13 such strikes were over wages as is noted below. They reached their 1974 to 1979 minimum of zero in 1977. This probably stemmed from the imposition of wage and price controls in 1975 and the generally strict administration of those controls during 1976, which made it less worthwhile for trade unions to engage in work stoppages during the term of the agreement. Similar results, including the responsiveness of strikes to dramatic changes in the Consumer Price Index as well as to the Anti-Inflation Board controls, were found in other jurisdictions.[114] Fourth, contract renewal strikes also

responded to AIB controls, decreasing during 1976 to 19 from 26 and 27 during 1974 and 1975 respectively as well as decreasing during 1977 to 10. The two years, 1976 and 1977, were the two full years during which these controls were in effect. This same pattern occurred in other Canadian jurisdictions during 1974 to 1977.[115] Fifth, there was only one upsurge in agreement renewal strikes during 1974 to 1979 and it took place in 1978, when there were 46 such strikes as opposed to 21 on average during 1974 to 1977 and 1979. Two factors which at least partially explain the 1978 increase are, first, the removal of AIB controls during the spring of 1978, which probably caused trade unions to seek to make up for wage increases they lost during the control years, and an increased bargaining calendar during 1978 which presumably was due to the trend in favour of labour agreements of shorter duration during 1974 to 1977. Most other Canadian jurisdictions did not experience such an upsurge in agreement renewal strikes during 1978 as opposed to 1974 to 1975, prior to wage and price controls.[116] Significantly, the number of agreement renewal strikes dropped from 46 in 1978 to 23 in 1979, which was about average for 1974 to 1979. In short, the 1978 upsurge in agreement renewal strikes may have been an unusual event.

TABLE 9

THE NUMBER AND DURATION OF WORK STOPPAGES

BY INDUSTRIES IN ALBERTA BY CONTRACT STATUS:

1974 - 1979

	Contract Status					
	First Agreement		Contract Renewal		During the Term	
ndustry	Number (b)	Duration (a)	Number (b)	Duration (a)	Number (b)	Duration (a)
Mineral Fuels	–	–	9	52.3	6	2.6
Construction	–	–	23	60.1	4	16.0
Food and Beverages	–	–	20	28.9	2	52.0
Rubber	–	–	–	–	3	6.3
Wood	–	–	1	57.0	–	
Paper	–	–	1	32.0	1	3.0
Printing	1	16.0	3	33.6	–	
Primary Metals	–	–	4	71.5	–	
Metal Fabricating	–	–	1	41.0	–	
Machinery	2	80.5	–	–	–	
Transportation Equip.	–	–	1	26.0	–	
Electrical Prod.	1	10.0	2	75.5	–	
Non-Metallic Min. Prod.	–	–	16	24.0	1	2.0
Petroleum and Coal Prod.	–	–	2	38.5	–	
Chemical Prod.	–	–	2	19.5	–	
Transportation	1	6.0	–	–	1	1.0
Communication	–	–	1	39.0	–	
Trade	1	32.0	13	9.4	1	8.0
Education	–	–	7	102.4	1	3.0
Health and Welfare	1	718.0	23	11.8	3	8.0
Accommodtion and	–	–	2	9.0	–	

Food						
Misc. Services	–	–	3	10.3	1	5.0
Provincial Administration	–	–	1	3.0	2	1.5
Local Administration	1	2.0	9	17.3	3	2.0
Total	8		144		29	

a) **Calculated in working days.**

b) **Each strike is only counted once during 1974-1979.**

Table 9 shows the distribution of the number and duration of strikes across various industries.[117] Several features of the data presented in Table 9 should be noted. First, the Alberta work stoppage pattern, particularly the pattern of contract renewal strikes, reflects the industrial mix found in Alberta. The largest number of contract renewal strikes took place in the following industries: construction, 23 or 16.0%; health and welfare, 23 or 16%; food and beverages, 20 or 13.9%; non-metallic mineral products, 16 or 11.1%; trade, 13 or 9%; mineral fuels, 9 or 6.3%; local administration, 9 or 6.3%, and education, 7 or 4.3%. Work stoppage patterns in other Canadian jurisdictions also reflect their industrial mix.[118] Second, the public sector contributed more than one-fourth of the 1974-1979 contract renewal strikes with 23 in health and welfare, 7 in education, 1 in provincial administration, and 9 in local administration. Third, the longest contract renewal work stoppages took place in education, 7 for 102.4 working days; electrical products, 2 for 75.5 working days; primary metals, 4 for 71.5 working days; construction, 23 for 60.1 working days; wood products, 1 for 57.0 working days; mineral fuels, 9 for 52.3 working days; metal fabricating, 1 for 41.0 working days; communications, 1 for 39.0 working days; petroleum and coal products, 2 for 38.5 working days, and printing, 3 for 33.6 working days. Fourth, there are at least four significant aspects to the duration of contract renewal strikes in Alberta industries during 1974 to 1979:

(1) The longest duration of work stoppages took place in the public sector and in the field of education where the impact of the strike is not as severe on the employer as his private sector counterpart.

(2) The Alberta Tar Sands legislation greatly affected construction negotiations outside of the legislation. As a result of this

legislation negotiations proved to be extremely difficult, resulting in the fourth highest duration of agreement renewal strikes in Alberta.

(3) Most of the remaining highest duration industries were manufacturing industries.

(4) At least one of them - communications - is a highly capital intensive industry, which makes it relatively easy for management to provide the service in the event of a strike.

Fifth, the two industries which contributed more than one-third of the strikes during the term in Alberta during 1974 to 1979 were mineral fuels with a total of 6 and construction with a total of 4. Researchers have generally found that these two industries were prone to these types of work stoppages.[119] Sixth, the public sector contributed nearly one-third of the strikes during the term of the collective agreement between 1974 to 1979. The fields affected and the number of strikes were as follows: education, 1; health and welfare, 3; provincial administration, 2; and local administration, 3. Seventh, the longest such illegal strikes took place in food and beverages with a total of 2 with an average duration of 52 working days. The construction industry experienced a total of 4 with an average duration of 16 working days. Eighth, the longest first agreement strikes took place in health and welfare with one lasting 718 working days; machinery, with 2 lasting 80.5 working days; and trade with one lasting 32.0 working days. Ninth, the labour-management relationship was severed in the longest first agreement strike. The rupturing of labour-management relationships has accompanied some first agreement strikes in other jurisdictions as well.[120]

TABLE 10

ISSUES STATED FOR STOPPAGES DURING THE TERM IN ALBERTA: 1974 - 1979

Year	Issues							
	Wages	Comfort	Safety	Deployment	Union Movement	Not Reported	Other	Total
1974	10				2		1	13
1975	2						1	3
1976				1	2		3	6
1977								0
1978		1			2		1	4
1979			1		1	1		3
	12	1	1	1	7	1	6	29

Table 10 portrays the nature of issues reported in stoppages during the term during 1974 to 1979 in Alberta.[121] Of course, the stated reasons need not be the real reasons, but as such they are better than nothing. The issue called "union movement" includes such things as sympathy strikes and strikes protesting government policy. There were no work stoppages during the term in Alberta during 1974 to 1979 for which the following reasons were stated: job security, discipline, scheduling, jurisdiction, contract matters, and grievance handling.[122]

Perhaps the most noteworthy feature of the information given in Table 10 is that 12 strikes during the term focussed on "wages". They comprised more than one-third of all such strikes during 1974 to 1979 and took place mainly in 1974 as well as in 1975 when Albertans first experienced double digit inflation during the 1970's. The next issue cited was "union movement" which was associated with 7 strikes during the term. These activities included sympathy strikes, honouring picket lines, and strikes in protest of government policies. Perhaps, not surprisingly, construction was the industry that experienced the 2 strikes during the term over "comfort", involving camp facilities, and job "safety". The dispute over "deployment" arose in the food and beverage industry.

To conclude, the work stoppage data used here covered only six years, 1974 to 1979. Although confined to six years it generally does not reveal significant increases in the number of and duration of strikes in Alberta. It appears that the AIB control program did result in a declining utility of the strike during the year 1977 in particular. The data supports the proposition that Alberta has a lower percentage of all work stoppages taking place during the term than most other Canadian jurisdictions. Over one-third of these so-called illegal strikes took place during the sudden double digit inflation experienced during 1974 and 1975 and were over the

issue of wages.

GRIEVANCE ARBITRATION

Both The Labour Relations Act and The Public Service Employee Relations Act require that all collective agreements between parties within their jurisdiction provide procedures for the settlement of all differences, without resort to work stoppages, with respect to administration of the collective agreements, including the interpretation, application, operation, or alleged contravention of those collective agreements.[123] Such grievance procedures usually take the form of a system of successive appeals vertically through the hierarchies of the union and management organizations. Where procedures are exhausted without giving satisfaction to the parties, both Acts provide for the submission of the difference to a "third party" for a final and binding decision. The "third party" is an arbitrator or arbitration board under the application of The Labour Relations Act or an adjudicator or adjudication board under The Public Service Employee Relations Act. Upon making an award, the "third party" is instructed to file a copy of the award with the appropriate administrative tribunal - either the Director of Mediation Services or the PSERB. The statistics presented in Tables 11 and 12 are derived from a collection of copies of awards filed pursuant to the LRA and formerly maintained at the Law Centre Library at the University of Alberta. They are now maintained by L-M Reporting Services, Ltd. These statistics are limited in terms of scope, as they include only awards pursuant to the LRA and it is obvious that some arbitrators have not filed their awards. However, the statistics may be valuable as general indicators of arbitration frequency, types of issues taken to arbitration, parties, and industrial sectors affected.

TABLE 11

GRIEVANCE ARBITRATION AWARDS FILED WITH

THE DIRECTOR OF MEDIATION SERVICES(a)

YEAR	NO. OF AWARDS FILED(b)
1974	36
1975	47
1976	37
1977	68
	188

a) Although section 124, subsection (2), of The Labour Relations Act, requires that, "Every arbitrator, arbitration board or other body shall, immediately upon making the award, file a copy of the award with the Director", it is apparent that some awards have not been filed. Estimates as to the numbers of awards which have not been filed are unavailable.

b) Some awards involved more than one grievance.

Source: Derived from the collection of decisions on file with the Law Library, University of Alberta.

TABLE 12

GRIEVANCE ARBITRATION AWARDS FILED WITH

THE DIRECTOR OF MEDIATION SERVICES

BY INDUSTRY

INDUSTRY	NO. OF AWARDS FILED
Mines, Quarries and Oil Wells	26
Manufacturing	54
Construction	20
Transportation, Communications, and Other Utilities	4
Trade	6
Community, Business and Personal Service Industries	48
Public Administration (Local)	30
	188

Source: Derived from the collection of decisions on file with the Law Library, University of Alberta.

During the period from 1974 through 1977, 188 grievance arbitration awards were filed with the Director. Grievances in industries associated with mines, quarries and oil wells accounted for 14%, grievances in manufacturing and construction for 29% and 11% respectively, and grievances in service industries and local public administration for 26% and 16% respectively.

The figures shown in Table 11 may indicate increasing use of arbitration. Much of the increase in arbitrations from 1976 to 1977 was due to the dramatic increase in awards filed in connection with differences arising under agreements in the public sector only. Five awards were filed in each of 1974, 1975, and 1976, but 15 awards were filed in 1977. More moderate increases in the use of arbitration were indicated in the service and manufacturing industries. Relative to the number of employees and number of union members in the industries on a weighted average basis, the mines, quarries, and oil wells industries experienced the highest rates of grievance arbitration activity. Throughout the 1974 through 1977 period, there were approximately 0.75 grievance arbitration awards per 1,000 employees and about 7.7 grievance arbitration awards per 1,000 union members. Manufacturing involved the second highest rates of use of grievance arbitration with 0.77 awards per 1,000 employees and about 2.3 awards per 1,000 union members. Public administrations (local) resorted to use of grievance arbitration at a rate of about 1.3 times per 1,000 employees and about 1.4 times per 1,000 union members. The arbitration of differences concerning discipline or discharge was most frequent. About 38% of the 188 awards filed with the Board during the four-year period under consideration dealt with one or both of these matters. Other differences which were frequently the subject of arbitration involved the interpretation of the collective agreement (15%), wages (13%), the application of seniority provisions (7%), overtime (6%), and classification and promotion (each 5%). The Canadian Union of Public Employees, and its

branch, the Civil Service Union, were involved in 20% of the awards filed. The C.U.P.E. was involved at a rate of about 2.2 awards per 1,000 members. The United Mine Workers of America was involved in grievance arbitration at a rate of about 8 awards filed per 1,000 members, accounting for about 6% of awards filed with the Board. Other labour organizations involved in more than 2% of the awards filed, and which had high rates of arbitration relative to the number of members claimed were the Canadian Paperworkers' Union (10.4 awards per 1,000 members), the United Rubber, Cork, Linoleum and Plastic Workers of America (10 awards per 1,000 members), the Oil, Chemical and Atomic Workers' International Union (6 awards per 1,000 members), the International Association of Firefighters (3.8 awards per 1,000 members), the United Steelworkers of America (2.9 awards per 1,000 members), the Canadian Food and Allied Workers (1.5 awards per 1,000 members), the United Brotherhood of Carpenters and Joiners of America (1.4 awards per 1,000 members) and the Alberta Association of Registered Nurses (1.3 awards per 1,000 members).

Employers and employers' organizations which were involved most frequently were the City of Edmonton, Canadian Bechtel Ltd., the City of Calgary, Coleman Collieries Ltd., Great Canadian Oil Sands Ltd., and McIntyre Porcupine Mines. School boards and their representative associations were involved in 13 of the awards filed. Hospitals and their representative organizations were involved in 23 of the awards filed.

INTEREST ARBITRATION

To reconcile the right of employees to organize and negotiate with the right of the public for uninterrupted flow of essential goods and services has always been a difficult challenge because of negotiation's preoccupation with the work stoppage right as an integral part of the process. Those who enthusiastically embrace negotiations as the most

appropriate means to determine terms and conditions of employment cannot avoid the inherent dilemma which derives from the fact that work stoppages in essential services both in the public and private sectors of employment may cause severe damage to the health, safety and well being of large segments of the society. In their attempt to deal with this issue, policy makers and expert opinions have been divided into three camps. First, there are those who believe that it takes the threat of the work stoppage or an actual work stoppage to stimulate effective and responsible negotiations. Thus, granting all employees an unlimited work stoppage right is not only a matter of equity but also the only way to preserve the value of free negotiations and to reduce the intensity and unpredictability of illegal work stoppages. Then there are those who contend that the social costs to the public associated with granting the work stoppage right to particular groups of employees such as civil servants, policemen, and firemen outweigh the benefits of free negotiations. Thus work stoppages in these sectors of employment must be utterly prohibited. A third, middle of the road approach would limit the coverage of any work stoppage prohibition only to situations of actual public emergency and to specifically defined groups of employees whose services are deemed essential. While there is substantial disagreement whether to place restrictions on the work stoppage right, all seem to agree that where the work stoppage is prohibited there must be a strong third party procedure that can be invoked unilaterally, to render a verdict which will be final and binding on both parties. The mechanism commonly referred to as an alternative or work stoppage substitute is some form of compulsory interest arbitration. It should be noted at the outset that the normative questions, whether the right to work stoppage should be granted to all employees and whether interest arbitration is superior to the work stoppage for resolving contract negotiation impasses, are addressed at length later in this report. The point of departure at this time is that the

Alberta legislature has ruled out the option of work stoppage in labour disputes involving particular groups of employees and during public emergencies and that compulsory interest arbitration has been instituted as the final step in the dispute resolution procedure. Generally speaking, interest arbitration can be distinguished from the more familiar form of labour arbitration, i.e., rights or grievance arbitration, in that the former is utilized in disputes over contract formation while the latter is disputes over contract performance. In interest arbitration a third party is responsible for formulating the terms and conditions of new collective agreements to govern the employment relationship. Conversely in grievance or rights arbitration a third party is called in to render a verdict about proper application and interpretation of the existing collective agreement.

Apart from the subject matter of the dispute, arbitration schemes are further classified into categories along the following two dimensions: (1) the degree to which both parties are compelled by an outside authority, other than their mutual consent, to submit their dispute to arbitration, and (2) the extent to which the arbitration decision (award) is final and binding upon both parties. Thus, for example, under compulsory binding arbitration either party or both may be forced to submit to arbitration and the tribunal's award is final and binding on both parties. Conversely, under voluntary binding arbitration, both parties must agree either beforehand or on ad hoc basis to submit their dispute to arbitration. Yet, once they invoke the process the arbitration award is final and binding on both. Under advisory arbitration, sometimes referred to as factfinding, which may be compulsory, the tribunal's decision has no binding authority. The parties are free to dispose of the proposed settlement as they choose. The recently introduced Disputes Inquiry Board in Alberta is an example of compulsory factfinding. Three different pieces of legislation in Alberta provide for interest arbitration as a terminal step for deadlocked negotiations over the terms of collective bargaining agreement: The Labour

Relations Act, S.A. 1980, c.72, The Firefighters and Policemen Labour Relations Act, R.S.A. 1970, c.143 and The Public Service Employee Relations Act, S.A. 1977, c.40. These Acts, as their titles imply, cover different categories of employees and utilize different combinations of binding and advisory interest arbitration models the use of which are either compulsory or voluntary.

The premise underlying this review is that negotiations, work stoppage, mediation, interest arbitration and other techniques for dispute resolution are all alternative mechanisms designed to institutionalize and regulate the conflicts that arise in negotiating the collective agreement. Thus, one must view compulsory interest arbitration within the broader context of negotiations, the latter being a particular vehicle or mode of bilateral decision-making process. Following this concept of bilateralism, arbitration does not place a priori a greater weight on the interests of either side. Instead, in case the parties fail to resolve their differences on their own, it leaves the balancing of conflicting interests to a third party neutral who makes a final determination of the outcomes.

Since an important part of this report is devoted to public policy evaluation, to judge whether compulsory interest arbitration is operating effectively requires the setting of criteria. Such criteria rest on the normative premise held about negotiations and the techniques for resolving labour disputes. The first criterion is the extent to which work stoppages and other job actions are avoided. This obvious criterion derives from the underlying reasons for introducing arbitration into particular jurisdictions where work disruption were judged to be intolerable. A second criterion which again reflects the value of free negotiations requires that the determination of substantive terms of labour agreements by a third party should be minimized. This premise is derived from a long-held policy of the legislatures and courts against writing employment contracts for

parties. The basis of this policy may be traced to the doctrines of freedom of contract and the preservation of a system of private decision-making via free negotiations as well as to the practical necessity which stems from the absence of consensus over norms of equity for determining specific conditions of employment. It is feared that the ability of the parties to effectively deal with their own problems may decline once the parties begin to rely and become dependent on third party intervention. A third important criterion for evaluation is the overall acceptability of the arbitration procedure and its key components to the parties. In the long run the viability of any technique for dispute resolution is dependent on its ability to achieve acceptance and to build a strong commitment on behalf of the disputants to make it work effectively. This is doubly true in collective labour disputes where the use of legal sanctions to force compliance is expensive, problematic, and its effectiveness diminishes rapidly through excessive use. Moreover, unless the parties develop a commitment to the arbitration procedure as an institution, the temptation to ignore a disappointing award and to take direct action outside the system will be impossible to withstand, especially when the stakes involved are large.

The interest arbitration activity in Alberta during the last ten years in both the public and private sectors pursuant to The Labour Relations Act, The Firefighters and Policemen Labour Relations Act, The Public Service Act and The Crown Agencies Employee Relations Act resulted in thirty-six interest arbitration awards under these three statutory schemes. Eighteen awards were issued in disputes between firemen and policemen, and their respective employers in municipal government, ten awards were issued in disputes involving employees of the provincial government and its Crown Agencies, and eight awards were rendered under the aegies of the voluntary or public emergency arbitration procedures in The Labour Relations Act.

Interest Arbitration Under the Labour Relations Act (LRA). The LRA is a comprehensive code of labour relations which governs the employment relationships of the vast majority of employees in the Province, both in the private and municipal sectors of employment. The Act in its present form sanctions the right to strike and lockout. However, this right may be suspended whenever in the opinion of the Lieutenant Governor an emergency may arise out of a labour dispute.[124] In such a case the Minister of Labour may establish a Public Emergency Tribunal which acts as a compulsory arbitration board with the power to issue a binding award. In addition to the compulsory binding arbitration in cases of public emergency under sections 148-150, the Act delineates procedures for voluntary binding arbitration under sections 115-117.

The Arbitration Board and Its Charter. Under the voluntary arbitration procedure the arbitration board is a tripartite three-person board. It consists of one member appointed by each party and a neutral chairman selected by the two parties' appointees. If the parties fail to select a chairman, the Minister is empowered to appoint a chairman upon a request of either party to the dispute. The only qualification for board members is that they are not directly affected by the dispute nor have been previously involved in an attempt to negotiate or settle the dispute. Under the public emergency arbitration procedures (sections 148-150), on the other hand, the structure and makeup of the tribunal is left to the discretion of the Minister of Labour. Probably because the voluntary arbitration is perceived as an ad hoc private machinery and the fact that arbitration is only one possible technique which the Minister may invoke in case of public emergency, the Act does not direct how the arbitration board and the Public Emergency Tribunal are supposed to discharge their duties. It only requires that the panel attempt to mediate the dispute before it assumes the more formal arbitration role. The scope of arbitrable issues, the rules of evidence and procedure which govern the arbitration hearing,

and finally the decision-making approach, all are left open. Furthermore, The Arbitration Act does not apply to either the voluntary or the compulsory public emergency procedure.

Enforcement and Judicial Review. While The Labour Relations Act exempts the arbitration procedures from the provisions of The Arbitration Act, it does not provide any procedural vehicle for enforcement and review of the arbitration award nor does it stipulate the standards of scrutiny that the Court may apply in reviewing such awards. It does, however, prescribe special enforcement proceedings for the Public Emergency Tribunal's award. Subsection (4) of section 150 states if an award is not complied with by the parties, the Minister may file a copy of the award with the clerk of the Court in the judicial district in which the difference arose and there upon the decision is enforceable as a judgment or order of the Court.

Administration. The Minister of Labour through the Mediation Services Branch administers the arbitration procedures. Costs of the arbitration board and the Public Emergency Tribunal are assumed by the Government of Alberta. This authority arises out of a regulation passed by the Lieutenant Governor pursuant to section 152 of The Labour Relations Act. The regulation (Order in Council #1175/80) outlines the fee schedules for the chairman and other board members and makes reference to the allowable travelling and living expenses and possible loss of remuneration as a result of service payment. The amounts set out in the schedule are the maximum. Expenses incurred over the Government fees are assumed by the parties themselves.

Interest Arbitration Under the Firefighters and Policemen Labour Relations Act, (FPLRA). Alberta is one of the four provinces which excludes police officers from the coverage of their general labour relations statute.[125] The firefighters, on the other hand, are excluded only from those provisions in the general statute dealing with collective labour relations. The impasse

resolution procedures for both the policemen and fire department employees is governed by The Firefighters and Policemen Labour Relations Act. This Act explicitly prohibits policemen and firemen from striking and subjects their interest disputes to compulsory binding arbitration as a terminal step in the impasse procedure.[126]

The Arbitration Board and Its Charter. The arbitration board is a tripartite board. Each party appoints one member and the parties' appointees select a third member who becomes the chairman. The Minister of Labour is empowered to appoint either a partisan member or a chairman upon the parties' failure to complete the appointment process within the time period prescribed by the Act. The only pronounced qualifications for arbitration board members is that they have to be a resident of Alberta and not associated with the immediate protaganists and the dispute. The Act makes any person who has pecuniary interest in the dispute or has acted as solicitor, counsel, or paid agent for either party or have received any remuneration from either party during a period of 6 months preceding the dispute ineligible to serve as members of the arbitration board. The arbitration board's charter is broadly defined. It has all the power of commissioners appointed under The Public Inquiry Act, R.S.A. 1970. The arbitration board is required to make an inquiry into the matters in dispute and to attempt to mediate between the parties. Only when these efforts fail may the arbitration board issue its award. The conduct of the arbitration proceedings is left to the complete discretion of the arbitration board. The Act does not stipulate the scope of arbitrable issues nor does it contain rules of procedures for the arbitration hearing nor any guidelines for the decision-making. The Act provides, however, that the decision of a majority is the award of the board but if there is no majority the decision of the chairman is the award of the board.

Enforcement and Judicial Review. The award is binding on the parties and

the parties must therefore include the terms of the award in the collective agreement. Where there is any question concerning the application of interpretation of the award the Minister of Labour may request the Board to reconvene. The statute is silent on the proper vehicle for enforcement and the appropriate scope of judicial review. In the absence of any specific provisions in the Act relating to judicial review, one could infer that The Arbitration Act will apply to the arbitration proceedings and that therefore the award of an arbitration board formed under the Act is both enforceable and subject to review by the Court of Queen's Bench or by a Judge of such a Court.

Administration. The Minister of Labour through the Mediation Services Branch administers the arbitration procedures under the Act. The expenses of both the board of arbitration and the conciliation commissioner are paid out of the General Revenue Fund of the Province. The schedule of fees for the chairman and the members of the board as well as other expenses that may be incurred are outlined in a regulation passed by the Lieutenant Governor (Order in Council #559/71).

Interest Arbitration Under the Public Service Employee Relations Act, (PSERA). The Public Service Employee Relations Act governs most of the aspects of labour relations for provincial employees in Alberta. Generally speaking, this Act applies to all employees of the Government of Alberta and to those employed by Crown Boards, Agencies, or Commissioners, with the exception of those who either exercise a policy making function in matters relating to personnel administration or make significant decisions respecting the treatment of employees. Also exempted from the coverage of the Act are members of a professional association who are excluded by the PSERB at the request of a majority of the group. The Public Service Employee Relations Act specifically prohibits strikes by government employees. The Act requires that unresolved negotiating

disputes be referred to compulsory binding arbitration under an elaborate machinery setup in the statutes.

The Arbitration Board and Its Charter. The arbitration board is tripartite with mutually agreed upon chairman and two partisan appointees. The Attorney General is empowered to appoint board members upon the parties' failure to complete the appointment process within the time limit prescribed in the statutes. Similar to the requirements in The Firefighters and Policemen Labour Relations Act, members of the arbitration board must be Canadian citizens or British subjects who reside in Alberta. Persons who either have pecuniary interest in the dispute and/or have acted for the parties or received remuneration directly from them during the period preceding the arbitration are ineligible for service as board members. The statutes also require that members of the arbitration board sign an oath that they will perform their duties faithfully and impartially and that they will not, except in the discharge of their duties, disclose to any person any of the evidence or other matter brought before the board. Much like the other statutory schemes of interest arbitration The Public Service Employee Relations Act spells out the scope of arbitrable issues[127] but does not prescribe any particular way to conduct the arbitration proceedings.[128] It only requires that the board make a full inquiry and endeavour to bring about agreement between the parties. However, unlike the other schemes currently operating in Alberta, The Public Service Employee Relations Act list a set of criteria which the board shall consider in the conduct of the proceedings and in formulating its award. These criteria are:

1) the interests of the public;

2) the terms and conditions of employment in similar occupations outside the employers' employment including such geographic, industrial or other variations as the arbitration board considers relevant;

3) the need to maintain appropriate relationships in the terms and conditions of employment as between different classification levels within an occupation and as between occupations in the employer's employment;

4) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;

5) any other factor that to it appears to be relevant to the matter in dispute.[129]

Enforcement and Review. The Public Service Employee Relations Act prescribes an elaborate procedure for the implementation of the arbitration board award. The parties are required to prepare an agreement to implement the arbitration board's recommendations. If one party fails to participate, the other party may write a labour agreement which gives effect to the recommendations. The agreement is submitted to the arbitration board for certification. The board may reconvene if there is any question regarding the interpretation or application of the recommendations. Although it is required that the parties sign the agreement, once certified it is not a necessary condition, and the agreement is binding even without the signatures. The Lieutenant Governor and the Minister will then make the necessary changes in the regulations and the official pay plan to give effect to such agreement. The Act has no provisions for enforcement and review of the arbitration board's recommendations.

Administration. The parties bear all of the costs of the arbitration proceedings. Each party pays the fees and expenses of its own appointees and the two parties share equally the expenses of the chairman and any necessary clerical assistance.

The interest arbitration process was the subject of a major study commissioned by the project. It lead to the publication of Mordehai

Mironi, The Arbitration of Interest Disputes in Alberta. An Analysis and Evaluation. Edmonton: Institute of Law Research and Reform (1977), 174 pp. The findings of this study will be reviewed in later sections of this report.

REFERENCE TO THE COURTS

As noted earlier, Alberta courts play a role in the functioning of the Alberta labour relations system. For example, the Provincial Courts decide prosecutions, commenced pursuant to Part 8 of the LRA for offenses set out therein. However, a prosecution cannot proceed unless the Minister of Labour has given consent in writing. We are advised that seldom is consent requested and seldom is consent given. The Court of Queen's Bench holds supervisory authority within the prerogative writs of certiorari and mandamus over decisions of sole arbitrators/adjudicators and boards and decisions of the LRB and PSERB. This court is also part of the procedures available for enforcing LRB, PSERB, and arbitrator/adjudicator decisions and orders. Again, these procedures are seldom invoked.

As noted above, the decisions of Alberta's labour boards, grievance arbitrators, and adjudicators are all subject to judicial review. The scope of review is delineated within the respective governing statutory authorities such as The Labour Relations Act or The Public Service Employee Relations Act. Normally, the scope of review is limited to certiorari and/or mandamus. Although judicial review is available, little is known of the volume of such references and the disposition of cases referred for review. In an attempt to obtain answers to these questions the project commissioned a study entitled "The Use of the Courts in Labour Relations -- Survey of Disposition of Actions Before the Courts." The principal investigator was Edmonton lawyer Robert A. (Bob) Philp.

The Philp study consisted of examining the Court House records relating

to references to the Courts during the nine year period May 1, 1970 to August 31, 1978. References were limited to applications calling for the review of decisions of the Labour Relations Board, Public Service Employee Relations Board, Grievance Arbitrators, and Grievance Adjudicators. However, in the process of doing so the investigators noted a surprisingly large number of actions at common law alleging unjust dismissal and consequently these actions were included within the scope of the study. The review extended to cases heard by both the Trial and Appellate divisions of the Supreme Court of Alberta. The study uncovered a total of 561 cases.

The employers named in the actions included employers in industries such as construction, services, resource development, municipal and provincial governments, manufacturing, agriculture, and education. The types of trade unions involved included local unions, international unions, provincial unions, and employee associations. In addition to employers and trade unions, the actions also involved employees in their individual capacities, trade union executives and business agents in their respective capacities, as well as local unions and their parent organizations. The form of relief requested included damages, injunction, certiorari, and mandamus. The study gave special attention to the time frame from application to disposition and the history of the action subsequent to its initial reference to the Court.

It is sometimes stated that these applications were often made to the Courts in an effort to hinder the implementation of the awards of administrative tribunals. Unfortunately, due to its design, the results of this study are not helpful in assessing this contention. On the other hand, the results suggest that there would be considerable justification in pursuing the proposition further in an attempt to determine the motives behind the action. Possibly, if appropriate, interviews with the applicant might

establish the underlying motive for seeking judicial review.

Labour Relations Board Decisions. As a quasi judicial tribunal the Labour Relations Board has a duty to act judicially and in special circumstances its decisions may be reviewed on application to the Alberta Court of Queen's Bench. A review of the decision of the Board may be made if the application is in compliance with section 18 of The Labour Relations Act. Section 18 reads as follows:

> (1) The Board has exclusive jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Board thereon is final and conclusive for all purposes, but the Board may, at any time, reconsider any decision, order, directive, declaration or ruling made by it and vary, revoke or affirm the decision, order, directive, declaration or ruling.
>
> (2) Subject to subsection (3), no decision, order, directive, declaration, ruling or proceeding of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings.
>
> (3) A decision, order, directive, declaration, ruling or proceeding of the Board may be questioned or reviewed by way of an application for certiorari or mandamus if the application is filed with the Court and served on the Board no later than 30 days after the date of the Board's decision, order, directive, declaration or ruling or reasons in respect thereof, whichever is later.

Of the 561 cases reviewed in this study 128 involved a review of a decision of the Labour Relations Board. The 128 reviews represented only seven percent of the decisions rendered by the LRB during the nine year period. The Edmonton Judicial District received 91 or 71% of the applications and the Calgary Judicial District received 37 or 29% of the applications. In 76 or 59% of the cases application for review was initiated by labour: 69 or 54% by local unions and their officers in a representative capacity, 2 or 1.6% by individual employees, 1 or .8% by a trade union and an individual employee, and 4 or 3% by an international union and their officers in their respective capacity. In 62 or 48% of the

cases application for review was initiated by management: 49 or 38% by individual employers and 13 or 10% by employer associations.

With respect to the disposition of the 128 applications filed, in 50 or 39% of the cases the application was dismissed. In 38 or 29% the application was granted. In the balance, comprising 40 cases or 31% of the applications, the action was discontinued or abandoned. Note that of the 128 applications only 88 or 69% were actually heard.

The evidence obtained from this review would indicate that by far the majority of the applications for judicial review are either dismissed or abandoned. The decision to abandon is often a positive decision by the parties seeking review and is generally taken as a result of other aspects within the labour-management relationship. It is also a decision taken with little or no reference to the Board. The motivation behind the abandonment or settlement of various applications would be an interesting study in itself providing that the parties involved were prepared to disclose the reasons for the abandonment or settlement of given applications and release their lawyers from the solicitor/client privilege.

The Labour Relations Board was named as a respondent in 122 or 95.3% of the applications to the Courts. Some 55% of the applications involved employers and trade unions in the construction industry. This figure clearly highlights the level of activity within labour-management relations in the construction industry. It also underscores the importance and size of the construction industry within the total provincial economy and demonstrates the position of the construction trade unions as one of the most strongly organized segments of the provincial labour force. The next most frequent area of activity involved unions and employers within the service industry. Applications in this industry totaled some 13.3%. Of the 88 decisions rendered by the Trial Division, a total of 5 were subsequently taken to the Appellate Division or at least a Notice of Appeal had been filed. To

date, only 2 decisions of The Public Service Employee Relations Board have been subject to judicial review. One application was dismissed and the other proceeded before the Supreme Court of Canada.

Arbitrator/Adjudicator Decisions. Under The Labour Relations Act and The Public Service Employee Relations Act there is provided mandatory provisions for grievance arbitration under each and every collective agreement in Alberta. If a collective agreement contains no arbitration provisions, then the parties are bound to follow the model arbitration provisions contained in the respective statutes. In addition to mandatory arbitration, both statutes provide that the decision of an arbitrator or an adjudicator may be reviewed by the Courts. With respect to arbitrators under The Labour Relations Act section 129 reads as follows:

> (1) Subject to subsection (2), no award or proceeding of an arbitrator, arbitration board or other body shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain the arbitrator, arbitration board or other body in any of his or its proceedings.
>
> (2) The decision or proceedings of an arbitrator, arbitration board or other body may be questioned, or reviewed by way of an application for certiorari or mandamus, if an application therefor is filed with the court not later than 30 days after the issuance of the award of the arbitrator, arbitration board or other body.

With respect to adjudicators under The Public Service Employee Relations Act section 89 reads as follows:

> (1) No award, proceeding or decision of a tribunal shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court, (whether by way of injunction, declaratory judgment, prohibition, quo warranto or otherwise) to question, review, prohibit or restrain the tribunal in any of his or its proceedings.
>
> (2) Notwithstanding subsection (1), the award, proceeding or decision of a tribunal may be questioned, or reviewed by way of an application for certiorari or mandamus, if an application therefor is filed with the Court not later than 30 days after the date of the award, proceedings or decision of the tribunal.

Of the 561 cases reviewed in this study, 36 involved a review of decisions of grievance arbitrators/adjudicators. The 36 reviews represented

only ten percent of the awards rendered by Alberta arbitrators/adjudicators during the nine year period. The Edmonton Judicial District received 28 or 78% of the applications and the Calgary Judicial District received 8 or 22% of the applications. In 23 or 64% of the cases applications for review was initiated by labour: 18 or 50% by local unions and their officers in a representative capacity, 4 or 11% by individual employees, and 1 or 3% by a trade union and an individual employee. In 13 or 36% of the cases application for review was initiated by management. All 13 were initiated by individual employers. No actions were initiated by employers' associations.

With respect to the disposition of the 36 applications filed, in 18 or 50% of the cases the application was dismissed. In 10 or 28% the application was granted. In the balance comprising 8 cases or 22% of the applications the action was discontinued or abandoned. Note that of the 36 applications only 28 or 78% were actually heard. It is interesting to note that although employers' organizations in the construction industry were active with respect to a review of Labour Relations Board decisions they were not active in calling for review of decisions of arbitrators or adjudicators. Generally, the construction industry although it is subject to the arbitration provisions does not have a high incidence of grievance arbitrations. Of the 36 applications calling for a review only 5 of the applications related to arbitrations affecting the construction industry. The remaining applications affected a variety of industries and included service, education, agriculture, manufacturing, and municipal and provincial governments and agencies. The number of arbitration/adjudication decisions which have been subject to judicial review are minimal given the number of arbitration/adjudication hearings held during the time frame of this study. The motivation for parties seeking judicial review may be similar to the motivation for seeking review of decisions of the Labour Relations Board. As noted earlier, the results of this study suggest that an attempt to determine the

motivations behind judicial review would probably generate very interesting insights.

The results of this study suggests several conclusions. First, the frequency of applications for judicial review of the decisions of the administrative tribunals reviewed is not that great given the total number of administrative decisions rendered. Second, the low success rate of applicants suggests that either the Courts are reluctant to interfere in the activities of administrative tribunals or find no fault with the award or decision placed before them. Third, it appears that many applications for judicial review are brought forward for some reason other than the substance of the decision rendered by the particular administrative tribunal. We note the very large number of applications which subsequent to application are settled or abandoned. Fourth, this study has noted the large number of court actions involving the employer/employee relationship but do not involve the activities of the administrative tribunals reviewed. Applications to the Courts for injunctions were frequent during the period of time under the study and in addition actions relating to unjust dismissals were common.

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74. S.A. 1977, c.40, s.22.

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124. See S.A. 1980, c.72, s.148. A state of public emergency may arise out of a labour dispute when: "(a) Damage to health or property is being caused or is likely to be caused because (i) a sewage system, plant or equipment

or a water, heating, electrical or gas system, plant or equipment has ceased to operate or is likely to cease or operate, or (ii) health services had been reduced, have ceased or are likely to be reduced or ceased, or (b) a reasonable hardship is being caused or is likely to be caused to persons who are not parties to the dispute..."

125. The other jurisdictions are Saskatchewan, Ontario, and Newfoundland.

126. The special statute for policemen and firefighters also establish two separate bargaining units for policemen, i.e., one for senior officers in the ranks of inspector or higher, excluding the chief constable and one officer whose rank is lower than inspector. The Act also prohibits the police officers from joining of affiliating with a trade union. Four other provinces outlaw strikes for policemen (Ontario, Prince Edward Island, Newfoundland and Quebec) and provide for compulsory binding arbitration as a substitute. Similar provisions for firefighters exist in six other provinces: Quebec, Prince Edward Island, Manitoba, Saskatchewan, New Brunswick, Newfoundland and Ontario. Even when the right to strike for public safety employees is granted it is rather limited.

127. It can be argued however that since the Minister decides on the negotiability of demands he may also determine whether a particular issue is arbitrable. Thus far the practice was to bring these questions before arbitration boards. The new amendments severely restrict the scope of issues that may be brought before arbitration boards.

128. In fact, the arbitration board is empowered to establish its own procedure.

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CHAPTER III

LABOUR RELATIONS AND THE ALBERTA INDUSTRIAL RELATIONS SYSTEM: SIMILARITIES AND DIFFERENCES

In the preceding chapters we set out the detailed anatomy and functioning of the Alberta labour relations system. This system does not function in isolation. In fact, it is only part of a larger system that governs all relationships between employers and their employees. This larger system, termed the industrial relations system, is committed to the same objectives as the labour relations system. The industrial relations system comprises other methods available for the setting of wages, hours and working conditions and administering the employer-employee relationship. These other methods include the unbridled functioning of the labour market through individual employee-employer negotiations, various personnel management systems, worker participation in management in a variety of forms, worker-owned and worker-run enterprises, as well as government regulation and direction. In short, the labour relations system is not the only method available.

The industrial relations system exists because of the inevitability in an industrialized society of having some system for the setting of wages, hours, and working conditions and the administration of the employer-employee relationship. We also must bear in mind that in terms of employee coverage more employees reside outside of the labour relations system than within it and in this sense the labour relations system is not the predominant process with in the industrial relations system. It is, however, given greater attention and importance because collectively, as opposed to individually, negotiated terms and conditions of employment become public knowledge and because the consequences of a work stoppage occurrence and the magnitude of increases in wages, hours and working conditions obtained within this process. Many employees have adopted the labour-management relations system, among other things, in hope of reaping the

benefits of improved wages, hours and working conditons and in order to enjoy some modicum of participation in the decisions that determine terms and conditions of employment.

The purpose of this chapter is to focus on the industrial relations system, in general, and the labour relations system, in particular, as a subset of the broader industrial relations system. It is intended to examine the nature and features of decision-making within the industrial relations system, cross-fertilization and spill-overs between the unionized and non-unionized sectors of that system, and the impact of environmental factors on decision-making within these two sectors of the system. Of particular importance is the role that labour markets, both those internal to the firm and those external to it, play in influencing the decisions made by participants and their subsequent behaviour in those systems.

OBJECTIVES AND PARTICIPANTS

The primary objective of the industrial relations system, like that of the labour relations sub-system, is to establish terms and conditions of employment. An important difference is the manner in which these decisions are made and sometimes the magnitude of various aspects of workers' terms and conditions of employment. As will be explained in greater depth below, management generally is less restricted in its ability to unilaterally make such decisions when unions are not present as opposed to when they are present in the individual enterprise or public sector operation. The objectives of participants common to industrial relations as a whole and labour relations in particular typically are the same, as indicated below.

Many of the participants in the labour relations system also participate in the non-unionized sector of the industrial relations system (NSIRS); however, some labour relations participants are conspicuous by their absence from the NSIRS. Their absence means that the remaining participants often function somewhat

differently, since the legislative machinery and processes for unionization as well as collective agreement negotiations and administration clearly do not apply to non-unionized firms or operations. In turn, at least two other factors governing decision-making and the roles of participants in the NSIRS gain prominence as compared within the unionized sector of the industrial relations system (USIRS). These two factors are the labour market, particularly the labour market external to firms and operations, and government legislation, especially those pieces of legislation which are oriented towards protecting employees in marginal firms and operations. The latter includes statutes like The Employment Standards Act, Statutes of Alberta 1980, Chap. 62, as amended, and The Occupational Health and Safety Act, Revised Statutes of Alberta 1980, Chap. 0-2, as amended.

Participants within the NSIRS who also participate in labour relations are employees, employers, government, legal counsel, consultants, and the courts. Absent from the NSIRS are trade unions, labour boards, statutorily required arbitrators and adjudicators, as well as the government in its custodial role as "strike-stopper." Employees who strike at common law are not protected by general labour relations statutes.

Government. The government, however, takes part in the NSIRS as regulator, facilitator, intervener, and employer. It regulates employee relations by enacting statutes such as The Employment Standards Act; The Occupational Health and Safety Act; The Workers' Compensation Act, Statutes of Alberta 1981, Chap. W-16; and The Individual's Rights Protection Act, Revised Statutes of Alberta 1980, Chapter I-2. Of course, these statutes implement anti-discimination, anti-exploitation, anti-humane, and anti-poverty policies which flow from the government's role as custodian of the public interest. They also reflect goals of government in regulating employment relationships and workplace activities. It is noteworthy that various administrative tribunals similar to labour boards are created under these pieces of legislation. They include the Workmen's Compensation Board, ad hoc employment standards umpires, and the Human Rights

Commission. Like labour boards, these administrative tribunals administer the acts under which they are created or portions thereof. These statutes and administrative procedures apply to all employment relationships and, accordingly, to the industrial relations system as a whole. As "intervener," the government is responsible, for instance, for appointing umpires under The Employment Standards Act (section 93), for appointing boards of inquiry under The Individual's Rights Protection Act (section 27) and under The Occupational Health and Safety Act (section 29), in addition to granting permission to prosecute offenses allegedly committed under the OHS Act (section 32). Government departments and agencies also have inspectorates and or field officers who investigate complaints or accidents under the four statutes cited above.[1] The government acts as facilitator in these areas by providing such things as educational programs.[2] To the extent that the government employs non-unionized employees, which it does chiefly in management circles or that it subcontracts work to non-unionized employers, it is involved in the non-unionized sector of the industrial relations system. Although the government formerly played a prominent and dominant role in this area, this role has diminished greatly over time, especially since the time when the government statutorily conferred unionization and negotiating rights on its employees.

Employees and Employers. Employees and employers pursue essentially the same objectives in non-unionized and unionized enterprises and operations, but the manner in which they participate in employer-employee relationships differs, somewhat, depending upon whether or not a trade union is present. Employees' objectives in the workplace consist of seeking a livelihood and some degree of job security, to ensure a future livelihood, in addition to attaining varying degrees of prestige, status, public acceptance, job satisfaction, and power over others. Employers' objectives comprise maximizing profits, which implies minimizing costs; being able to allocate resources efficiently in response to market signals; serving the interests of shareholders, customers, suppliers, employees, the public, and, in turn, government; and attaining prestige, status and public acceptance. In short, the

employer seeks to maximize profits subject to certain constraints. These constraints flow from product and input markets as well as from the environment within which the firm makes decisions. This contextual setting includes the interests of shareholders, customers, suppliers, employees, the public, and government. The management of the enterprise or operation is both responsible and responsive to these interests in differing degrees.[3] For instance, the degree to which management is responsive to one of its primary interests, that of shareholders, comes under the rubric or debate over the "separation of ownership from control." Of course, one of the key features of industrial relations is that management, by and large, is dealing with people who have emotions and feelings rather than, say, with robots.

Diverging Interests. Perhaps, the most important feature of employee-employer relationships in the non-unionized sector is that the so-called inherent conflict between employees' interests and employers' interests exists there, as well as in the unionized sector. Employees seek improvements in wages, hours and working conditions while employers view such improvements as increased labour costs which will reduce profits, everything else held constant. In the short term, the employer's ability to cope with a given level of increased labour costs chiefly depends upon his ability to pass on such increases in input costs to customers in the form of price hikes. In addition, workers' desires to achieve job security, through the earmarking of jobs or other restrictive practices, runs counter to management's objective of being able to respond as quickly and readily as possible to market signals. Latent in non-unionized employee-employer relationships is this conflict over so-called traditional managerial rights and prerogatives. Significantly, the so-called traditional managment rights and prerogatives have been respected by the courts and, in effect, thereby protected at common law.[4] This means, among other things, that management is free to unilaterally implement policies or procedures in non-union firms and operations which emphasize the coincidence of employer and employees' interests through arrangements such as profit-sharing schemes, incentive systems and worker

participation in management.

Converging Interests. The converging of interests characterizes employment relationships where unions are and are not involved. Employment relationships are symbiotic relationships in the sense that labour needs capital in order to produce goods and services and vice versa and that employees' livelihoods are integrally linked with the firm's livelihood. Lamentably, all too often it takes a crisis, such as a collapse of export markets or of the domestic economy, to focus attention and actions on this symbiotic relationship. In other words, poor economic or financial circumstances tend to be a catalyst for carefully tempered decision-making and labour-capital cooperation, particularly where unions are present. Part of the reason for this is that contract negotiations take place under uncertainty and a strategic control variable during negotiations is the amount of information that is disclosed. As trade union leaders frequently put it, they only see the firm's accounting books when conditions are bad. The key point here, though, is the inherent symbiotic relationship and coincidence of the interests of employees and employers in joining together in production or providing services and in the longevity of the firm or operation.

Differing Participation. The manner in which employers and employees participate in the industrial relations system differs somewhat, if not considerably, depending upon whether or not the firm or operation is unionized. By and large, employers play a more dominant role and employees a more passive role when trade unions are not present. Employers tend to dominate employment relationships, in that they can unilaterally institute policies and programs and can exercise power and control over employees. But, there are constraints on the exercise of managerial discretion, such as certain minimum employment standards that management must comply with, regardless of the existence or non-existence of a union. In short, certain constraints fetter the exercise of managerial discretion in non-unionized outfits, as explained below.

Sources of Power. Basically, the employer controls the employment relationship,

regardless of whether or not a union is present. Employees' ultimate source of power derives from their control over the labour services they provide, but it is absorbed into collective actions where a trade union is present. It is the manner in which these powers can be exercised or implemented that distinguishes decision-making in the unionized and non-unionized sector of the economy. It distinguishes the decision-making in terms of the nature and, to a certain extent, the outcomes to the decision-making process. The source of power for the individual employee is his control over the labour services he provides. As one worker once put it, "My hands are my security." A key power determinant, as to the magnitude of individual employer-employee negotiations is the "relative indispensibility" of the individual. Relative indispensibility derives from at least two sources: (1) the individual's talent and skills be they innate or acquired and (2) the individual's strategic position in the chain of production or distribution. By contrast, the employer's powers stem from the legal system, in general, and, in particular, from its ability to control and direct production or the delivery of a service, including its ability to control and direct factors of production such as capital, labour and so-called intermediate products like raw materials and energy inputs. From the labour economist's perspective, the employer can close operations and migrate, he can substitute capital for labour, he can substitute casual or part-time employees for regular or full-time employees, he can substitute semi-skilled or unskilled workers respectively for skilled or semi-skilled employees, or he can subcontract all or parts of his operation to economically more efficient operations.[5] With regards to the individual employee, the employer can hire, fire, promote, demote, and suspend, with the exception that the employer cannot suspend or permanently lay off at common law.[6] Although these sources of power are common to individual and collective employee-employer negotiations, the decision-making inherent in these negotiations differs largely due to the concerted nature of collective agreement negotiations as opposed to the individual nature of the negotiation of the contract of employment at common law and because of the availability in the former case and non-availability in the

latter case of the lawful work stoppage weapon. More will be said about this below.

Legal Counsel, Consultants, and the Courts. Legal counsel, consultants and the courts play much the same role where contracts of employment are at common law as where there are collective agreements. The chief function and objective of legal counsel is to advise participants about their rights at law and possible courses of action that can be taken to promote or safeguard their positions before the law. Consultants, like lawyers, are resources that the primary participants in employment relationships can draw upon, regardless of whether or not the employees are represented by a trade union. Their role may involve various functions from instituting or looking after one or more personnel functions and possibly establishing an internal compensation package and intra-organizational democratic system which is oriented, among other things, towards resisting or avoiding unionization, where a trade-union has not been formed. The courts clearly are established to maintain and administer justice with regards to all employment relationships, not solely those dealing with trade-unions, and to act as watchdogs on the proceedings before and decisions of administrative tribunals established pursuant to statutes impinging upon or regulation certain elements of employment relationships.

MANAGERIAL DISCRETION IN UNIONIZED AND NON-UNIONIZED ENTERPRISES

Managerial discretion and decision-making is constrained both in the presence and absence of trade-unions. To the extent that trade unions negotiate restrictive work practices and implement pressure tactics during the terms of collective agreements and can lawfully close down plants, job sites, offices or retail outlets, unionized employers face greater overt and possibly greater covert restraints on their exercise of discretion. Moreover, management can unilaterally look after compensation management at common law but not necessarily under a collective agreement. However, to the extent that the employer can suspend or permanently lay off employees and unilaterally exercise many of the same managerial rights

and prerogatives under a collective agreement as at common law, management is not necessarily as severly constrained or restrained by trade unions as seems to be the popular conceptualization or myth. In addition, some restraints on the exercise of managerial discretion, such as the closed shop, were freely negotiated and agreed to by management.

Two constraints common to both unionized and non-unionized operations and enterprises are (1) labour markets and other market developments and (2) minimum standards legislation as well as other statutes like those discussed above which impinge upon and regulate certain facets of employment relationships. The latter govern all employment relationships and, as a rule, will be viewed as overriding terms and conditions of collective agreements which fall below statutory minimum employment standards, in those very rare instances where this occurs. Generally speaking, statutory minimum employment standards apply primarily to the non-unionized workforce and operations or firms which are marginal or involved in highly competitive industries. The highly competitive nature of industries such as retail and wholesale trade, finance, real estate and business services is a key deterrent to unionization. In other words, managerial decisions are heavily constrained by public policy but the impact of public policy on managerial decision-making may differ between the unionized and non-unionized sectors of the economy. Non-unionized employers, in particular, need not become involved in transactions or processes under a labour relations act. External labour market developments are very important to those enterprises and operations which do employ an intensive and well-considered approach to the recruitment and retention of their workforces. Those employers who compete by having a stable, reliable workforce of competent individuals clearly must keep abreast of labour market developments, if they are unionized or non-unionized. The labour market tends to play a more recessive role in unionized operations. Product, input, and other market developments are important as well. Viewed broadly, the nature of the economic environment constrains managerial decision-making.

There is an additional key constraint on management, but it differs between unionized and non-unionized firms and operations. Where the employer is unionized, the trade union, itself, is a constraint, in varying degrees, on managerial decision-making. This is the traditional view by management that the union is a "thorn in management's side." Trade unions, however, offer the employer a feedback mechanism from employees via collective agreement negotiations and administration, but non-unionized employers obviously need not engage in such processes. Trade unions may offer the employer, who typically is the primary initiator in unionized and non-unionized settings, a "transmission belt" for implementing certain policies. Nonetheless, unionized employers generally have less freedom of action than their non-unionized counterparts. Where the employer is not unionized, the threat of unionization is a constraint on management.[7] In other words, conditions in the unionized sector constrain the exercise of managerial discretion in the NSIRS. We shall next look at the scope of managerial discretion in unionized versus non-unionized firms and operations and later below return to the threat of unionization as a constraint on non-unionized managements. The impact of the economic environment on managerial decision-making also will be explained in greater depth below.

The Scope of Managerial Discretion. Management generally can exercise a freer reign in managing without a union than with a union. The extent to which management has acceded to trade union requests and bridled its domain of unilateral authority and action reflects primarily the amount of collective power its employees can exercise vis-a-vis the power of management. For this reason, the limitations on management's so-called traditional rights and prerogatives vary from one labour-management relationship to the next. The extent to which the exercise of management discretion has been constrained by trade unions may have been overexaggerated. With respect to management's traditional rights and prerogatives, the differences between the unionized and non-unionized sectors may be differences in degree rather than in kind, as some observers have alleged. In other words, managements generally are not necessarily fettered under a collective

agreement by a quantum leap above their counterparts who operate under contracts of service at common law. Alternatively, the collective agreement is not necessarily superior to the individual contract of employment at common law in terms of the rights it confers on those it covers. In the final analysis, as argued by Professor Glasbeek, the collective agreement may, indeed, merely amount to a glorified bundle of individual contracts of service.[8]

Power Relations. Employment relationships, including those that involve trade unions, are power relations. The employer, as buttressed at law, can exercise hierarchical control, authority and power over employees. Employment relationships, including unionized ones, often involve challenges and responses. The challenges frequently are manifestations of control, authority or power in the form of orders or actions. They may elicit a variety of responses ranging from acquiescence through passive resistance to active resistance. Management often is the initiator but trade unions or employees also may initiate challenges. The employer or management often is thought of as the initiator because they function within our capitalist system. Society's view of the entrepreneur, as supported by the courts as well as labour arbitrators and adjudicators, is that the "entrepreneur in a competitive society should be free to invest and to dispose of his capital as he sees fit and be subjected to as little external noneconomic restraint as is consonant with social needs."[9] In the face of the control, authority, and powers accorded to employers, collective behaviour, as exercised in collective agreement negotiation and administration, is consonant with social needs in that it provides employees with some measure of countervailing powers. The upshot of trade unionism and such collective behaviour was that the traditional initiator, the employer, may be challenged by trade unions either covertly or overtly and possibly through such pressure tactics as flooding the grievance machinery, work-to-rule compaigns, bans on overtime, sick-ins, study sessions, and occupation of the workplace.[10] The relative absence resort to pressure tactics in the non-unionized sector means that non-unionized employers are less restricted than in their exercise of managerial discretion unionized counterparts.

Entrepreneurial Initiative. Unless there is express wording to the contrary, unionized and non-unionized employers generally are unrestricted as initiators in the sense that they can determine how much to invest, where to invest it, what products to make, what amount, what quality, what processes to use, what substances to employ, and so forth. Moreover, trade unions very seldom directly limit the scope of employers in their investment and deployment of capital decisions. Indeed, employers can easily close down their enterprises and take their capital elsewhere. Because trade unions have encountered difficulties in negotiating clauses in collective agreements which would curtail or severely reduce the mobility of capital, they have sought legislative assistance in dealing with plant closures and mass lay offs.[11]

Personnel Functions. Non-unionized employers generally can exercise greater latitude in the various personnel functions as they relate not only to the external labour market but also to the internal labour market. External labour market involvement by employers· includes recruiting, selecting and hiring employees as well as firing and laying off. That is, we view these activities as concerning either bringing employees into the firm or putting them back into the labour market, which employees also may do voluntarily by quitting. Internal labour market functions include job evaluations and the establishment of job classifications transfers, performance appraisals, promotions or demotions, training and development, intrafirm democracy, and compensation management. They take place within the firm's organizational structure and bounds and impact on operations and dealings inside the firm. Typically, internal labour market affairs are oriented towards such things as developing and retaining a reliable workforce, providing motivation and feedback in order to promote higher productivity, and dealing with employees' complaints and perceived inequities.

The External Labour Market: Entries and Exits. With respect to the external labour market the unionized and non-unionized employer may stand on somewhat equal footing. Both can exercise the right to recruit, select and hire without

encumbrances, with the exception of the unionized employer who has agreed to a preentry "closed shop". Because the closed shop requires union membership prior to the receipt of a job, the employer who agrees to a closed shop in effect has agreed not to recruit employees who are not members of the trade union that is party to the closed shop arrangement. During 1980-81 in 17.3% or 178 of 1028 agreements in Alberta provided for closed shops, and 64 or over one-third of the closed shops were in the construction industry.[13] Since hiring hall arrangements often are coupled with closed shops, many of the unionized employers covered by closed shops, presumably also permitted the union some latitude in assigning union members to jobs.[14]

The non-union employer has two options in terms of dealing with discipline cases or instances where there is a need to reduce the work force. The two alternatives are either to retain the employee or to terminate him. However, terminating the employee may bring to bear the notice and pay in lieu of notice provisions of fair employment standards legislation. By contrast, the unionized employer, in the absence of either a custom or express contract language to the contrary, very often will be permitted by arbitrators and adjudicators to engage in layoffs, unilaterally reduce the hours of work, or to suspend employees as a disciplinary remedial action.[15] In other words, according to Glasbeek, where a trade union is present the employer enjoys greater latitude in terms of the courses of action he can pursue and the "arsenal of calib rated punishments" available "to facilitate whipping the workforce into shape." It is noteworthy that arbitrators and adjudicators normally permit employers to mete out discipline and discharge on grounds similar to those adopted by courts at common law.[16] Typically, arbitrators and adjudicators require that a higher standard of proof be met.

Significantly, the non-union employer's decisions are subjected only to court scrutiny in this area. The courts tend to perpetuate many of the master-servant notions of about employment relationships, and court actions can be costly endeavours for allegedly aggreived workers. By contrast, the employer who deals

with a trade union is placed under the scrutiny of the grievance machinery as well as grievance arbitrators and adjudicators and faces a process to which individual employees have more ready access, and in which they more readily participate because their legal fees are paid by collectively gathered funds. Some, but not all arbitrators and adjudicators traditionally follow the courts in not imposing restrictions on managerial decision-making which were not jointly agreed to either in practice or in words. It appears that some arbitral trends seem to lie in the direction of closer scrutiny and review of the exercise of managerial discretion in unionized operations.[17]

The Internal Labour Market. With regards to the internal labour market, the unionized employer typically can exert less of a free hand in managing his operations and work force than his non-unionized counterpart. The reason for this is that it is in the day-to-day operations of the enterprise that the conflict between employees' job security and their desires for fair treatment continually come up against the management's desire to retain as much flexibility, power, control, and authority as possible. The internal labour market personnel functions tend to be more amenable to trade union input and trade-offs vis a vis management, in part, because some of them are lower priority issues than many external labour market dealings such as plant location, or employee recruitment and selection.[18]

The three principal means for trade unions to limit the exercise of managerial discretion internally are (1) through the ostensibly objective seniority principle as it relates to provisions such as promotions, transfers, layoffs, call-backs, and benefit plan entitlements, (2) the grievance handling mechanism, and a final method for resolving rights disputes, as required at law, except in Saskatchewan, and (3) the negotiation of restrictions to promote job security, particularly in the areas of the work assignment, contracting out, technological change, and restrictive work practices such as "featherbedding." The latter represent substantive limitations while the grievance machinery represents procedural limitations on managerial and

supervisory direction and control over the work place and the work force. The seniority principle clearly is used to promote some degree of job security, as well.

Professor K. Swan has dealt in-depth with these restrictions on management in an article entitled "Union Impact on Management of the Organization: A Legal Perspective," so we shall not do so ourselves. One of his key points is that, in order to achieve incursions into management's traditional rights and prerogatives, trade-unions had to possess sufficient bargaining power vis a vis management. Moreover, they had to make concessions in other areas or, viewed alternatively, to pay for managerial concessions, and they generally had to respect and retreat from management's highest priority and most cherished domains, such as plant location. According to Swan:

> .....whatever limitation unions wish to impose on a presumptive managerial discretion to control the use of labour in an enterprise must be expressly bargained for during the negotiation of a collective agreement. That requirement, with its associated costs, has circumscribed the intrusion of union influence into the historical areas of management discretion. Since the duty to bargain in good faith only requires negotiation and not agreement, every concession coming from management in bargaining must either be bought by backing down on other demands or forced by resort to economic sanctions. In either way, collective-agreement provisions encroaching on managerial prerogatives will, if resisted by the employer, be won only at a significant cost to the union and to its members. Moreover, although it is difficult to generalize, there has been a natural employer disposition to resist vigorously any encroachment on its traditional prerogatives. As a result, there has been little indulgence in symbolism in this area; union power has been concentrated for the most part on limiting managerial discretion over matters directly and practically affecting critical job interests and only tentatively has it been used to assert broader influence over the actual direction of the enterprise.[19]

The key point is that procedural and substantive restrictions on the exercise of managerial discretion exist in the unionized but not in the non-unionized sectors of the economy. These restrictions are agreed to by both employers and trade unions.

The extent of trade union restrictions on traditional management rights and prerogatives can be inferred to some extent from Alberta Labour's publication, Negotiated Working Conditions in Alberta Collective Agreements 1980-81 Edition.

Selected findings for all industries are reproduced below:

1) Nearly one-half of the 1028 agreements contained a management's rights provision which included a residual rights clause: 394 agreements or 48.1% (p. 9).

2) There was no management's rights clause in 113 or 11% of the agreements surveyed (p. 9).

3) A seniority unit for layoffs, promotions and transfers was established in 805 or 78.3% of the 1028 agreements sampled (p. 14).

4) Seniority played no role in promotions in 345 or 33.6%, in transfers in 529 or 51.5% and in layoffs in 226 or 22% of the 1028 agreements (pp. 16-17).

5) Provisions for restrictions on work by non-bargaining unit employees were written into 352 or 34.2% of the agreements summarized (p. 78).

6) A provision containing restrictions on contracting out existed in 265 or 25.8% of the 1028 agreements (p. 78).

7) Advance notice of technological change was called for in 114 or 11.1% of the sample (p. 79).

8) Advance notice of plant closing or relocation appeared in 26 or 2.5% of the 1028 collective agreements (p. 81).

9) There was no provision for either job evaluation or union participation in job classification in 793 or 77.1% of the 1028

> contracts, and no express provision for grievance of job classification or re-classification in 905 or 88.0% of them (p. 82).

It should be noted that arbitral deference to the "residual rights" theory probably would lie in those cases where there either was not provision for management's rights or where there was no residual rights clause in the management's rights provision, if the collective agreement was silent on the matter in dispute.[46]

Wage Structures Under Trade Unions. A final point should be made concerning wage structures, in particular. It is that, although unions have agreed to a variety of wage structures, including profit-sharing schemes and piece-rate or other incentive systems, they basically seek a rigid wage structure in which all employees in a given classification receive the same level of remuneration, and labour arbitrators and adjudicators and the courts tend to support this kind of wage regime.[20] The reasons that unions promote this kind of wage regime include egalitarianism and protecting against arbitrary decisions or favouritism on the employer's part. We shall speak below of the "levelling effect" that occurs when a formerly non-unionized firm's work force is brought under a fixed job classification wage structure, and some employees' wages are lowered while others are raised in order to bring them into one of the negotiated wage classification levels. Just like strongly seniority-based provisions concerning promotion, transfer, and recall, the rigid wage structure also somewhat ties the hands of the unionized employer as compared with his non-unionized counterpart, who can unilaterally administer his employees' wage compensation packages.

Given the less fettered exercise of managerial decision-making discretion in the absence of a trade union as well as such factors as anti-union employer ethos, it is not surprising that many non-unionized employers resist unionization or do not extend an open invitation to trade unionism and the labour relations system. However, this is not to say that trade unions do not have anything positive to offer employers. As noted above, they may assist employers in implementing

certain policies or in presenting shop floor feedback to management. Other potential benefits of trade unions to employers will be addressed in the discussions that follow.

The nature of decision-making in the industrial relations system. Typically, decisions by participants in the industrial relations system take place or, in our opinion, should take place within the paradigm for planning or decision-making under uncertainty. One well-known paradigm is the "management by objectives" paradigm which is used extensively in manpower planning within industrial relations and which is, as we see it, the paradigm for decision-making which is or should be used in negotiations, be they on an individual or collective basis.[21] In short, it is or should be as applicable at the negotiating table as within the corporate boardroom.

Uncertainty, Data and Forecasts. Uncertainty imposes certain informational and forecasting needs on the primary parties, particularly the employer. Many of them concern the economic environment as well as public policy developments and possible interests, attitudes, and reactions on the part of the other side to the employment relationship. The firm, in particular, must keep abreast of product, labour and other input market developments, to the extent that they constrain the firm. The informational and forecasting needs also relate to the cost and benefits associated with certain courses of action, bearing in mind the impact of the relevant constraints.

On the one hand, the wage levels and other terms and conditions of employment fixed in a collective agreement shelter management from the cost uncertainties otherwise caused by unpredictable wage fluctuations in the labour market. Cost of living allowance and similar clauses can be used to build some flexibility into labour agreements.[22] On the other hand, management becomes "locked in" to terms and conditions of employment, stipulated in the collective agreement, especially if it is a multi-year agreement. Labour market or product market developments as well as settlements affecting employees comparable to the employer's workers

may cause frustrations, poor employee morale, and thereby become associated with worker self-help actions. Because the occurrence of pressure tactics cannot be predicted with certainty and because of the potentially disruptive consequences of these tactics, the employer faces greater uncertainty about meeting deadlines or other contractual obligations with regards to the goods produced or services provided.[23] Unions reduce uncertainty to the extent that they help establish and enforce rules and procedures for regulating and controlling the day-to-day behaviour of employees. By contrast, the existence of a grievance-handling mechanism generates uncertainty about the resolution of employee-employer differences which is greater than in non-unionized firms where authority solely is vested in management, and it is not subject to scrutiny by trade unions, arbitrators or adjudicators.

Trade Union Impact as Constraints on Efficiency. Managers strive to achieve efficiency in at least two ways. One way is to use the least costly input mixes of labour and capital services to produce desired level of output. We shall term this "cost efficiency." Another way to achieve efficiency is being able to quickly react to market signals and adjust inputs accordingly. We shall refer to this as "responsive efficiency." There is a good deal of empirical data about trade unions and cost efficiency. By contrast, much of the impact of trade unions on responsive efficiency flows from the kinds of institutional arrangements that develop between unions and their employers. In other words, the impact of trade unions on responsive efficiency can be observed, deduced and inferred from the manner in which trade unions act as institutional constraints on managerial planning and decision-making. In general, there are fewer direct linkages and impacts of product and external labour markets on the firm's internal labour market where the firm is unionized than where it is not.

The impact of trade unions on cost efficiency has been highly controversial, widely debated and widely researched. It must be noted that researchers have employed a wide range of methodologies and data bases and that there are

"subtle complexities to what, on the surface, appears to be a relatively simple measurement problem."[24] Nonetheless, some generalizations can be drawn from the disparate body of research. In particular, it "appears that unions have had a positive impact on the compensation of their members" and that they "have had a larger impact on fringe benefits than wages."[25] Two researchers, Godard and Kochan, summarized the literature as follows:

> Existing research provides only limited and somewhat ambiguous findings as to which of these views can be considered most accurate. On the one hand, indications are that unionism does lead to higher labour costs and slightly lower profitability, particularly under oligopolistic product-market conditions. On the other hand, there are indications to suggest that, on the average, unionism can be associated with lower turnover and higher productivity. But the direction and magnitude of these effects seems to vary considerably from one firm to the next.[26]

Recent estimates, which must be considered as tentative results, tend to reveal that unionized workers, on average, earn wages which exceed non-union workers' wages by 20 to 30%.[27] From the standpoint of wages and fringe benefits, alone, and without taking productivity and other factors into account, unionized firms tend to be cost-inefficient.

Likewise, focusing solely on responsive efficiency, enterprises and operations with trade unions tend to have less responsive efficiency than their non-unionized counterparts. This is due to the fixed wage structures, restrictive practices, seniority provisions, and other provisions designed to protect employees' job security, as well as the fixed terms found in many, if not all collective agreements. What these features of collective agreements do is to partially insulate or buffer employees from the vicissitudes and vagaries of product and labour markets. By contrast, unionized, as opposed to non-unionized employers generally encounter greater difficulties in reacting and implementing corrective actions to market signals. We currently are witnessing many unionized employers' lack of flexibility in responding to downturns in the economy and in their product or service markets.

Unionized firms encountering product or service market slumps generally impose belt-tightening measures in the form of wage cuts on their management personnel

and non-unionized white collar workers while they wait for collective agreements with their unionized employees to become "open" for renegotiations. Depending upon relative negotiating power and a host of other factors such as management's credibility, the ensuing agreement renegotiations may or may not result in so-called give-backs or take-backs for management. In the meantime, many unionized employees presumably will have been laid off. The unionized employer typically must pay severance allowances or supplementary unemployment benefits which exceed the non-unionized employer's liabilities associated with reducing the workforce. It is worth reiterating, however, that the non-unionized employer is restricted to temporary layoffs and cannot permanently layoff employees. Both the unionized and non-unionized employer probably will be involved in "labour hording," that is, in retaining more employees than the firm requires to maintain contemporaneous production schedules. The rationale for this is to avoid skill shortages when and if production picks up in future and to avoid losing the investments in training that firm has put into certain individuals. It is also to avoid the recruitment, selection and other hiring costs associated with strategic or highly skilled positions within the firm. Under a seniority regime, the unionized employer obviously will not necessarily be able to retain the same employees as those he would "hoard," were he not unionized.

Similarly, most unionized firms probably will not be able to respond as quickly to labour market developments as their non-unionized counterparts. The basic reason for this is that unionized employers who have a rigidly structured wage system of compensation management are locked into the wage system for the duration of the collective agreement. The non-unionized employer is free to implement compensation package changes in his internal labour market which are designed either to recruit additional employees into "entry level positions" in the firm or to reduce labour turnover, particularly among highly skilled or strategic workers, which is prompted by the firm's internal compensation package structure being out of whack with the external labour market. This flexibility typically is not available to the unionized employer, especially with respect to recruiting

additional employees. On the one hand, unions have been found to reduce quit rates.[28] Reduced turnover presumably is due to the higher compensation packages that unionized employees earn as compared with compatible non-unionized employees. On the other hand, employers who are contractually bound to certain wage levels for unionized entry level positions for which they face immediate shortages, may face difficulties in reducing or eliminating the shortages while simultaneously avoiding establishing undesirable precedents for future rounds of agreement renegotiations. This built-in rigidity could be further compounded by the demographic characteristics of the units with whom the employer negotiates. For instance, a unit which is comprised of primarily older employees undoubtedly would strongly resist wage increases for entry level positions unless they received similar increases, even though they displayed a very low turnover rate. The unionized employer also would face difficulties competing against non-unionized employers who could more quickly respond to labour market imbalances, be they specific skill shortages or surpluses. But, some trade unions have permitted their employers to pay, for example, "phantom" travelling time in a market where there was a certain skilled trade shortage or to unilaterally adjust wages because they neglected to negotiate restrictive covenants creating frozen wage structures. In addition, many arbitrators will permit employers to unilaterally establish job classifications under collective agreements in the absence of express written structures to the contrary.[29]

Trade Union Impact on Productivity. Productivity affects the competitiveness of the enterprise or operation and in that management through its various personnel functions can attempt to enhance productivity. It is an intervening factor because it "intervenes" between workers and capital and productive output or the provision of the service.

Although there are only a few empirical studies on the impact of trade unions on productivity, their finding is that, as a rule, higher productivity is associated with trade unionism. One research team suggested that in manufacturing the higher

ductivity in unionized operations "could roughly affect the increase in total ;ts attributable to higher wages" in the unionized sector.[30]

/eral explanations are profferred with regards to the increase in productivity ich seems to be associated with trade unions. One is that trade union concern h due process and higher wage compensation lend to higher employee morale. cording to Morley Gunderson, another explanation is the following:

> An alternative view regards unions as having some positive effects on productivity by reducing turnover, "shocking" management into more efficient practices, improving morale and cooperation among workers, providing information about the collective preferences of workers, and by improving communications between labour and management.[31]

third explanation is that more strenuous work conditions, such as a structured rk setting, inflexible hours and a faster work pace, accompany trade unionism. addition, it is hypothesized that unionized employers use more stringent hiring ndards, notably with respect to the educational qualifications of their workers.[32]

e Nature of Individual Versus Collective Negotiations. On average, wage mpensation packages, restrictions on the exercise of managerial discretion, oductivity, turnover, and due process tend to be higher in the unionized than in non-unionized sector. The nature of individual versus collective negotiations plains some of these differences, especially with regards to wage compensation ckages. In addition, there are certain important aspects of collective versus dividual negotiations like the "levelling effect" of fixed wages schemes under former versus more dispersed and flexible wage schemes under the latter.

e key determinant of the levels of terms and conditions of employment tween the non-unionized and unionized sectors is, of course, the work stoppage ght. For a given unit of employees, the talents and relative indispensibility of dividuals as well as their relative negotiating skills, determine the outcomes of dividual negotiations. It is these factors which lend credibility to the implicit reat of the withdrawal of the individual's labour services. This is very apparent nong professional athletes whose unions negotiate purely floor wages and a few

of whom have become "hold-outs" during individual negotiations with their employers. By contrast, in collective negotiations individual talents and relative indispensibilities tend to be diluted or absorbed into those of the unit as a whole. The key power is the work stoppage right. Collective negotiations' outcomes are determined by factors like the strategic importance of various informal work units with in the unit or of the entire unit, in the firm's production or distribution chain, the unit's ability to close down the employer in the event of an impasse, the negotiating structure, and the political and social features of negotiations within the trade union or the employers' association. The duty to negotiate "in good faith" may have a marginal impact on collective negotiations.

Individual Negotiations. Individual negotiations take place within the competitive framework of the labour market in that individual employees may be competing and negotiating for the same vacancy in a firm. The factor of replacability is much more important in these negotiations, as a rule, than in collective negotiations, with a few notable exceptions such as highly capital intensive operations, like refineries, which management personnel can continue operating. The threat of the withdrawl of labour services generally is less credible than in collective negotiations largely due to the replacability and the legal framework governing the withdrawl of services under an individual contract of service. For the latter reasons, holdouts in individual negotiations in professional sports, for example, are the vast exception rather than the norm. Holdouts typically involve highly talented or otherwise relatively indispensible individuals. The law, in other words, tends to give the employer the upper hand in one-on-one negotiations over individual terms and conditions of employment. Employees tend to become more indispensible to the firm, the higher they are placed in the firm's organizational hierarchy. Thus, individual negotiations are much more protracted and involve more issues for a top-level corporate executive than for a manual labourer in the same firm.

Individual negotiations do not necessarily conform with the textbook examples of

perfect competition in the workplace, in part, because employers and employees do not possess perfect information. Instead, individual negotiations, like collective negotiations, take place under uncertainty. This means that preparations and, in particular, knowledge of what is taking place in the relevant labour markets is as essential to both sides in individual negotiations as it is in collective negotiations. Individual negotiations can deviate from the perfect competition model in the sense that employees are not homogeneous labour inputs but differ in personal characteristics and traits such as age, sex, education, and skills and abilities. Indeed, some labour market transactions more closely resemble transactions in the used car market, where goods are highly heterogeneous and there can be a good deal of uncertainty as to the quality of the product, than transactions in a new car market, where products are relatively homogeneous and generally of a known quality. In addition, people differ as to the negotiating skills they possess, their assertiveness, self-confidence, and other personality traits which can influence outcomes in individual negotiations. Employers, moreover, may be in a monopsonistic position in the labour market, which means that they can exercise some discretion over the wage offer they make. An employer in a one-industry town is in a monopsonistic position and can play one employee off against another. For these reasons, there may be a good deal of wage dispersion in a non-union plant, office, or work site, as contrasted with the wage uniformity and rigid wage structures that tend to exist in their unionized counterparts.

An additionally significant difference between individual and collective negotiations is the agent conducting negotiations. In individual negotiations the individual either negotiates for himself or hires an agent. Under a collective negotiating regime, individuals in the unit are represented by the trade union certified or voluntarily recognized to represent them and similarly for a unit of employers and the corresponding employers' association. Significantly, no room is left for individual bargaining since the trade union and sometimes the employers' association in Alberta enjoy "exclusive bargaining rights" at law. As the Supreme Court stated

in the Paquet case:

> There is no room left for private negotiation between employer and employee. Certainly to the extent of the matters covered by the collective agreement, freedom of contract between master and individual servant is abrogated. The collective agreement tells the employer on what terms he must in the future conduct his master and servant relations...[33]

CROSS-FERTILIZATION AND SPILL-OVER EFFECTS

The unionized and non-unionized sectors of the industrial relations systems do not operate in isolation. Some unionized employers fear the loss of business to non-unionized employers, and use the threat thereof as a tactic in negotiations to attempt to keep terms and conditions of employment in line with those of their non-unionized counterparts. Many non-unionized employers fear and actively resist unionization. For these reasons, employers in either sector keep abreast of terms and conditions of employment, personnel management policies, and compensation schemes in the other sector. Pattern-setting and pattern-following negotiations flow from one sector into the other, but typically from the unionized sector into the non-unionized sector because collectively negotiated terms and conditions of employment become public information. The result is a good deal of cross-fertilization and spill-overs between the two sectors.

The type of employee-employer relationship or labour-management relationship that evolves is a product of circumstances. They are solutions to a set of problems or issues that have come up. By and large, unionism grows up in a social milieu where egalitarianism and other trade union objectives have appeal. The end-product is the democratic, generally egalitarian institution of agreement negotiation and administration. Outside the labour relations system, and even within it in limited degrees, there are experiments or long-standing experiences with various forms of worker participation in management which are structured in accordance with corporate law or labour relations law. However, by and large, the predominant management attitude towards worker participation in management seems to be one of disinterest and of a desire not to relinquish traditional

management rights and prerogatives unless there seems to be an immediate payoff in terms of increased productivity, increased profits, or a lower probability of unionization.

The general managerial industrial relations policy in non-unionized firms is oriented toward avoiding unionization, and a variety of policies are implemented in order to achieve the objective of a "union-free work environment", according to Godard and Kochan:

> ...coercive tactics involving physical and psychological intimidation; union "substitution" practices involving company-established grievance systems (usually without binding arbitration) and wage levels at or about the union scale; paternalistic practices involving company-sponsored social events, profits having and even free turkeys at Christmas; and, finally, more advanced "human relations" practices involving worker-management consultation, information sharing, and job redesign and enrichment.[43]

Many of these policies are designed, in part, to reduce the appeal of a trade union to the firm's employees. One way this is accomplished in Alberta is to set up a para-agreement negotiation and administration mechanism which may involve a pay scale where employees are paid according to the number of tasks or jobs they are trained for and capable of performing. In this mechanism, the threat of unionization acts as a constraint on management to treat its employees fairly. Otherwise, union organizers will appear at the plant gates. Non-unionized employers at a few plants welcome union organizing compaigns because of the improvements in wages, hours and working conditions that tend to accompany these compaigns.

There is at least one noble experiment in Canada in which the reverse process is taking place. The Shell Oil chemical plant in Sarnia, Ontario, voluntarily recognized the Energy and Chemical Workers' Union in exchange for the union's agreeing to the team management concept, under which, among other things, employees are paid according to the number of tasks they can perfor. The 1979-81 agreement, a very short agreement, contained the following clauses: recognition, plant committee, grievances, hours of work and rates of pay, deduction of union dues, seniority, vacations, statutory holidays, safety and health, and termination.

Consequently, there is no management's rights clause. This is a system which is based on trust. Although it is in its infancy and, therfore, too premature to evaluate, this system may or may not prove to be a harbinger of things to come.[44]

It is a difficult, if not practically insurmountable task, to trace linkages between the unionized and non-unionized sectors of our economy with respect to wage developments. Part of the reason for this is that there could be spill-overs via workers' disposable income which are very difficult, if not impossible to trace. For instance, if unionized workers spent the preponderence of their disposable income on goods and services produced by non-union employees, wages in the non-unionized sector of the economy could be pulled upwards through derived demand, that is, through the additional demand for labour that derives from increased demand for the firm's good or service. However, there is some reason to believe that, although unionization can influence non-union wages, as pointed out by Gunderson, wages in the non-unionized sector will continue to remain behind unionized wages:

> ...unions can affect non-union wages through their support of wage-fixing legislation, which applies mainly to the non-union sector. In addition, non-unionized firms may raise their wages to avoid the threat of becoming unionized. In the extreme, they may pay wages in excess of the union wage rate to avoid what they regard as other costs (notably interference with managerial prerogatives) associated with becoming unionized. Non-union firms may also be compelled to raise their wages so as to compete with unionized firms for a given work force, or to restore traditional wages relativities that may have existed prior to unionization. This argument, however, ignores the fact that non-union firms should not have to worry about recruiting problems or restoring traditional wage patterns because they will have a supply influx of workers who cannot get jobs in the high-wage union sector; in essence, market forces suggest that their recruiting problems will be lessened and that there will be less pressure to maintain a traditional wage pattern.[45]

In other words, because of the institutional rigidities surrounding trade-unionism, the labour market is segmented into two sub-markets, one of which comprises unionized firms paying high wages and one of which comprises non-unionized firms paying lower wages. This "dual labour market theory" will continue to function due to institutional rigidities. To the extent that unionized wage increases reduce employment opportunities in the unionized sector, the excess supply of

labour from the unionized sector should depress wages in the non-union sector, where the linkages between external labour market developments and internal labour market developments are essentially direct and immediate, largely due to the absence of institutional rigidities. Significantly, there is some interaction between wage packages in the two sectors.

The linkage between social developments and social legislation is, perhaps, much easier to trace than wage linkages. As a rule, social developments, such as social insurance, human rights, and occupational health and safety, have grown out of the trade union movement to become a part of the protective legislation that applies to both unionized and non-unionized work places.

The labour relations system and the remainder of the industrial relations system do not function in isolation but, indeed, influence and cross-fertilize each other. Some features of the unionized sector are not necessarily reflected in the non-unionized sector and vice versa, but, by and large, each sector functions with an eye on the other. Much of our social legislation has its roots in the trade-union movement. Both sectors are influenced, in varying degrees by public policy, the economic environment, and the threat or institutional aspects of trade unionism.

FOOTNOTES

1. For a more in-depth discussion of the features and functioning of these laws, see Harry J. Glasbeek, "The Contract of Employment at Common Law," in J. Anderson and M. Gunderson, eds., Union-Management Relations in Canada, Don Mills, Ontario: Addison-Wesley Publishers, 1982, pp. 52-65.

2. See, for example, The Individual's Rights Protection Act, R.S.A 1980, Chap. I-2, sec. 16 and The Occupational Health and Safety Act, R.S.A 1980, Chap. 0-2, sec. 21.

3. See, for instance, E.W. Bakke, "The Goals of Management," in E.W. Bakke, C. Kerr and C.W. Anrod, eds., Unions, Management and the Public, New York: Harcourt, Brace and World, Inc., 1967, 3rd ed., pp. 201-210 and Roger Chartier, "Collective Bargaining and Management Rights," Relations Industrielles, Vol. 15, No. 3, pp. 298-323.

4. H.J. Glasbeek, op. cit., p. 66.

5. H.D. Woods, Labour Policy in Canada, Toronto: Macmillan of Canada, 1973, pp. 3-6.

6. H.J. Glasbeek, op. cit., pp. 59-60.

7. See J.C. Anderson and M. Gunderson, "The Canadian Industrial Relations System," in J.C. Anderson and M. Gunderson, eds., Union-Management Relations in Canada, Don Mills, Ontario: Addison-Wesley Publishers, 1982, p. 16.

8. H.J. Glasbeek, op. cit.,

9. Ibid., p. 73.

10. See, for instance, S.H. Slichter, J.J. Healy and E.R. Livernash, eds., The Impact of Collective Bargaining on Management, Washington, D.C.: The Brookings Institute, 1960, pp. 15-17 and 663-691.

11. Glasbeek, op. cit., p. 74.

12. There also are the admittedly marginal cases of the "runaway shop" which is relocated to avoid the union and collective action by employees. The avenue of recourse in these cases, however, lies before a labour board. See K.P. Swan, "Union Impact on Management of the Organization: A Legal Perspective," in J.C. Anderson and M. Gunderson, eds., op. cit., p. 283.

13. Research Services Branch, Alberta Labour, Negotiated Working Conditions in Alberta Collective Agreements 1980-81 Edition, Edmonton: Alberta Labour, 1981, pp 8, 229.

14. A hiring hall is "a sort of employment agency which selects union members to fill an employer's request and has the exclusive right to refer workers to the employer." See K.P. Swan, op. cit., p. 273.

15. H.J. Glasbeek, op. cit., pp. 59-60.

16. H.J. Glasbeek, op. cit., p. 75.

17. K.P. Swan, op. cit., pp. 280-281 and 284, especially p. 284 concerning the new development, the "doctrine of fair administration."

18. J.H. Godard and T.A. Kochan, "Canadian Management Under Collective Bargaining: Policies, Processes, Structure and Effectiveness," in J. Anderson and M. Gunderson, eds., op. cit., pp. 124-127.

19. K.P. Swan, op. cit., p. 272.

20. K.P. Swan, op. cit., pp. 270,282.

21. See, for instance, Department of Employment, Company Manpower Planning, Manpower Papers No. 1, London: Her Majesty's Stationary Office, 1974, pp. 1-4, L.F. Moore and L. Charach, eds., Manpower Planning for Canadians, 2nd ed., Vancouver: The Institute of Industrial Relations, University of British Columbia, 1979 and G.I. Nierenberg, Fundamentals of Negotiating, New York: Hawthorn Books, Inc., 1973. Neirenberg's "need theory of negotiations" can be interpreted as being negotiating by objectives in that the objective that is sought is to meet some of both parties' needs.

22. J.H. Godard and T.A. Kochan, op cit., pp. 120-121, 126.

23. See E.G. Fisher and M.B. Percy, "The Impact of Unanticipated Output and Consumer Prices on Wildcat Strikes," Relations Industrielles (forthcoming) and J.C. Anderson and M. Gunderson, "Strikes and Dispute Resolution," in J.C. Anderson and M. Gunderson, eds., op. cit., p. 231.

24. M. Gunderson, "Union Impact on Wages, Fringe Benefits, and Productivity," in J. Anderson and M. Gunderson, eds., op. cit., p. 264.

25. M. Gunderson, op. cit., p. 264.

26. J.H. Godard and T.A. Kochan, op. cit., p. 121.

27. M. Gunderson, op. cit., p. 259.

28. Ibid., p. 263.

29. See D.J.M. Brown and D.M. Beatty, op. cit., pp. 187-203 and E.E. Palmer, op. cit., pp. 371-386.

30. M. Gunderson, op cit., p. 263 and J.H. Godard and T.A. Kochan, op. cit., p. 121.

31. M. Gunderson, op. cit., p. 263.

32. M. Gunderson, op. cit., pp. 262-264.

33. Syndicat Catholique des Employes de Magasins de Quebec Inc. v. Compagnie Paquet Ltee. (1959), 18 Dominion Law Reports (2d) 346 at pp. 353-354.

41. M. Gunderson, op. cit., p. 248.

42. Ibid., p. 264.

43. J.H. Godard and T.A. Kochan, op. cit., p. 122.

44. See, for example, P.A. Ondrack and M.G. Evans, "The Shell Chemical Plant at Sarnia - An Example of Union-Management Cooperation," in H.C. Jain, ed., Workers' Participation in Management, New York: Praeger, 1980.

45. M. Gunderson, op. cit., p. 261.

46. See D.J.M. Brown and D.M. Beatty, Canadian Labour Arbitration, Agincourt, Ontario: Canada Law Book Limited, 1977 and E.E. Polmer, Collective Agreement Arbitration in Canada, Toronto: Butterworths, 1978.

CHAPTER IV

THE LAW GOVERNING LABOUR RELATIONS IN ALBERTA

We believe that the ultimate purpose of society is to accord to every individual in that society, at birth, an equal opportunity to fully realize his spiritual, intellectual, and physical potentialities. If this primary objective is correct, it follows that the ultimate test of the goodness or badness of every institutional procedure, including the law itself is whether or not it helps to further this purpose. To attempt to achieve this fundamental objective society must not only preserve its existence, from external as well as internal forces bent to destroy it, but in a positive way maximize the availability of the resources needed to satisfy human wants, i.e., to increase "the pie" of available satisfactions. To enlarge the "pie" of human satisfactions we believe requires a fostering of individual freedom, initiative, and choices circumscribed by the need to equally recognize such freedom in others. However, it must also attempt to fairly allocate such satisfactions among individuals in society. The fairness of such allocation can be judged by the extent to which the primary objective was being met.

To strive for "fairness" will require society, as a practical matter, to control and balance the power of individuals and groups within society. In some cases this can be accomplished by reducing relative power; in other cases by increasing relative power. For example, by making illegal agreements amongst manufacturers to set the price for their product, the law in fact has reduced the power or freedom of manufacturers to set price. On the other hand, by permitting employees to bargain collectively and to require the employer to bargain with their representatives, the trade union, as distinct from the individual, the law has increased the power of employees to set the price of their wages. In so doing, however, the law has restricted in some measure the freedom of contract of individuals as well as making them dependent on group action. Having done so, the law may further need to balance the interests of the group as a whole with that of individuals within the group. In effect the law may have to balance the power of the group versus the power of the individual within the group. It should

be equally noted that errors or misjudgment occurring in this balancing process may not only keep "the pie" from growing, they may in fact cause it to shrink. One wonders whether the short-term "pie" in Canada has in fact not shrunk as a result of the current provincial and federal energy debates and disagreements.

We believe that our society has progressed considerably towards the attainment of the primary objective. In the first place, the law has recognized what might be termed fundamental human rights and freedoms. Thus, the Canadian Bill of Rights in Section 1 provides:

> It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, color, religion or sex, the following human rights and fundamental freedoms, namely,
>
> a) the right of the individual to life, liberty, security of the person and injurment of property, and the right not to be deprived thereof except by due process of law;
> b) the right of the individual to equality before the law and the protection of the law;
> c) freedom of religion;
> d) freedom of speech;
> e) freedom of assembly and association;
> f) freedom of the press.

It might be observed that these freedoms are not absolute but must be balanced. Thus freedom of speech would not include a blaring loudspeaker campaign on some issue at 3 a.m. in a residential neighbourhood. Such action would be classified as a nuisance and would be actionable.

We believe that as part of the primary objective, society has attempted to raise its educational level through the establishment of a universal and publicly funded primary education system. The question remains, however, whether and to what extent private primary school systems should be permitted, and if so, should these be funded through general revenues. An analysis of this issue requires a return to a consideration of the primary objective. Society has also moved towards the establishment of minimum economic levels for individuals and moved towards greater "economic freedom." Thus, there is in place legislation covering welfare payments, unemployment insurance payments, and old age pension payments. A further move in this direction may be the establishment of a

negative income tax. Generally, a universal medicare system exists. The right of physicians to opt out, however, is now a burning issue in Canada. In addition, numerous new health laws, both at the federal and provincial levels, are being enacted to protect the health of the citizenry. Finally in this context, the law has provided minimum conditions in respect of the work environment. Thus, the labour standards legislation both federally and provincially regulate conditions such as maximum hours of work, minimum wages, and rules in respect of employment of child labour. Subject to the aforesaid minima, our society has generally opted for a market economy but with some considerable regulation and control to ensure attainment of objectives. As must be patently obvious, to enunciate the primary objective of society does not result in ready and simple answers to what society should do in achieving this objective in any given case. Many balancing and judgmental tasks have to be carried out and difficult decisions made. The process is ongoing and continuous.

It is our belief that the objectives of the law in the labour-management context is within the tradition and views set out above. As in other fields of the law, it seeks to identify the elements of power within the relationship and to undertake to maintain a balancing within this power relationship. In order to fulfill this objective, the law has introduced in the labour-management relationship environment a set of principles that are designed to fulfill this objective. We thus propose to look in greater detail at the labour-management relations law and its administration and ascertain its effectiveness and potential effectiveness towards the attainment of the primary and related objectives of society.

JURISDICTION

The British North America Act, 1867, is silent on the division of authority in respect of labour relations. By virtue of the interpretation accorded to the BNA Act by the Courts, legislative authority is split between the federal parliament and the provincial legislatures. The correct approach to be taken in the allocation is stated by Mr. Justice Baetz of the Supreme Court of Canada in Construction

Montcalm Inc. v. Minimum Wage Commission (1979) 1 SCR 754 where at page 768 he holds:

> The issue must be resolved in the light of established principles the first of which is that Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule: Toronto Electric Commissioners v. Snider. By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject: In re the validity of the Industrial Relations and Disputes Investigation Act (the Stevedoring case). It follows that primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but only if it is demonstrated that federal authority over these matters is an integral element of such federal competence; thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one; In re the application of the Minimum Wage Act of Saskatchewan to an employee of a Revenue Post Office, (the Revenue Post Office case); Quebec Minimum Wage Commission v. Bell Telephone Minimum Wage case); Letter Carriers' Union of Canada v. Canadian Union of Postal Workers (the Letter Carriers' case). The question whether an undertaking, service or business is a federal one depends on the nature of its operation: Pigeon J. in Canada Labour Relations Board v. City of Yellowknife, at p. 736. But in order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of "a going concern," (Martland J. in the Bell Telephone Minimum Wage case at p. 772), without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity; Agence Maritime Inc. v. Canada Labour Relations Board (the Agence Maritime case); the Letter Carriers' case.

It is instructive in the application of the above principles to consider the actual facts in the Montcalm case. There, the minimum wage commission of Quebec attempted to collect certain wages pursuant to the Minimum Wage Act of Quebec from Construction Montcalm Inc. Montcalm Inc. was a Quebec building enterprise which, under a contract with the crown in the right of Canada, was doing construction work on the runways of a new international airport (Mirabelle) and on federal crown land. The issue was whether the employees of this construction company were thus subject to provincial legislation and entitled to the benefits of provincial law or whether they came under federal jurisdiction. Montcalm argued on three grounds that it was subject to federal rather than provincial law. First, it argued that aeronautics is a class of subjects which comes under exclusive federal authority and comprises the construction of airports, including the

conditions of employment of workers engaged in the construction of airports. Mirabelle airport was a federal work for undertaking. Second, provincial law does not apply on federal government lands. Third, the labour relations field was already occupied by federal legislation relating to wages and hours of work.

Baetz J. in respect of argument number 1, held at page 770:

> The construction of an airport is not in every respect an integral part of aeronautics. Much depends on what is meant by the word "construction." To decide whether to build an airport and where to build it involves aspects of airport construction which undoubtedly constitute matters of exclusive federal concern: ... similarly the design of a future airport, its dimensions, the materials to be incorporated in the various buildings, runways and structures, and other similar specifications are, from a legislative point of view and apart from contract matters of exclusive federal concern. The reason is that decisions made on these subjects will be permanently reflected in the structure of the finished product and are such as to have a direct effect upon its operational qualities and, therefore, upon its suitability for the purpose of aeronautics. But the mode or manner of carrying out the same decisions in the act of constructing an airport stand on a different footing. Thus, the requirement that workers wear protective helmet on all construction sites including the construction site of a new airport has everything to do with construction and with provincial safety regulations and nothing to do with aeronautics ... In my opinion what wages shall be paid by an independent contractor like Montcalm to his employees engaged in the construction of runways is a matter so far removed from aerial navigation or from the operation of an airport that it cannot be said that the power to regulate this matter forms an integral part of primary federal competence over aeronautics or is related to the operation of a federal work, undertaking, service or business.

From an analysis of this reasoning, it is obvious that the concept of an activity being an integral part of a federal activity is to be narrowly construed thus enhancing provincial jurisdiction. Further recent cases of the Supreme Court of Canada tend to enhance provincial jurisdiction in respect of labour relations. Manufacturing Ltd. v. United Woodworkers Workers of America and Ontario Labour Relations Board (1979 SCR) and the Canadian Pioneer Management Ltd. v. Labour Relations Board of Saskatchewan (1979 SCR). The decisions have helped clarify the law in this area.

Thus, to summarize, the residual jurisdictions is with provinces. Federal jurisdiction has generally been limited to the inter-provincial, national or inter-national transportation industry, communications, radio and television broadcasting, banking, uranium mining, and the federal crown and its agencies. It is not the task of this

report to evaluate the jurisdictional split. The fact of a jurisdictional split, however, has produced uncertainty in the law and this uncertainty has generally favoured the employers and their ability to litigate and delay union organizational effort.

Federal Jurisdiction. The Federal Parliament has enacted two major pieces of legislation: The Canada Labour Code (RSC 1970 CL-1 as amended) and The Public Service Staff Relations Act (RSC 1970 Chapter P-35 as amended). The Public Service Staff Relations Act applies basically to the public service and certain crown agencies as set out in part 2 of Schedule 1 of the Act and their respective employees. (Section 2 definitions of employee and employer). Under The Public Service Staff Relations Act employees have the right to elect to follow a negotiating procedure which leads to a strike or to interest arbitration. This Act also provides, however, for employees being "designated" by the Public Service Staff Relations Board and by such designation they lose the right to strike. Such employees are those whose duties consist in whole or in part of duties which at any particular time or after any specified period of time are or will be necessary in the interest of the safety or security of the public. (Section 790). The Canada Labour Code basically applies to employers and employees not coming under The Public Service Staff Relations Act. Employees under this Act have the right to strike.

Alberta Jurisdiction. Alberta has enacted four basic pieces of labour relations legislation. These are: The Firefighters and Policemen Labour Relations Act (RSA 1970 Chapter 143 as amended); The Public Service Employee Relations Act (Statutes of Alberta 1977 Chapter 40 as amended); The Labour Relations Act (Statutes of Alberta 1980 Chapter 72), and The Technical Institutes Act S.A. 1981, C.T.-3.1. The Firefighters and Policemen Labour Relations Act, as the name implies, applies to firefighters and policemen. In the event negotiations do not produce a collective agreement matters are to be resolved by binding interest arbitration (Section 11). The Public Service Employee Relations Act applies to the Alberta crown and

certain crown agencies unless specifically excluded. Again, any unresolved negotiation issues are subject to compulsory interest arbitration (Section 49). The Technical Institutes Act applies to the employers defined therein and to their academic staff. No specific procedure is set out for resolving negotiating disputes. Presumably the final decision rests with the employer. The Labour Relations Act applies to all other employers and employees save where expressly excluded (Section 2). Employees coming under The Labour Relations Act have the right to strike. It should be observed that not only private sector employers come under this Act but such employers as municipalities, municipal or private hospitals, school boards, and certain crown agencies which have been excluded under the operation of The Public Service Employee Relations Act such as the Alberta Government Telephone Commission. By virtue of specific exclusions in The Public Service Employee Relations Act and a combined operation of Section 2 (2) (C) of The Labour Act and sections of The Universities Act and sections of The Colleges Act, the academic staffs at Universities and Colleges are excluded. They thus appear to be in a totally non-regulated regime and subject to the common law whatever it may be at this point of time and, unlike the technical institutes, there is still no specific legislation in respect of them.

As a result of the constitutional split over labour relations and the differing legislations of the Federal and Provincial governments, a number of seemingly anomolous situations can arise. Thus, nurses working at the Charles Camsell Hospital in Edmonton which previously was a federally operated hospital used to be under The Public Service Staff Relations Act and thus had the alternative of the work stoppage right or arbitration in the event of a non-resolved bargaining dispute. They currently negotiate under The Labour Relations Act. Nurses at the Royal Alexandra Hospital in Edmonton which is operated by the City of Edmonton itself would come under The Labour Relations Act and these nurses would have the right to a work stoppage. Nurses employed at the University of Alberta Alberta Hospital which comes under the jurisdiction of The Public Service Employees Relations Act of Alberta, as its board is Crown appointed, would be

subject to interest arbitration. Nurses at the Misericordia Hospital, which we understand is privately run, would come under The Labour Relations Act and a consequent work stoppage right. An instructor in English at the Northern Alberta Institute of Technology would come under The Technical Institutes Act. A similar instructor at a College or University would not come under any applicable legislation, and thus may not have the right of work stoppage or to arbitration. An English instructor at a public or private school comes under The Labour Relations Act and has the work stoppage right. An English instructor employed by the Correspondence Branch of the Department of Education falls under The Public Service Employees Relations Act and has no work stoppage right. A similar comparison may be made for other occupations employed by different employers coming under the various statutes and jurisdictions. We will consider these anomalies and the proliferation of legislation in later sections of this report.

The central focus of this chapter is on the labour relations law governing the labour relations system of Alberta. To do so, we will take a detailed look at the statutory and case law having application to this system. In short, the statutory provisions and the case law constitute the law of labour relations having application in Alberta. No attempt is made to consider the employment law as such, labour standards, workers compensation, and similar legislation applying to employees generally. In our attempt to describe the Alberta labour relations law we will focus primarily on the detail within specific Alberta statutes and the applicable case law.

THE LABOUR RELATIONS ACT AND RELATED LAW

Scope of Coverage. In the introduction to this chapter we described the basic applicability of the Act to employers and employees in the private sector and certain public institutions such as municipalities. At this point we need to examine more closely the question of what is an "employee" as defined from an independent contractor as the Act gives rights only to "employees" as such. We will also examine the types of employees which are denied the bargaining rights

under the Act.

Section 1(1)(k) defines an employee as

> "employee" means a person employed to do work who is in receipt of wages, but does not include
>
> (i) a person who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations, or
>
> (ii) a person who is a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of Alberta and employed in his professional capacity.

Section 1(1)(l) defines "employer" as follows:

> "employer" means a person who employs an employee.

From the statutory definitions it is impossible as such to determine the criteria for determining the status of the employee of an employment relationship. To do this, we need to turn to decided cases in the courts. The leading case is the Yellow Cab case where the relevant tests are stated as follows: (insert Yellow Cab material).

It is to be observed that the test with its stress on control is essentially a legal one in nature as distinct from being economic in nature and stressing economic dependency for determination of the employment relationship.

Given an employee status as such, a person may still not be treated as an "employee" by virtue of exclusions in the Act. These exclusions are considered below. Section 2(2)(e) provides for the following:

> employees employed on a farm or ranch whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, poultry or bees or to their employer while acting in the capacity of their employer.

The wording of the "farm employee" exclusion in the current Act is a reworded version from the former Act and represents both a narrowing and a broadening focus. It is narrower in that a test of "directly" is now employed. It is broader in that it seems to exclude employees who might even work for "commercial" large size farm and ranch operations.

The "domestic" exclusion is provided by section 2(2)(f) which reads as follows:

> employees employed in domestic work in a private dwelling or to their employer while he is ordinarily resident in the dwelling and acting in the capacity of their employer.

The "professional" exclusion is contained in section 1(1)(k)(ii) and reads as follows:

> a person who is a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of Alberta and employed in his professional capacity."

Finally the "managerial" and "confidential capacity" exclusions are provided in section 1(1)(k)(i) and read as follows:

> a person who, in the opinion of the Board exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

The "managerial exclusions" has been the subject of considerable Board and court review. A good statement of the issues is the case of Dipsy Doodle Lollipop Company where it was stated that: (insert quotes from the case)

The "confidential capacity" exclusion has also been the subject of numerous decisions. The tests to be applied are set out in the Tiny Tim Manufacturing which reads in part as follows: (insert material).

Labour Relations Board. The previous Board of Industrial Relations is continued under the new name of The Labour Relations Board (The Board).[1]

The Board members are appointed and their remuneration is set by the Lieutenant Governor in Council.[2] The Chairman and the Vice-Chairman hold office during pleasure while the other members are appointed for a term as fixed by the Lieutentant Governor in Council.[3] Generally terms are for 1 to 8 years.

Although not set out in the Act, the practice has been to make the Board tripartite in nature. That is, it consists of neutral Chairmen plus Vice-Chairmen with the balance of the members from the management and labour communities. The Chairman of late has been a lawyer.

In addition to Board members, the staff of the Board includes a secretary of the

Board, registrars, legal counsel, and other officers charged with general and specific administrative tasks under the Act.[4]

A quorum of the Board is the Chairman or a Vice-Chairman and two members.[5] The Chairman and the Vice-Chairman have a second and casting vote in the case of a tie vote.[6] The Chairman schedules Board meetings, determines who presides at hearings, and decides whether the Board will sit as a full board or in divisions.[7]

Procedures. Section 8(1)(b) of the Act specifically enables the board to receive and investigate applications, references, questions, and complaints. We will now endeavour to outline the general approach and procedures used by the Board in these matters.

Applications. With the exception of certification applications, for which a form is provided, no special procedures or published forms exist. Applications are generally made by letter setting out the nature of the application and the remedy sought. The Board would advise the respondent(s) of the application having been received.

Investigation. Depending upon the type of application, officers of the Board might make preliminary investigations and possibly prepare an officer's report. The results of the investigation are to a lesser or greater degree provided to the respondent(s). For example, in a certification application the report of an investigating officer excluding names of employees in order to comply with Section 24 of the Act, is made available to the employer. The respondent may make submissions of their own.

In any event, in its proceedings including the investigative aspects or phase the Board has considerable power and discretion. Thus Section 9(1) provides as follows:

> 9(1) For the purpose of deciding any question under section 8(2) or determining any other matter referred to it or arising under this Act, the Board may

a. make
   1) any examination of books, payrolls, records, papers, contracts of employment or collective agreements, or
   2) any inquiry,
   that it considers necessary;
b. hold any hearing that it considers necessary;
c. require, conduct or supervise votes by secret ballot;
d. make rules with respect to any vote required, conducted or supervised including
   1) the manner of taking or casting votes;
   2) the procedure to be followed before, during and after a vote;
   3) the fixing of the date, place and time of voting;
   4) the manner in which and the time at which a voters' list is to be prepared;
   5) the disposal of ballots;
e. appoint persons to act as returning officers for any vote required, supervised or conducted and vest in them whatever authority it considers necessary to ensure that the vote is properly conducted and that its rules are complied with;
f. when it is required or permitted to do so under this Act, determine who is eligible to vote on any matter;
g. investigate any complaint made to it concerning any vote taken persuant to this Act;
h. require an employer to place a suitable portion of his premises where employees are working at the disposal of the Board for the purpose of taking a vote;
i. direct all interested persons to refrain or desist from electioneering or from issuing any propoganda or both for any period of time prior to the date of a vote that the Board fixes.

Section 9(2) permits delegation of the Board's power in paragraph (a), (c), (e), (f), (g), (h), and (i) to officers of the Board. Section 10 provides the following:

10(1) The Board, the Chairman, a vice-chairman or any officer may
a. inspect and examine all books, payrolls and other records of an employer, employee or any other person relating to employment or terms or conditions of employment;
b. by notice in writing demand the production of any books, records, documents, papers, payrolls, contracts of employment or other records relating to employment or terms and conditions of employment either forthwith or at a time, date and place specified in the notice;
c. take extracts from or make copies of books, records, documents, papers, payrolls, contracts of employment and any other records relating to employment or terms or conditions of employment;
d. require an employer, employee or any other person to make, furnish or produce full and correct statements, either orally or in writing respecting employment or terms and conditions of employment, and may require the statements to be made on oath or to be verified by statutory declaration;
e. post or require any employer, employee or other persons to post any notices or other communications of the Board at the locations that the Board, Chairman, vice-chairman or officer, as the case may be, considers advisable;
f. question an employee, without his employer being present, during the employee's regular hours of work or otherwise to ascertain whether this Act or any decision, order, directive, declaration or ruling under this Act has been or is being complied with.

(2) Nothing in subsection (1)(f) requires an employee to answer a question asked of him by the Board, Chairman, vice-chairman or officer.

(3) An employer, any person acting on his behalf and any employee shall give all necessary assistance to an officer to enable him to make an entry, inspection, examination or inquiry or to post notices or communications for the purposes of this Act.

Section 13 deals with the summoning of witnesses and the Section 8(1)(c) provides the following:

... make rules of procedure for the conduct of its business and for hearing and conducting inquiries and for any other matters it considers necessary.

Finally, section 12(2) provides for the following:

The Board
a. may accept any oral or written evidence that it, in its discretion, considers proper, whether admissible in a court of law or not, and
b. is not bound by the law of evidence applicable to judicial proceedings.

Pre-hearing Decisions. Depending upon the application, if there is any opposition and having regard to its information, the Board may render decisions without a formal hearing. In fact, a substantial number of its decisions are rendered in this non-hearing or administrative capacity.

Hearing. On applications which are opposed, the Board will normally conduct a hearing. Hearings are normally tape-recorded and follow a not dissimilar procedure to a typical court trial but in a much more informal manner. Evidence is presented through sworn witnesses, although many times evidence is produced by counsel in brief form with sworn testimony adduced only if the evidence is not agreed to by the opposing side.

Normal civil law rules of procedure apply and the Board must sort out the evidence in case of conflict. As previously noted, section 12(2) provides that the Board is not bound by the law of evidence applicable to judicial proceedings and may accept evidence whether admissible in a court of law or not. Nevertheless, it should be stressed at this point that irrespective of the Board's latitude and discretion it must in its deliberations act "fairly". In this regard, the Alberta Court of appeal has held in the Edmonton hooker case the following: (insert material

from the case). We will generally consider the judicial review of Board decisions in a later part of this chapter.

Decision and Reasons. A decision of the majority of the Board is a decision of the Board. Written reasons do not have to be given by the Board as The Administrative Practices Act has not been made to apply to this Board. Normally, a decision is rendered orally and with reason. The practice of the Board does not favour the giving of dissenting opinions.

Reconsideration. The Board's reconsideration power is contained in section 18(1) which reads as follows:

> The Board has exclusive jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Board thereon is final and conclusive for all purposes, but the Board may, at any time, reconsider any decision, order, directive, declaration or ruling made by it and vary, revoke or affirm the decision, order, directive, declaration or ruling.

In considering a similar reconsideration provision in the British Columbia legislation, the Supreme Court of Canada in the Dipsy Doodle case stated as follows: (insert material) The Board has been careful in applying its reconsideration power to prevent abuses of the processes.

Judicial Review. Board decisions are subject to judicial review by the Court of Queen's Bench. In this regard section 18(2) and (3) provides the following:

> (2) Subject to subsection (3), no decision, order, directive, declaration, ruling or proceeding of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgement, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings.
>
> (3) A decision, order, directive, declaration, ruling or proceedings of the Board may be questioned or reviewed by way of an application for certiorari or mandamus if the application is filed with the Court and served on the Board no later than 30 days after the date of the Board's decision, order, directive, declaration or ruling or reasons in respect thereof, whichever is later.

The criteria for review have been set out by the Supreme Court of Canada in the Stedelbauer case. In this case the court held: (quote from case) Numerous cases have been taken to the courts. The current position in administrative law is

outlined in the case of the Lollipop Company decided by the Supreme Court of Canada. In this case it was held that: (insert material from case) Before concluding this part the provisions of section 19 should be reported. Section 19 reads as follows:

> (1) If the Board is satisfied in any proceedings under this Act that a bona fide mistake has been made in naming or not naming a person, trade union, employer or employers' organization, the Board may direct that the name of the person, trade union, employer or employers' organization be substituted, added or deleted as a party to the proceedings.
>
> (2) No proceedings under this Act is invalid by reason of a defect of form or a technical irregularity.

Enforcement of Board Orders. There appear to be two types of procedures for enforcing Board orders. First, Board orders arising in the unfair labour practice application are enforced by filing the award with the Court of Queen's Bench.[8] Upon filing they become orders of the court and in the case that they are not obeyed the remedies for breaches of court orders apply. These remedies are set out in the Rules of Court. Rule 109-(a) provides as follows: (quote from Rules of Court) Breaches of any other Board orders or decisions would amount to a breach of section 153(a) and (b) of the Act and thus an offense punishable on summary conviction in Provincial Court. Consent of the Minister of Labour however is required in this regard.[9] Section 17 facilitates proof of Board orders in court proceedings. Section 17 reads as follows:

> 17(1) An order that the Board makes may be issued on its behalf by the Chairman or a vice-chairman.
> (2) An order purporting to be signed by the Chairman or a vice-chairman on behalf of the Board shall be admitted in evidence as prima facie proof
> a. of the order, and
> b. that the persons signing the order were authorized to do so,
> without proof of the appointment or signature of the Chairman or vice-chairman.
>
> (3) A copy of an order, having endorsed thereon a certificate purporting to be signed by the secretary or a registrar of the Board stating that the copy is a true copy, shall be received in any court as prima facie proof of the order and its contents, without proof of the appointment or signature of the secretary or registrar.

Summary of Board Roles and Jurisdiction. The Act gives the Board a diversity of jurisdiction and roles to fulfill. For purposes of description and subsequent

analysis and evaluation, we have grouped these functions and have given labels to the various roles.

1. Judicial Role and Interpreter of the Act. In a judicial role a body normally functions by determining facts and applying within a system a set of legal principles to arrive at a sanctional remedy. The hearing and determining of unfair labour practices would be examples of the exercise of a judicial role.[10] It should be noted that not all offenses under the Act are unfair labour practices. Accordingly, certain offenses such as participation in the legal work stoppages are still dealt with in the Provincial Court.[11] The Board also has authority to issue cease and desist orders in illegal strikes and lockouts.[12] Such a remedial procedure was held valid by the Supreme Court of Canada in the Tomco case. The Supreme Court held the following: (quote from the Tomco case)

Part of what might be termed as the judicial function of the Board is that provided by Section 21 which reads as follows:

21(1) When a difference exists between an employer or an employers' organization and a trade union concerning the application or operation of this Act, any of the parties to the difference may refer the differences to the Board.
(2) On reference of a difference to the Board pursuant to subsection (1) the Board may, if it considers it desirable, cause an investigation to be made as to the facts and in the course of the investigation call the parties concerned before it for the purpose of effecting an agreement between the parties in relation to the difference.
(3) If the Board is unable to effect an agreement between the parties, the Board may make recommendations as to what in its opinion ought to be done by the parties concerned.
(4) If agreement between the parties is not effected, the Board may institute whatever action it considers necessary to ensure compliance with an enforcement of this Act. Finally, the Board's functions under section 8(2) might be viewed as judicial. Section 8(2) provides the following:

(2) The Board may decide for the purposes of this Act whether:
a. a person is an employer;
b. a person is an employee;
c. an organization or association is an employers' organization;
d. an organization of employees is a trade union;
e. an employer has given an employers' organization authority to bargain collectively on his behalf or has revoked that authority;
f. a collective agreement has been entered into;
g. a person is bound by a collective agreement;
h. a person is a party to a collective agreement;
i. a collective agreement has been entered into on behalf of any person;
j. a collective agreement is in effect;
k. the parties to a dispute have settled the terms to be included in a collective agreement;
l. a group of employees is a unit appropriate for collective bargaining;
m. a person has applied for membership or has terminated his membership in a trade union;
n. a person is a member in good standing of a trade union;
o. a person is included in or excluded from a unit;
p. an employer is affected by the registration certificate of a registered employers' organization;
and the Board's decision is final and binding.

2. Certification and Registration - Determiner of the Negotiating Structure.
Initially the purported negotiating structure is determined by a bargaining agent when it applies for certification under section 34(1) in respect of a unit which it considers appropriate for collective bargaining. Subsequently, however, this unit determination becomes a matter for the Board in its inquiry into whether the unit is "an appropriate unit for collective bargaining".[19] In this process the Board may under section 37(2) direct the following:

(2)In any inquiry under subsection (1), the Board may

(a) include or exclude employees from the unit that is claimed by the trade union to be appropriate for collective bargaining,

(b) alter or amend the description of the unit that is claimed by the trade union to be appropriate for collective bargaining.

Thus the Board in the certification process determines the initial bargaining structure. The parties, however, subsequently by negotiation and without concurrence of the Board can enlarge the unit and hence the bargaining structure. In short, they can contract out of the Board's unit determination. In addition, multi-party bargaining can be initiated by the parties but it is primarily on a voluntary basis with no Board control or sanctions. The exception is in construction where the concept of a registered employers' organization has been introduced.

Under its reconsideration powers, the Board has on occasion streamlined the bargaining structure as for example in the Chemcell case. However, because of limited jurisdiction such restructuring has not been frequent nor often possible.

3. Administrator. This role envisages a variety of functions which might not otherwise fit under the more specific role definitions. Under the current legislation this role would specifically include three distinct functions. First, by virtue of the model arbitration provisions in The Technical Institute's Act, Section 36, the Board is authorized to appoint the sole arbitrators for grievance arbitration in respect of collective agreements coming under the Act.[13] Second, section 8(3) of The Labour Relations Act provides the following:

> In addition to the matters specified or refereed to in subsections (1) and (2), the Board has all necessary jurisdiction and power to perform any duties assigned to it by the Lieutenant Governor in Council.

We are not aware of any specific functions assigned to the Board by the Lieutentant Governor in Council. Finally, section 123 provides the following:

> 123 When a difference has been submitted to an arbitrator, arbitration board or other body and one of the parties to the difference complains to the Board that the arbitrator, arbitration board or other body has failed to render an award within a reasonable time, the Board may, after consulting with the parties and the arbitrator, arbitration board or other body,
> (a)issue whatever directive it considers necessary in the circumstances to ensure that an award will be rendered in the matter without further undue delay, or
> (b)appoint a new arbitrator, arbitration board or other body to in the place of the arbitrator, arbitration board or other body complained against.

Constitutions of unions and employers' organizations are filed with the Board.

Rights of Employees - Unfair Labour Practices Rights of employees under the Act might be placed in three basic categories.

1. Right of an employee to join a trade union and participate in collective activity, with a corresponding duty on the employer not to interfere with this right.
2. Right of an employee not to join a trade union with a corresponding duty on the part of the union not to interfere with this right.
3. Right of an employee to join a particular trade union with a corresponding duty on the union to admit the employee into membership.

We will examine the first two categories of rights in this part of the chapter and the third in the part of this chapter dealing with trade unions and individual

employees.

As Against an Employer. Historically, there was no duty cast on the employer not to interfere with an employee's right to be a member of a trade union and participate in its collective activities. Thus there was no law against an employer for refusing to hire or for dismissing an individual simply because he was a trade unionist. In addition, the collective activities of trade unions were viewed both as criminal conspiracies and unlawful restraints of trade.

In due course, unlawfulness of collective action was removed from the law and with the passage of labour relations legislation after the Second World War, a positive duty was imposed on employers not to interfere in an employee's trade union activities. In Alberta, until 1960, the administration of this duty was in the hands of Provincial Courts but has subsequently fallen with the jurisdiction of the Board.

The employees' rights are set out in Section 32(1) and provides as follows:

> An employee has the right
>
> (a) to be a member of a trade union and to participate in its lawful activities, and
>
> (b) to bargain collectively with his employer through a bargaining agent.

The confidentiality of membership is in part addressed in section 24 which provides:

> The Board is not required to divulge any information as to whether a person is or is not a member of a trade union or has or has not applied for membership in a trade union.

The corresponding duty on employers is provided by section 137(3) which in part read as follows:

> "(a)(i) is a member of a trade union or an applicant for membership in a trade union.
>
> (b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred on him by this Act.
>
> (d) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any other means, to compel

> a person to refrain from becoming or to cease to be a member, officer or representative of a trade union.

An interference with the employees' right to trade unionism may be carried out not only with the "stick approach" for which section 137(3) is designed, but might also be carried out with a "carrot approach". In this regard, the following excerpt from the Jolly Green Giant case is illustrative: (insert quote from case)

To overcome the possible use of the "carrot approach" the Act attempts to freeze working conditions at the time of certification and in this regard section 136(1) provides the following:

> 136(1) If a trade union has made an application for certification, no employer affected by the application shall, except in accordance with an established custom or practice of the employer or with the consent of the trade union or in accordance with a collective agreement in effect with respect to the employees in the unit affected by the application, alter the rates of pay, any term or condition of employment or any right or privilege of any of those employees during the time between the date of the application and
> a. the date of its refusal, or
> b. 30 days after the date of certification.

Violations of section 137(3) are processed before the Board. The complainant makes a complaint in writing to the Board under section 141(1). Upon receiving the complaint the Board serves notice of the complaint on the respondent.[14] The Board may also appoint an officer to attempt to resolve the dispute.[15] If no settlement is reached the Board may then inquire into the dispute.[16] In this regard, statutory deference to arbitration is accorded under section 142(4) which provides the following:

> The Board may refuse to inquire into any complaint in respect of a matter that, in the opinion of the Board, could be referred by the complainant to an arbitrator, arbitration board or other body pursuant to a collective agreement.

The inquiry under section 142(3) proceeds in accordance with the Board's usual hearing procedures and as outlined earlier. If the complaint is without merit the Board may reject the complaint at any time.[17] If the Board finds the complaint valid then it may under section 142(5) do as follows:

> (5)When the Board is satisfied after an inquiry that an employer, employers' organization, employee, trade union or other person has failed to comply with section 71, 136, 137, 138 or 140 or any provision of those sections, the Board may rectify the act in respect of which the complaint is made and without restricting the generality of the foregoing
> a. shall issue a directive to the employer, employers' organization, employee,

trade union or other person concerned to cease doing the act in respect of which the complaint was made;

b. may in the same or a subsequent directive require the employer, employers' organization, employee, trade union or other person
   1) to reinstate any employee suspended or discharged contrary to those sections;
   2) to pay to any employee or former employee suspended or discharged contrary to those sections compensation not exceeding a sum that, in the opinion of the Board, would have been paid by the employer to the employee, together with a sum not exceeding the amount of interest paid by the employee on money borrowed to support himself and his family during the time he was so suspended or discharged;
   3) to reinstate or admit a person as a member of a trade union;
   4) to rescind any disciplinary action or pecuniary or other penalty taken or imposed contrary to those sections;
   5) to pay to a person compensation not exceeding a sum that, in the opinion of the Board, is equivalent to the pecuniary or other penalty imposed on a person contrary to those sections;
   6) to pay to an employee in respect of a failure to comply with section 137 compensation not exceeding a sum that, in the opinion of the Board, is equivalent to the remuneration that would have been paid to the employee by the employer if the employer had complied with that section;

c. may, notwithstanding anything in this Act,
   1) certify or refuse to certify a trade union as bargaining agent for a unit of employees;
   2) revoke or refuse the certification of a bargaining agent;
   3) revoke or refuse to revoke the rights of a bargaining agent voluntarily recognized;
   4) register or refuse to register an employers' organization as an agent for collective bargaining on behalf of employers in a trade jurisdiction and territory in the construction industry;
   5) cancel or refuse to cancel the registration certificate of a registered employers' organization.

The most common unfair labour practice conduct on the part of an employer is the discharge of an employee. The Board has to determine whether an employee was dicharged for his support of a trade union which is an unfair labour practice or whether he was discharged for some other valid reason such as lack of work, insubordination, incompetence, or other grounds. In this regard section 143 specifically provides:

> Nothing in this Act detracts from or interferes with the right of an employer to suspend, transfer, lay off or discharge employees for proper and sufficient cause.

The Canadair case decided by the Supreme Court sets out the Board's approach in such a case. (Insert quote from case)

In the event a Board order is not complied with it may be filed with the Court of Queen's Bench for enforcement purposes.[18] The difficulty of enforcement against a recalcitrant employer is exemplified by the B.C. decision in the Kidd Brothers

case. (Insert quote)

As Against a Union. An employee may choose not to belong to or be represented by a union. The Act protects this right. Thus section 138(e) provides for the following:

> Use coercion or intimidation of any kind with respect to any employee with a view to encouraging or discouraging membership or activity in or for a trade union.

There seem to be few reported cases in this area. Canadian Fabricated Products Ltd., an Ontario Board decision, is, however, illustrative of the interpretation to be placed on their statute. There the Labour Relations Board held: (insert from case)

The procedures and remedies available under section 142 have previously been considered.

It should be observed, however, that an employee's rights not to be a union member or a member of a particular union are circumscribed by the certification process itself which is based on the democratic principle of majority rule.

Rights of Employers - Unfair Labour Practices. Rights of employers under the Act might be placed under five categories.

1. The right to be non-union except after due process under the Act with a corresponding duty on the union not to interfere with this right.
2. The right to voluntarily recognize for collective bargaining purposes a trade union representing employees.
3. The right to join an employers' association and participate in collective activity with a corresponding duty on the union(s) not to interfere with this right.
4. Right of the employer not to join an employers' organization with a corresponding duty on the part of an employers' organization and possibly trade union not to interfere with this right.
5. Right of an employer to join a particular employers' organization with a corresponding duty on the employers' organization to admit the employer into membership.

We shall examine the first four types of rights in this part of the chapter and the fifth right under the heading of Employers' - Organization and Individual Employers. 1.

The Right to be Non-Union - Subject Only to the Act. This right is specifically set out in section 138(a) which provides that: .

> 138 No trade union and no person acting on behalf of a trade union shall
>
> (a) Seek to compel an employer or employers' organization to bargain collectively with the trade union if the trade union is not the bargaining agent for a unit of employees that includes employees of the employer.

Other provisions of the Act buttress this general intent. Section 39(2) provides the following:

> A trade union shall not be certified as a bargaining agent if, in the opinion of the Board, application for membership or membership in the trade union directly resulted from picketing of the place of employment of the employees affected or elsewhere.

In the Radio Shack case the Ontario Board refused to certify where prior to the application the union attempted to obtain recognition through picketing. Finally, section 83(2) provides the following:

> Any collective agreement entered into between an employer or an employers' organization and a trade union as a result of the employer's recognition of the trade union as a bargaining agent may be declared by the Board to be void when in its opinion the recognition resulted from picketing of the place of employment of the employees affected or elsewhere.

2. Right of Voluntary Recognition of a Trade Union. Section 32(3) of the Act provides the following:

> Subject to this Act, an employer has the right to voluntarily bargain collectively with a bargaining agent acting on behalf of his employees or a unit of them.

We presume this right of voluntary recognition comes into play if the employer bona fide believes that the union in fact represents a majority of his employees in an appropriate unit. Otherwise, employee rights of democratic free choice could be greatly undermined. It is to be noted in this regard that collective agreements with employer dominated unions are voidable. Section 83(1) provides the following:

> 83(1) Any collective agreement entered into between an employer, or an

employers' organization and a trade union that is not a certified bargaining agent may be declared by the Board to be void when in its opinion the administration, management or policy of the trade union is

a. dominated by an employer, or
b. influenced by an employer so that the trade union's fitness to represent employees for the purpose of collective bargaining is impaired.

3. Right to Join Employers' Organization. Section 32(2) specifically grants this right. Section 138(c) provides that "(n)o trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers' organization."

4.

Right to Abstain from Membership in an Employers' Organization. No specific provisions appear to provide the employer with this right. In any case, whatever the right might be the ordinary law would apply. In any event, such a right is circumscribed by the provisions of the Act dealing with registration of employers' organizations. We will examine the registration concept later in this chapter. Moreover, section 138(c) presumably applies to trade union participation in or interference with the employer's decision not to join an employer's association.

Trade Unions. In this part of the report we examine the nature of a trade union from a legal point of view under the Act. The Act in section 1(1)(w) defines a trade union as follows:

> "Trade union" means an organization of employees that has a written constitution, rules or by-laws and has as one of its objects the regulation of relations between employers and employees.

Section 1(1)(b) defines a "bargaining agent" as:

> "bargaining agent" means a trade union acting on behalf of employees in collective bargaining or as a party to a collective agreement with an employer or employers' organization, whether or not the bargaining agent is a certified bargaining agent.

Trade unions are variously organized and structured. There may be some unions or employees' associations whose sole membership may be the employees of one establishment or plant. The gamut can run to very large international organizations which for administrative purposes are further divided into divisions, regions,

districts, and finally along "local lines". The term trade union might be applied to the international organization or to one of its constituent parts, such as the local which might in addition to the "union constitution" have a local constitution or by-law.

The definitions in the Act reqiures "an organization of employees" and as such an organization of "locals" or "districts" might not be a union for purposes of the Act. It is on this basis that the Board generally views the "local" union which is composed of individual members as a trade union for certification purposes. It must be an organization with a written constitution. In fact, such a constitution must be filed with the Board pursuant to section 23(1) of the Act. One of the objects of the organization must be the regulation of relations between employers and employees. Finally, it must be an organization; that is, have proper officers elected pursuant to the constitution. In fact, the names of officials must be filed with the Board including the names of those persons who have signing authority in respect of the execution of a collective agreement as called for in section 23 of the Act. Other than as given in the definition section of the Act there do not appear to be any other statutory requirements. The whole possible areas of union democracy and disqualification of officers for criminal activities seem to be left to the discretion of the membership. It is to be noted that under the new Act the concept of a "proper bargaining agent" is no longer applicable. There may be some discretionary power in the Board under section 37(1)(c) in that in a certification application the Board is entitled to inquire into "any other question that is, in the opinion of the Board, material in considering the application." However, the ability of the Board to inquire further may in fact be very limited. (See the Supreme Court of Canada case re the communist officer of a union.)

At common law unions are unincorporated associations. As such they cannot sue or be sued. Actions by or against officers or trustees of union funds, and certain representative forms of action might be permitted. Legal status difficulties were

further compounded by the fact that at common law at least for some purposes unions were viewed as being in illegal restraint of trade. These historical difficulties are eliminated at least for purposes under the Act by section 25 of the Act which provides the following:

> (1) For the purposes of this Act a trade union is capable of
> a. prosecuting and being prosecuted, and
> b. suing and being sued.
>
> (2)A trade union and its acts shall not be deemed to be unlawful by reason only that one or more of its objects or purposes are in restraint of trade.

Section 78 specifically provides for union security provisions in collective agreements. This section reads as follows:

> Nothing in this Act prevents a trade union from continuing an existing collective agreement or entering into a new collective agreement with an employer or employers' organization whereby all the employees or any unit of employees of the employer or employers' organization are required to be members of a trade union.

We will examine this provision further in our review of Union - Employer Relationships. Section 27 permits a union checkoff provision. It reads:

> 27(1) An employer may authorize his employer in writing to deduct from wages due to him an amount payable by that employee to a trade union for
> a. union dues, and
> b. initiation fees not exceeding an amount equivalent to one month's union dues.
>
> (2)The employer shall, from wages due to the employee, make the payments authorized by the employee, and the authorization
> a. is effective only for the amount or the percentage of the wages specified therein, and
> b. continues in force for at least three months and thereafter until revoked in writing by the employee.
>
> (3)The employer shall by the 15th day of each month remit to the trade union named in the authorization
> a. the dues deducted for the preceding month, and
> b. a written statement of the name of the employee for whom the deduction was made and of the amount or percentage of the employee's wages of each deduction
>
> until the authorization is revoked in writing by the employee and the revocation delivered to the employer.
>
> (4) On receipt of a revocation of an authorization to deduct union dues, the employer shall immediately give a copy of the revocation to the trade union

concerned.

The Union and Individual Employees. Does an individual have the right to become a member of a trade union? At common law the answer was a no. The position under the Act may be different. Firstly, section 32(1)(a) seems to grant such a right. It is not clear, however, whether the section is to be read as giving such a right against employers or also as against a specific union. The Jurek case seems to recognize such a right only against employers. The Flint case seems to give it also against unions. In any event whether there is such a right it is now clear that membership rules are not to be applied in a discriminatory fashion. Section 138(g) of the Act provides:

> Expel or suspend a person from membership in the trade union or deny membership in the trade union to a person by applying to him in a discriminatory manner the membership rules of the trade union.

This section might imply that there is no right as such to become a member of a particular union; otherwise, why would one have the section? For example, a union might decide that it will not admit any new members for five years. An applicant would be hard-pressed to show discrimination if he was not admitted to membership.

Once a person becomes a member then it becomes somewhat more difficult to expel him at common law. His position is improved by the Act. Thus section 138(g), previously quoted above, applies to prevent discrimination. In addition, section 138(h) provides the following:

> 138 No trade union and no person acting on behalf of a trade union shall
>
> (h) Take disciplinary action against or impose any form of penalty on a person by applying to him in a discriminatory manner the standards of discipline of the trade union.

It should be observed at this point that other than the prohibition against discrimination and provisions against imposing discipline for obeying the law or the collective agreement the Act does not specifically control the substantive charges on which a member may be disciplined. As far as procedural protection is concerned, section 26 provides the following:

26 No trade union shall expel or suspend any of its members or take disciplinary action against or impose any form of penalty on any person for any reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union, unless that person has been

a. served personally or by double registered mail with specific charges in writing.
b. given a reasonable time to prepare his defence.
c. afforded a full and fair hearing, including the right to be represented by counsel, and
d. found guilty of the charge or charges, and if a monetary penalty is imposed, fails to pay it after having been given a reasonable time to do so.

In the Giovanzzo case the Court of Appeal in interpreting the foregoing section noted the following: (quote from the case)

An interpretation of section 26 might suggest that the safeguards are not applicable for discipline where it is imposed for a failure to pay union dues.

The next question that arises in this context is if all steps are duly taken by the union and the member is expelled, what is his position as it relates to his job rights if the applicable collective agreement provides for a closed or union shop. In this regard section 78, which as already been quoted above, must be reviewed as well as section 137(3)(a)(ii), and 138(f) which provide for the following:

137(3) No employer or employer's organization and no person acting on behalf of an employer or employers' organization shall

a. refuse to employ or continue to employ any person or discriminate against any person in regard to employment or any term or condition of employment because the person

(i) Has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union.

138 No trade union or person acting on behalf of a trade union shall

(f) require an employer to terminate the employment of an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union.

In the Evergreen case the Board held the following: (Quote from the Evergreen case). The Supreme Court of Canada agreed with this result and holding.

The union holds a duty of fair representation to all members in a unit that it

represents whether or not they are members of their union. This duty exists particularly at at least one point in time. At the time of negotiating a collective agreement it may exist impliedly at law, although recent amendments to The Labour Relations Act may have rendered its application at this time nugatory. It definitely is operative at the time of processing an employee grievance. The duty existed impliedly by operation of law at both points in time. With regards to agreement administration, it now has received statutory sanction and is included in the unfair labour practice provisions. Thus, section 138(i) (as amended) provides for the following:

> 138 No trade union and no person acting on behalf of a trade union shall
>
> (i) deny an employee or former employee who is or was within the bargaining unit the right to be fairly represented by the trade union with respect to his rights under the collective agreement.

The union's position at the time of bargaining set out in the Lollipop case where the following is stated:(Quote from case). The position on grievances and arbitration matters was stated in the I Won't Work union case. It concluded that: (Quote from case)

Further protection is afforded the non-union member in section 28 of the Act. It provides the following:

> If a trade union issues a temporary card, document or other permit to a person who is not a member of the trade union, the dues or fees charged by the trade union, the dues or fees charged by the trade union for the temporary card, document or other permit for each month shall not exceed an amount equivalent to the dues or fees payable by a member of the trade union for the same period.

Interestingly enough, there are no statutory provisions governing the use of the hiring hall, a device which is utilized extensively in the construction industry.

Employers' Organizations. In this part of this chapter we examine the nature of an employers' organization from a legal point of view under the Act. Employers' organizations may be variously organized and structured particularly from a voting rights point of view. With unions, there is generally one vote available to each member. It is difficult to structure a one vote per employer and be equitable

under all the circumstances. An examination of the by-laws in some cases incorporating documents under The Alberta Societies Act reveals that a variety of approaches is in fact used. The Act, surprisingly, contains little in the way of legal requirements or guidance in the establishment of employers' organizations. Section 1(1)(m) provides the following:

> "employers' organization" means an organization of employers acting on behalf of an employer or employers, having as one of its objects the regulation of relations between employers and employees, whether or not the employers' organization is a registered employers' organization.

It appears that an employers' organization might not even need a constitution in writing! "Organization" is still needed however and this might imply a writing requirement and officers elected pursuant to a constitution. An employers' organization need not file its constitution nor a list of officers with the Board unless it intends to apply to the Board to become a registered employers' organization (Section 29). By section 30 an employer's organization, whether registered or not, is capable of prosecution being prosecuted, suing, and being sued. It might be observed that there is no provision in the Act comparable to section 25(2) which applies to unions and which excludes employer associations from unlawfulness due to possible restraint of trade.

Employers' Organizations - Individual Employers. Does an employer have the right to become a member of an employers' organization? At common law the answer would be a no. Section 32(2)(a) may in fact change the law if it is read to apply not only to the right to membership but also to a right against an employers' organization to deny membership. It should be noted that there are no equivalent provisions similar to section 138(g) and (h), regarding discriminatory intra-organizational denial of membership or disciplinary action, which would apply to an employers' organization. Once an employer is a member of a registered employers' organization some protection to discipline is afforded by section 31 which reads as follows:

> 31 No registered employers' organization shall expel or suspend any of its members or take disciplinary action against or impose any form of penalty on any person for any reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members

of the registered employers' organization as a condition of acquiring or retaining membership in the registered employers' organization, unless that person has been

a. served personally or by double registered mail with specific charges in writing,
b. given a reasonable time to prepare his defence,
c. afforded a full and fair hearing, including the right to be represented by counsel, and
d. found guilty of the charge or charges, and if a monetary penalty is imposed, fails to pay it after having been given a reasonable time to do so.

It should be observed that no statutory duty of fair representation is imposed upon an employers' organization.

The Establishment and Termination of Collective Bargaining Rights by a Union. The acquisition of bargaining rights by the union gives rise to distinct but related concepts. First, the union is recognized as the exclusive bargaining agent for the unit of employees. By virtue of this exclusive recognition concept, the employer cannot lawfully negotiate with individual employees or with some other trade union in respect of employees in the unit. Second, both the union and the employer become subject to the duty to bargain in good faith. These concepts are forced through the unfair labour practice provisions of the Act. Section 137(3)(f) provides the following:

137(3) No employer or employers' organization and no person acting on behalf of an employer or employers' organization shall

(f) bargain collectively for the purpose of entering into a collective agreement, or enter into a collective agreement with a trade union in respect of a bargaining unit if another trade union is the bargaining agent for that unit.

Section 138(a) and (b) provides for the following:

138 No trade union and no person acting on behalf of a trade union shall

a. seek to compel an employer or employers' organization to bargain collectively with the trade union if the trade union is not the bargaining agent for a unit of employees that includes employees of the employer.
b. bargain collectively or enter into a collective agreement with an employer or employers' organization in respect of a unit, if that trade union or person knows, or in the opinion of the Board ought to know, that another trade union is the bargaining agent for that unit of employees;

Section 139 of the Act provides the following:

139 No employer, employers' organization or bargaining agent and no authorized representative acting on behalf of any of them, after having served or having been served with a notice to commence collective bargaining pursuant to section 73 or the provisions of a collective agreement, shall refuse

a. to meet and commence to bargain collectively in good faith, or
b. to make every reasonable effort to enter into a collective agreement.

Finally, section 142(6) reads as follows:

(6) When the Board is satisfied after an enquiry that an employer, employers' organization, bargaining agent or authorized representative of any of them is failing or has failed to comply with section 139, the Board
a. shall issue a directive directing the employer, employers' organization, bargaining agent or authorized representative concerned to bargain in good faith and made every reasonable effort to enter into a collective agreement, and
b. may prescribe the procedure or conditions under which collective bargaining is to take place.

Bargaining rights may be acquired by the union through voluntary recognition by the employer through entering into a collective agreement with the union. Thereupon by operation of section 73(2) of the Act the union can require the employer to bargain for a renewal of the collective agreement. The process can repeat itself ad infinitum.

The union can also acquire bargaining rights through the process of certification. Assuming there are no bars to the application, and we shall return to consider the various possible bars to an application, section 34(1) provides for the following:

A trade union that claims to have been selected by a majority of employees in a unit that the trade union considers appropriate for collective bargaining may apply to the Board to be certified as the bargaining agent of the employees in the unit.

Section 34(2) then provides:

(2) An application under subsection (1) shall be supported by evidence that a majority of the employees in the unit by
a. membership in good standing in the trade union,
b. having applied for membership in the trade union and having paid on their own behalf a sum of not less than $2 not longer than 90 days before the date the application for certification was made, or
c. indicating in writing their selection of the trade union to be the bargaining agent on their behalf,
or by any combination thereof, have selected the trade union to be a bargaining agent on their behalf.

It should be noted that the application for membership under section 34(2)(b) must not be older than 90 days. Accordingly, a 90 day limit is in a sense imposed by the Act on organizational activities. Sections 37 and 38 of the statute provide:

37(1)On receipt of an application by a trade union for certification as a bargaining agent, the Board shall inquire into

a. whether the unit of employees is an appropriate unit for collective bargaining;
b. whether the trade union has been selected by a majority of the employees in the unit;
c. any other question that is, in the opinion of the Board, material in considering the application.

(2) In any inquiry under subsection (1), the Board may

a. include or exclude employees from the unit that is claimed by the trade union to be appropriate for collective bargaining,
b. alter or amend the description of the unit that is claimed by the trade union to be appropriate for collective bargaining, and
c. do any other things it considers appropriate.

38(1) The Board shall complete its inquiries into and consideration of an application for certification as soon as possible.

(2) When the Board is satisfied that the unit on behalf of which the trade union is applying for certification is an appropriate unit for collective bargaining,

a. it shall further satisfy itself that a majority of the employees in the unit by
(i) membership in good standing in the trade union, or
(ii) having applied for membership in the trade union and having paid on their own behalf a sum of not less than $2 not longer than 90 days before the date the application for certification was made,
or both, have selected the trade union to be a bargaining agent on their behalf, or
b. if a majority of the employees in the unit have indicated in writing their selection of the trade union as the bargaining agent on their behalf or in any other case that the Board considers advisable, it shall further satisfy itself that a majority of those employees in the unit on the date the application for certification was made, or or any other date or dates fixed by the Board, who voted at a vote conducted by the Board, voted for the trade union to be the bargaining agent on their behalf,

and thereupon the Board shall certify the trade union to be the bargaining agent of the employees.

(3) When a trade union is certified under subsection (2) as a bargaining agent, the certificate issued by the Board shall

a. name the certified bargaining agent,
b. name the employer in respect of which the trade union is certified as bargaining agent, and
c. describe the unit in respect of which the trade union is certified as a bargaining agent.

Accordingly, in a certification application the Board must first determine whether the unit applied for is appropriate for collective bargaining. The Act defines the unit as "any group of employees of an employer". In this regard it does leave the power to the Board to include and exclude emplyees, as well as to alter or amend the description of the unit. The Act defines a "unit" as "any group of employees of an employer". Thus it is possible to have craft units, plant units, multi-plant units of the same employer, geographic units as in the construction

industry, and specific location units such as in transportation.

The determination of the appropriate unit is one of the most important Board functions as employers, unions, and employees rights are all fundamentally affected. A.W.E. Carrothers in Collective Bargaining Law in Canada states at p. 234: (Insert quote from Carrothers) A study was done of unit determination by the Alberta Board by Al Kennedy. The conclusions should be noted.

Once the Board is satisfied that the unit is appropriate, it then must satisfy itself that the union has majority support. The Board, based on the evidence of support and any questions surrounding it, may certify outright, refuse the application, or call for a certification vote. In cases where a vote is not called the support determination is made as of the date of the application. In this regard, section 36 of the Act provides the following:

> A person may be deemed by the Board to be an employee for the purposes of this Act from the date an application for the certification of a bargaining agent is made and until it is disposed of, if he was an employee immediately before the date the application was made.

Where the Board has doubt in support of the evidence of majority support afforded by membership cards and membership applications, as for instance when persons who sign the applications subsequently sign petitions opposing the union, the Board might call for a vote. A voters list would be established as of a particular date, which could be after the date of application. The majority would be determined on the basis of actual votes cast not on the basis of those who were eligible to vote. Where the Board is satisfied of majority support it would certify and issue a certificate which names the union and employer and describes the unit. The immediate effect of the certification is provided in Section 40. It reads as follows:

> 40(1) When a trade union becomes a certified bargaining agent, it
> a. has exclusive authority to bargain collectively on behalf of the employees in the unit for which it is certified and to bind them by a collective agreement, and
> b. immediately replaces any other bargaining agent of employees in the unit for which it is certified.

(2) When a trade union becomes a certified bargaining agent of employees in a unit, the certification of any trade union previously certified as the bargaining agent for any employees in the unit is revoked to the extent that the certification relates to those employees.

(3) When a trade union becomes a certified bargaining agent of employees in a unit and if at the time of certification a collective agreement is in force respecting those employees, the trade union

a. becomes a party to the collective agreement in place of the bargaining agent that was a party to the collective agreement in respect of the employees in the unit, and
b. may, insofar as the collective agreement applies to the employees and notwithstanding anything contained in the collective agreement, terminate the agreement at any time by giving the employer at least 2 months' notice in writing.

In order to create a certain degree of stability in the certification process and prevent possible abuse of the process, the Act provides for a number of bars to certification application. First, unless the Board consents, no trade union may apply for certification until at least 60 days after it has filed its constitution pursuant to section 23(1)(a) of the Act. Second, no application can be made during the first 10 months of another trade union's certificate in respect of any of the employees covered by such certificate (section 34). This period is intended to provide the time required for any court proceedings involving the original certification (section 34(3)(c)). Third, no application may be made if an existing collective agreement applies in the unit except (a) at any time in the last 2 months of the term of such an agreement, or (b) in the 11th and 12th month of the second or any subsequent year of the term of such agreement (section 34(3)(d), and (e)). Extensions of collective agreement as such do not act as bars (section 80(3)). Fourth, unless the Board consents, no application can be made if a strike or lockout is in effect (section 34(4)). Fifth, unless the Board consents, where an application is refused the same or substantially the same application cannot be made until after the expiration of 90 days from the date of the refusal (section 49). Finally, the courts have sanctioned Board decisions to refuse an application because the workforce in the unit would substantially expand in the near future. The "expanding workforce" bar was approved by the Supreme Court of Canada in the Noranda case. (Quote from the Noranda case.)

In those situations where recognition was granted voluntarily, bargaining rights may be terminated by application under section 45 of the Act. Such an

application may be made by employees, but not by the employer. The Board may issue a declaration that the bargaining agent is no longer entitled to bargain collectively if

a. a majority of the employees no longer wish the bargaining agent (section 46(1)(a)),
b. there have been no employees in the unit for a period of at least three years (section 46(2)(b)(i)), or
c. the bargaining agent has abandoned its bargaining rights (section 46(2)(b)(ii).

Where the bargaining agent was certified bargaining rights may be lost through revocation of the certification. The application may be made by the certified bargaining agent or by employees in the unit (section 42(1)). It may also be made by an employer but only if collective bargaining has not taken place during the past 3 years (section 42(3)). The Board must revoke the certificate if a majority of the employees no longer desire the bargaining agent (section 43(1)(a)). It may revoke the certificate if there have been no employees in the unit for at least 3 years or the bargaining agent has abandoned its bargaining rights (section 43(1)(b)). It should be observed that the bar to an application for certification generally applies to applications for revocations of voluntarily recognized bargaining rights or certifications (see sections 45(20), 45(3), 42(2), 42(4) and 49). Finally, power is given to the Board on notice to revoke rights if the bargaining agent or employer on receipt of such notice do not object within 60 days (sections 45 and 47). Where bargaining rights are lost the bargaining agent ceases to have the right of exclusive representation and any existing collective agreement becomes void (sections 43(2) and 46(2)).

The Establishment and Termination of Collective Bargaining Rights - Employers' Organizations. Non-registered employers' organizations bargain only on behalf of employers who have granted to the organization authority to do so. The status of representation is set out in section 75 which provides the following:

75(1) When an employers' organization that is not a registered employers'

organization serves notice to commence collective bargaining, the notice must also contain or be accompanied by

a. a list of the names and addresses of the employers on whose behalf the employers' organization is authorized to bargain collectively,
b. a copy of each authorization given by the employers, and
c. a list of the names and addresses of the persons designated as its bargaining committee.

(2)When an employers' organization that is not a registered employers' organization receives a notice to commence collective bargaining, it shall, within 10 days after the day on which it receives the notice, serve on the bargaining agent the lists and authorizations referred to in subsection (1).

(3) A copy of the lists and authorizations served under subsection (1) or (2) must be filed with the Director.

(4) Upon service of the lists and authorizations in accordance with subsection (1) or (2), as the case may be, the employers' organization shall be deemed to be bargaining collectively for all the employers who are named in the list and who gave their authorization.

(5) An employer may be added to the list of employers on whose behalf the employers' organization is deemed to be bargaining collectively if

a. the bargaining agent and the employers' organization agree to add the employer to the list, and
b. an authorization of the employer is served under subsection (1) or (2), as the case may be.

(6)An authorization under this section may be given by a director or other official of the employer and thereupon that authorization shall be deemed to be the authorization of the employer.

(7) When an employer has authorized an employers' organization that is not a registered employers' organization to bargain collectively on his behalf, the authorization may not be revoked until

a. a collective agreement has been entered into between the employers' organization and the bargaining agent, or
b. a strike or lockout commences in accordance with this Act,

whichever first occurs.

It should be noted that if bargaining leads to a strike or lockout, an employer immediately has the right to revoke an authorization and bargain collectively with the union. However, until such a revocation is made, the union has to bargain with the employers' organization and the duty of good faith bargaining applies to both. Where an employers' organization is involved votes on strikes and lockouts must be conducted of all employers within the organization and their employees. Decisions are made on the basis of a simple majority of those actually voting (section 88). The Act provides for registration of employers' organizations but only in the construction industry. The operative differences between an unregistered and a registered employers' organization under the Alberta Act are as

follows. First, the registered employers' organization is an exclusive bargaining agent. In this regard, section 54 provides:

> 54(1) On the issuance of a registration certificate the employers' organization named therein becomes a registered employers' organization and has exclusive authority to bargain collectively with the trade union named in the registration certificate on behalf of
> a. all employers engaged in the territory and trade jurisdiction in the construction industry set out in the registration certificate with whom the trade union has established or subsequently establishes the right of collective bargaining, and
> b. any other employer engaged in the construction industry who is party to an agreement, notwithstanding anything in that agreement, which provides that he shall comply with any of the terms of a collective agreement entered into by the trade union in respect of work in the territory and trade jurisdiction set out in the registration certificate.
> (2) When a registered employers' organization bargains collectively with a trade union, it shall be deemed to be bargaining collectively on behalf of all of the employers specified or referred to in subsection (1), with whom the trade union retains the right to bargain collectively.

Thus employers who may not wish to be registered are forced into being represented and employers may not get out of the organization unless the registration is cancelled. Second, employers cannot make any individual collective agreements with a union until after 60 days of a strike or lockout (section 58(1) and sections 108 and 109). Finally, any individual collective agreement that may have been made becomes void upon a collective agreement being entered into between the union and the registered employers' organization (section 110(2)). Applications for registration are processed in somewhat of a similar manner to that of a certification application. Section 51(1) of the Act provides the following:

> 51(1) An employers' organization may apply to the Board to be registered as the agent for collective bargaining on behalf of all employers in a territory and trade jurisdiction in the construction industry in respect of whom a trade union has established the right of collective bargaining when the employers' organization claims to have a majority of the employers as members.

Section 50(1) provides that in sections 51 to 61 the term "trade union" includes two or more trade unions having a common trade jurisdiction. Sections 52 and 53 provide the following:

> 52(1) On receipt of an application for registration by an employers' organization, the Board shall inquire into
> a. whether the application is timely, taking into consideration any seasonal factors affecting the work relating to the trade jurisdiction described in the application;
> b. if applicable, whether 2 or more trade unions have a common trade jurisdiction;

c. whether the employers' organization has as members the majority of the employers in the territory and trade jurisdiction described in the application with whom the trade union has established the right of collective bargaining;
d. the trade jurisdiction for which the employers' organization should be registered;
e. the territory for which the employers' organization should be registered;
f. whether the work relating to the trade jurisdiction described in the application in whole or in part is part of the construction industry;
g. any other matter that is, in the opinion of the Board, material to the application.

(2) For the purpose of determining whether a majority of employers engaged in the territory and trade jurisdiction described in the application in the construction industry in respect of whom a trade union has established the right of collective bargaining are members of the employers' organization applying for registration, the Board may fix a period of time during which any employer so engaged shall be deemed to be an employer for the purposes of the application.

(3) In any inquiry under subsection (1), the Board may
a. determine which employers come within or should be excluded from the territory or trade jurisdiction;
b. alter or amend the territory or trade jurisdiction;
c. do any other things it considers appropriate.

53(1) When the Board is satisfied that an employers' organization should be registered as the agent for collective bargaining on behalf of all employers in a territory and trade jurisdiction in the construction industry in respect of whom a trade union has estabilised the right of collective bargaining, the Board shall issue a registration certificate to the employers' organization.

(2) The registration certificate shall state:
a. the name of the registered employers' organization;
b. the name of the trade union with which the registered employers' organization may bargain collectively;
c. the trade jurisdiction in respect of which the registered employers' organization and a trade union may bargain collectively, and
d. the territory to which the registration certificate applies.

(3) When 2 or more trade unions are named in a registration certificate, this Act applies to the trade unions with respect to the settlement of disputes, strikes or lockouts as if they were a single trade union.

Registrations have posed considerable definitional problems particularly in defining trade jurisdictions. It should be noted that exclusive bargaining authority applies not only to the original employers involved in the application but also to employers in the trade jurisdiction with whom the union subsequently acquires bargaining rights and to employers who incorporate the master agreement into their collective agreement by reference (section 54).

An application for registration is subject to various bars to application. First, the

employers' organization must file its constitution at least 60 days prior to the date of the application (section 50(2)). Second, no application may be made during the period when the majority of employers and the trade union named in the application are bargaining collectively (section 51(2)(a)). Third, no application may be made in the 6-month period preceding the 90 days prior to the end of the term of the collective agreement between the trade union and the majority of the employers named in the application (section 51(2)(b)). Fourth, unless Board consent is given no application may be made if a strike or lockout is in effect (section 59(3)).

Registration of employers' organizations may be cancelled on application to the Board. Such an application may be made at any time during the last 2 months of a collective agreement, or if no collective agreement has been entered into, after 10 months of the date of registration or upon notice to commence bargaining, whichever is the latter (section 59(2)). A registration shall be cancelled if a majority of employers no longer wish the organization to represent them (section 60(2)(a)). The registration certificate may be cancelled if

a. there have been no employees affected by the registration certificate engaged in the territory and trade jurisdiction for a period of at least 3 years or
b. the majority of employers affected by the registration certificate have not employed employees in the territory and trade jurisdiction for a period of at least 3 years (section 60(2)(b)).

Section 60(3) considers the effects of the cancellation of a registration certificate. It reads as follows:

> 60(3) When a registration certificate is cancelled under subsection (2),
> a. the trade union retains all rights of collective bargaining existing in respect of the individual employers in respect of whom is has established the right of collective bargaining.
> b. any collective agreement in effect between the trade union and the registered employers' organization continues to be binding on
>
> (i) every employer who was bound by the collective agreement at the time of cancellation of the registration certificate, and
>
> (ii) the trade union and every employee bound by the collective agreement,

and

c. the employers' organization ceases to be registered as an agent for collective bargaining on behalf of the employers.

CHAPTER V

THE ALBERTA LABOUR RELATIONS SYSTEM AND LABOUR RELATIONS LAW: EVALUATION AND ISSUES

The term labour-management relations applies to that segment of the industrial relations system which deals with the unionized sector of the economy. As noted in Chapter I, the interaction process between unions and management is institutionalized as evidenced by identifiable participants and their goals as well as established processes of interaction many of which are circumscribed by the law. In this Chapter of the report, we evaluate the system as well as identify what we believe to be the central issues in its functioning and in its law. We have before us the basic question: Having regard to purposes and objectives, how effective is the system of labour relations and labour relations law in Alberta? We realize that there are no accepted criteria for the appraisal of the overall system as it tends to be complex, dynamic, and to exhibit variations in the way it operates in the public and the private sectors. The primary participants in the labour-management relationship are management, unions, and government. Therefore, to evaluate the process one has to examine and keep in mind the structure, philosophies, and functions of the respective participants and the goals they bring to the labour-management relationship. Furthermore, effectiveness in the labour-management relationship must also be appraised with respect to its institutional interaction with the general society. Our evaluation is drawn from an analysis of the effectiveness of the institutional framework and its validity.

INSTITUTIONAL FRAMEWORK AND ITS VIABILITY

In Chapters I, II, III, and IV we reviewed and described the elements comprising the institutional framework of the Alberta labour-management relations system within a specified framework for analysis. Our evaluation of the viability of this institutional framework adopts the same approach. We will focus on the participants with goals who interact in a given context and within processes and

a framework of the law, in order to set wages, hours and working conditions in a collective agreement and a system for its administration. However, unlike our earlier review we offer comments only on those elements within the framework that to us require evaluation and present issues in contemporary labour relations. In addition, this chapter is used to argue the case in support of the specific recommendations set out in Chapter VI. The selective approach used in this chapter is carried into our recommendations set out in Chapter VI. Participants' roles will be presented first, followed in order by goals and processes.

PARTICIPANTS

Employees. A number of employees seem to find themselves involved in employment relationships in which they do not fully appreciate their rights at law and sometimes even their rights under the collective agreement. In addition, they may not fully understand the subtleties or complexities of such things as agreement administration or agreement negotiations. This lack of understanding shrouds their participation in the labour-management relationship and may be reflected in such things as representation, ratification, and work stoppage votes.

Some employees are selfish, thinking primarily in terms of what the system or the employer can do for them. The pursuit of economic self-interest, however, is a building block of our capitalistic system and becomes reflected in our institutions including the labour-management relationship. However, there are employees seem to possess insatiable appetites.

Many times initial demands placed on the bargaining table have been so high that they simply can not be met. Admittedly, some of this stems from posturing and fear of settling for less than might otherwise have been achieved. However, when asked to exercise self-restraint many employees simply have refused to do so. Attitudes like selfishness and lack of restraint can undermine, maim, or disrupt the negotiating process which involves concessionary behaviour. Employees possessing such traits may not modify them in part due to lack of exposure to

points of view or data contrary to their views. Under these circumstances, it is the role of third parties, the economic sanction, or both to attempt to reduce or eliminate impediments to a settlement such as unrealistic expectations or incorrect perceptions of the other side's outlook.

Every generation seems to think and say that employees have become more "militant" than workers of past generations. It is argued that they have a poorer attitude towards work and, in particular, lack pride in their craftmanship. It is said that they are not committed to the notion of a full day's work for a full day's pay. These attitudes are said to be held by the youngest generation of workers. Another oft-cited feature of today's employees, as products of an affluent age, is that they are more concerned with increasing their leisure time and leisure time activities than with their jobs. This attitude is encapsuled in the tee-shirt saying, "Your leisure is your pleasure."

Employee attitudes and characteristics such as a lack of understanding, selfishness, insatiable appetites, lack of commitment to the job, and the pursuit of economic self-interest are, in our opinion, largely reflections of the larger society as well as its strengths, illnesses, and shortcomings. In other words, society's values and attitudes are brought into the workplace by workers. Domestic problems, for instance, often affect workplace behaviour. Since the inception of the industrial revolution, child labour laws, and compulsory universal education, society has been faced with the dilemma of increasingly integrating more educated workers into workplaces involving repetitive mechanized production processes.

Workplace issues like occupational health and safety and the erosion of employees' job security through the introduction of technological change have been issues during the last two centuries and indeed are age-old issues. But, in the face of higher levels of educational attainment and greater overall affluence, there has been a shift in the emphasis placed on workplace issues. In other words, the fact that trade unions have been able to achieve improvements in the "bread and butter" items including wages and fringe benefits as well as hours and certain

working conditions has enabled trade-unions and the employees who belong to them to focus somewhat greater attention on issues dealing with occupational health and safety in particular and the quality of working life in general. Employees have achieved gains in these areas not only at the bargaining table but also through statutory changes. The relatively new and revised legislation in such areas applies to both unionized and non-unionized employees.

In summary, we have observed that societal attitudes, issues and concerns are the source of many, if not all of the issues and concerns associated with employees as participants in labour relations. The mandate of this project is not to change society but to recommend changes for improving the general quality of the labour relations system. In view of our mandate, we suggest that greater attention be paid to educating employees on the labour relations system and how it interrelates with our social, political, and economic systems. We see education in responsible democratic decision making as being an important area to focus on, since the system is built upon and promotes such decision making.

Before leaving the evaluation of employees in the system we wish to speak to the fact that under current statutes certain persons may not be "employees" within the meaning of the labour relations system or otherwise are not able to participate in the system. Our concern is with persons employed on farms and ranches, in domestic work, persons in the professions, and dependent contractors.

At one time the family farm and family-operated enterprises were the chief means for producing agricultural products. As a consequence of rural-urban migration, improved production methods, the larger capital requirements for farming and ranching, and other factors we have witnessed a decline of the family farm and family-run enterprises in the agricultural and horticultural sectors. In some cases, production activities in the sectors are carried out by large corporations with many employees and whose organization and management practices closely resemble their counterparts in the non-agricultural industrial world. Today students of agricultural science are taught the methods and technology of "agri-business"

at our universities and colleges. Although they may work under working conditions similar to unionized employees, employees in certain parts of the agricultural and horticultural industries are denied access under current legislation to the labour relations system and its method for establishing wages, hours, and working conditions. Domestic employees, ~~likewise,~~ are also not permitted to form and join unions or to participate in agreement negotiations and administration even though many of their fellow workers are permitted to engage in these activities. Neither group of employees can engage in these activities because they are specifically excluded from the application of the current LRA by reason of sections 2(2)(e) and (f). ~~However,~~ differential treatment of employees is not unique to labour relations statutes but also occurs under The Workmens' Compensation Act, The Occupational Health and Safety Act, and The Employment Standards Act. It is noteworthy that the same two groups of employees, farm and ranch employees and domestic employees, are covered by certain provisions of The Employment Standards Act. There is an historical explanation for this inconsistency between The Employment Standards Act and the LRA. Formerly, both employment standards and labour relations were embraced in and administered under The Alberta Labour Act, 1973. When the latter Act ~~originally~~ was first enacted, it excluded from its coverage farm and ranch employees as well as persons who were members of the medical, dental, architectural, engineering, or legal profession because it was believed the fair employment standards provisions of the Act should not apply to these groups of employees. The Alberta Labour Act, 1973 was split in 1980 between employment standards and labour relations resulting in The Employment Standards Act and the LRA. The definition of employee and application of The Alberta Labour Act, 1973 was carried over into the LRA but not necessarily into The Employment Standards Act. It should be noted that although many employees enjoy the right to form, join, and participate in trade unions and their lawful activities, only slightly above one-quarter of all non-agricultural employees have chosen to do so. Moreover, trade union penetration into some industries is well below ten percent. In order to eliminate statutory inconsistencies and to permeit

all employees the freedom ~~of choice~~ whether or not a trade union should represent them in their ~~employment~~ relationships with their employers, we believe that the LRA should apply to farm and ranch employees, ~~as well as~~ domestic employees, and that the definition of employee in the in the LRA include ~~rather than exclude~~ a person who is a member of the medical, dental, architectural , engineering, or legal profession qualified to practice under the laws of Alberta and employed in his professional capacity.

Labour relations statutes promote agreement negotiation and administration rights. Some employers place seemingly independent contractors in a position of depending on them for work. Sometimes these so-called dependent contractors work side-by-side with wage-earning employees, under the same working conditions, and with their remuneration scales based on those of wage-earning employees. Dependent contractors currently are not included under the definition of "employee" in the LRA and, therefore, are denied the opportunity of having a trade union represent them in agreement negotiations and administration if they wish. There is a legal saying to the effect that the distinction drawn is a distinction without a difference. In our opinion, this observation applies to the current distinction that dependent contractors are not employees but rather are independent contractors. The artificiality of this distinction, in addition to the principles of freedom of choice and self-determination, lead us to the conclusion that the definition of employee should encompass dependent contractors.

Trade Unions. A perennial issue facing trade unions has been the members' ability to exercise their freedom of choice and the degree of democracy within labour organizations. With regards to freedom of choice, an area of concern is that there be competition as to the trade union that will represent employees in their labour-management relationships. In terms of union democracy, concern is expressed over restrictions on membership in labour organizations, over the concept of closed membership, and over attempts by labour organizations to regulate the supply of labour. There also is concern about the continued exercise

of democratic principles in trade unions. This includes such things as employees' abilities to exercise the freedom and rights accorded them as members of society as well as of labour organizations, internal management and discipline within the trade union, responsibilities of trade unions at law, financial accountability of labour organizations particularly with regards to financial disclosure, and the management of health and welfare schemes as well as pension funds. In addition, general public discussion sometimes focuses on the quality and expertise of union leadership and the training of persons in the organization. The national-international composition of the trade union movement in Alberta and the rest of Canada traditionally has been an issue confronting society.

In order to deal with such issues and concerns, we consider it important to examine the nature, features and functioning of labour organizations. Trade unions are constitutionally based institutions. Indeed, they are required at law to have a written constitution prior to application for certification. Trade union constitutions and by-laws typically set out provisions such as the elected positions within the organization, as well as the powers, duties and responsibilities for officials filling those positions; election procedures and often strike vote or ratification vote procedure; members' rights and obligations; and an internal appeal procedure for dealing with intra-union disciplinary matters. ~~Thus,~~ Important substantive and procedural rights are spelled out in trade union constitutions and by-laws. Within this constitutional framework, the elected officials govern the labour organization, establish its policies and oversee the processes of achieving union recognition, negotiating labour agreements and administering them.

The fact that trade union officials are elected by a constituency comprising the members of the union means that the trade union is a representative democracy, much like credit unions, governments, corporations, clubs and societies. Trade union democracy, however, appears to us to be more vibrant and more responsive to its constituency than corporate democracy in particular. We see at least two reasons for this. First, corporate democracy is based on voting principles which

differs considerably from the one person-one vote precept of union elections. Only some shareholders, customarily common shareholders, typically can vote and their votes are determined by the number of shares they own. Moreover, proxy voting sometimes occurs in the election of corporate officials but not with respect to elected union officials. Second, trade union procedures frequently involve plebiscites of the constituency in the form of strike votes and ratification votes. Seldom, if ever, have memoranda of agreement been subjected to ratification votes by a corporation's voting stockholders. This is not to say that "takeover bids" and "shareholder revolts" do not occur within corporations and may focus at least partially on the labour settlement. The key point here is that our society in part is structured on the fundamental building block of representative democratic institutions, of which trade unions are an example.

It is possible to have trade unions which are constitutionally based but whose activities cannot be characterized as being democratic in actuality. Two such examples are the Nazi Party, which dominated trade union movement established in Germany during the 1930's and functioned into the mid ~~1940's~~ 1940s, and the ~~Marxist-Leninist~~ trade unions in most East European countries. The latter ~~functioned~~ largely as Communist Party organs and generally ~~were~~ are aimed at boosting productivity without necessarily seeking improvements in wages, hours and working conditions which is a major objective of North American and many other Free World trade unions. In practice, North American and Alberta trade unions, and their counterparts in other Free World nations, generally exhibit democratic behaviour in the sense that individuals can freely express their opinions, vote in elections and participate in the other lawful activities of labour organizations. union elections ?

~~However,~~ This is not to say that Alberta trade unions may not succumb to anti-democratic practices such as internal discipline of members which denies natural justice or to certain vagrancies such as manipulation of the organization ~~of stacking its functioning counter~~ against to the members' best interests and in favour of

vagaries

the elected officials. However, elected representatives in any democratic institution may cover up their activities or may pursue strategies and tactics which are designed to keep themselves in power but which do not serve the interests of their constituencies very well. Oligarchic decision-making often may characterize such institutions, particularly as they grow substantially. We shall return below to issues like internal discipline and focus for now on the issue of the possible divergence between members' and elected officials' interests. It is a phenomenon that confronts, in our view, any representative democratic institution.

To us, one of the major dilemmas facing any representative democracy like trade unions is apathy amongst the constituency. Low turnouts at elections often is one of the reasons that the interests of elected representatives may deviate from those of the members they serve and that oligarchic decision-making may take place. Indicative of the apathy within labour organizations is the frequently observed phenomenon that ~~the largest turnout at union meetings typically concerns~~ the largest turnout of members occurs at meeting which ratification votes, strike votes, or elections of officials shortly after a tentative agreement has been turned down or narrowly accepted. That is, ~~large turnouts generally occur~~ when ~~the so called~~ bread and butter issues of agreement negotiations are at stake and members' pocketbooks will be directly affected. Conversely, if the trade union leadership continue to "deliver" on these "goods", then they may remain in power even if they manage the organization's internal affairs in a high-handed or oligarchic fashion.

One proposal which often has been put forward is that unions be required to run multiple slates during the election of union officials. Another proposal is that there be a greater degree of education with respect to responsible participation in democratic decision making such as the election of union officials.

We have opted for the latter proposal for two reasons.

~~It is the latter course of action that we propose with regards to the conduct of union elections and votes. There are at least two reasons for such a proposal.~~ ~~The~~ First, ~~one is that~~ apathy tends to be a societal problem, as argued above. The other reason is that under our current labour relations laws employees are

provided with a freedom of choice and periodic opportunities to decide which, if any, trade union can best represent their interests at the negotiating table and in agreement administration. The certification and decertification processes are designed to periodically allow workers to freely express their desires as to which trade union represents them, and ~~it is~~ they are also designed to avoid or preclude forced recognition and employer-dominated trade unions.

Juxtaposed against the fact that trade unions are constitutionally governed representative democratic organizations which may exhibit oligarchic decision making is the fact that they also are protected associations. Both certified and voluntarily recognized trade unions receive exclusive bargaining rights. This means that individual members of a bargaining unit cannot negotiate individually with their employer and that the trade union is their agent for effecting ~~the~~ labour agreements. The trade union also polices the agreement and has the exclusive right to administer the agreement to which it and not the individual employee is a party, unless the trade union contracts out of this right. General labour relations statutes in Canada like the Alberta Labour Relations Act require that a grievance-handling mechanism be included in collective agreements and provide one through model clauses if the agreement is silent ~~on certain aspects of grievance handling~~. The compulsory inclusion of grievance handling mechanisms in collective agreements plus the legal recognition of trade unions as parties to those agreements means that, ~~in effect~~ subject to the duty of fair representation, trade unions have exclusive representational rights in contract administration unless otherwise agreed ~~to~~ by custom.

The existence of such exclusive representational rights means that trade unions face certain expectations and obligations as well as possible strictures for disregarding or abusing these expectations and obligations. Safeguards ~~or remedial actions lie under statutory law or at common law~~ exist in statute and case law, depending upon the exclusive representational right. With regard to agreement administration, section 138(i) of The Labour Relations Act (as amended) currently places upon a trade union the duty of fair representation, ~~In order to fairly represent employees,~~ which means that a trade union

must not act in a discriminatory or capricious manner nor in bad faith. Recourse is before the Labour Relations Board. Their duty of fair representation first took effect in Alberta on March 1st, 1981, so there is not extensive case law on it in Alberta. However, elsewhere in North America, the duty of fair representation normally will not apply to union agreement administration involving incompetence, laxity, negligence, or poor judgment on the part of the union representative. Just as such "malpractice suits" can occur with respect to agreement administration, they also may take place with regards to agreement negotiations. However, the avenue of recourse seems to be before the courts rather than the Labour Relations Board.[1] The jurisprudence applying to agreement negotiations also seems to require flagrant actions or misrepresentations. In other words, it probably would not embrace most representational squabbles or issues internal to trade unions or employers' associations. Generally speaking, it is expected that court actions will be more costly than transactions before the Labour Relations Board.

Trade unions are protected in other ways at law. In particular they are protected against certain unfair labour practices as perpetrated by the employer. These "unfair practices" are practices which restrain or preclude employees from exercising their lawful rights under The Labour Relations Act such as the right to organize, the right to participate in lawful union activities, the right to bargain collectively, the right to a lawful work stoppage, and the right to a grievance handling mechanism. There is some equivalence to unfair practices, to the extent that some of them apply to employer and trade union alike. Examples include intimidation, coercion and bargaining in bad faith.

Three important unfair labour practices pertain to internal disciplinary matters. One concerns the circumstances under which a trade union can compel an employer to dismiss a trade union member. Another covers the discriminatory application of trade union membership criteria to potential members. The other deals with the internal appeal mechanism as established under the union's constitution and by-laws. All three may be viewed as relating in differing degrees, perhaps, to

union security clauses.

Section 78 of The Labour Relations Act permits a trade union and an employer to negotiate a union security arrangement. The nature of such an arrangement is not restricted nor delimited at law and may include a closed or pre-entry shop, a union or post-entry shop, a Rand formula or agency shop, or an open shop. In addition, there is no statutory provision requiring a check-off mechanism. But, section 27 of the Act deals with the degree to which and the length of time for which employee authorizations concerning the deduction of union dues and initiation fees are binding upon employers, trade unions, and employees. It also establishes deadlines for the transfer of such funds from the employer to the trade union.

In our view, the issue of union security arrangements is essentially a political one. Legislative assemblies and the Parliament traditionally have not placed restrictions on union security arrangements in Canada. By contrast, their counterparts in Great Britain and the United States have seen fit to do so. We suggest that this issue be left in the political arena. This presumes that politicians are fully aware of the possibilities of having artifically high wages due to restrictions of entry into certain trades or indeed into so-called self-regulated professions. In addition, we wish to point out that removal of the right to negotiate closed shops in particular amounts to "take-back" legislation which favours those employers who already have been signatory to such provisions in collective agreements.

Section 137 (3)(ii) of The Labour Relations Act creates an obligation upon the employer not to "refuse to employ or to continue to employ" any person because that person "has been expelled or suspended from membership in a trade union for a reason other than failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union." Likewise, section 138 (f) prohibits trade unions from requiring an employer to terminate the

employment of an employee except for failure to pay union dues, etc. The Evergreen Services Ltd. decision (79 CLLC 14, 195 and 80 CLLC 14, 225) supported the finding by the Labour Relations Board that a trade union had illegally ~~sought~~ required ~~that~~ to the employer fire two members of the bargaining unit for reasons other than failure to pay union dues.

which? s 78 - 137(3)(ii); 138(f)?

The project members supports the view that such a provision protects members of a bargaining unit from dismissal for such things as exercising their rights of free speech within the trade-union. From a trade union standpoint this may be viewed as being deleterious in terms of intra-union discipline. However, just as with the employer's right to free speech during an organizing campaign, there must be a balancing of interests. In this case, we urge that the line be drawn to favor the protection of individuals exercising their rights and freedoms within democratic and protected institutions like trade unions. For this reason and in order to preserve the viability of trade unions as democratic organizations, we recommend retention in principle of those features of the Act which protect members from discriminatory expulsion from trade unions. See for instance, section 138 (g), (h), (i), (j), (k), (l) and (m).

So you mean the cited sections? If so, say so.

Section 138 (g) of The Labour Relations Act, for instance, requires that a trade union not "deny membership" in it "to a person by applying to him in a discriminatory manner the membership rules of the trade union." In addition, The Individual Rights Protection Act (R.S.A. 1980, Chap. I-2) in section 6 protects individuals from discrimination in hiring or continued employment on the basis of "the race, religion beliefs, colour, sex, physical characteristics, marital status, age, ancestory or place of origin of that person or of any other person". The provisions of the latter Act, as set forth in section one, have paramountcy over those in other statutes such as The Labour Relations Act.

should be?

Because trade unions are constitutionally based democratic institutions, The Labour Relations Act makes provisions in section 141 (2) for the exhaustion of internal appeal mechanisms in matters dealing with the discriminatory application of a

See comments appended pp. 7 & 8.

trade union's membership rules with regards to expulsion or suspension of membership or denial of membership as set out in section 138 (g) and to other disciplinary action as set out in section 138 (h). ~~However,~~ should the Labour Relations Board deem either that "the action or circumstances giving rise to the complaint is such that the complaint should be dealt without delay," as stated in section 141 (3) (a) or that "the trade union has not given the complainant ready access to a reasonable appeal procedure," as stated in section 141 (3) (b), the Board can deal with the matter at hand. Moreover, section 26 of the Act stipulates as follows (emphasis added):

> 26. No trade union shall expel or suspend any of its members or take disciplinary action against or impose any form of penalty on any person for any reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade-union as a condition of acquiring or retaining membership in the trade union, unless that person has been ...
>
> (a) serves personally or by double registered mail with specific charges in writing.
> (b) be given a reasonable time to prepare his defense,
> (c) afforded a full and fair hearing, including the right to be represented by counsel, and
> (d) found guilty of the charge or charges, and if a monetary penalty is imposed, fails to pay it after having been given a reasonable time to do so.
>
> Recourse under section 26 presumably lies before the courts. Section 26 (c) reiterates the relevant jurisprudence which holds that there is a duty to be fair during such proceedings particularly where the decision affects the livelihood of an individual.

The project has found that there is a wide-spread or serious abuse of members' internal rights within trade unions with regards to the meting out of discipline, suspensions and expulsions. As was explained above, many safeguards are provided for in The Labour Relations Act to ensure that employees are given fair treatment within the disciplinary machineries provided for in trade union constitutions and by-laws. On face value these statutory provisions seem to us to be desirable and well-conceived and to afford a good deal of protection for individuals' rights. ~~However,~~ in our opinion, the legislation should go further and encourage and provide for highly informed decision-making within trade unions. To this end, we suggest that trade unions be statutorily required to provide members with copies

of the constitution and by-laws upon request. Why?

In general, we do not observe in Alberta anything which approaches the degree of corruption and strong-arm tactics that were revealed in Quebec in the Cliche Commission's report. Rarely has trusteeship been imposed in Alberta either by national or international headquarters or by government. Calls for the imposition of governmental trusteeship also seem to have been very infrequent. However, there have been several cases in recent years in which funds disappeared from union pension funds.

In order to avoid such abuses of authority and to promote more informed and more responsible decision making within trade unions, we suggest that pension funds, health and welfare schemes and other such funds be required to be jointly administered and the trade unions become more financially accountable to members about their overall operations. Several governments in Canada currently require the disclosure of financial statements to members upon request. We view such provisions as an important contribution to responsible and democratic decision-making and therefore, urge adoption of similar provisions in Alberta.

We have two suggestions for studying

It may be that many people do not agree with our observations and remarks as to the extent of anti-democratic practices within trade unions operating in Alberta. If this matter be deemed a serious public issue, we have two suggestions for studying it. We recommend, first, that research be conducted on its nature and scope and, second, that one possible means for dealing with it would be through either establishing the office of Labour Ombudsman or giving additional latitude in this area to the existing Ombudsman. One reason for considering the use of an Ombudsman is to attempt to provide a fairly quick method, hopefully neither overly costly nor litigious, for resolving complaints, and, perhaps, to avoid overlapping or concurrent jurisdictions between, say, an arbitration board and the Labour Relations Board. A final observation that we wish to make concerning alleged anti-democratic practices within trade unions is that attacks on the management of internal union affairs, though directed at trade unions, often are in

fact directed at the existence of the labour relations system and in turn at the institutions of agreement negotiations and agreement administration.

To return to our theme of promoting more responsible democratic decision-making, we recommend that a labour directory be published by the Department of Labour. The labour directory would include the names and addresses of the top officers in trade unions and employers' associations as well as membership figures for these organizations. The directory would serve several purposes. For one, it would assist employees in "shopping" for a trade union and employers looking for an employers' association. For another, it hopefully would provide a bit more cohesion to the labour relations community in Alberta, perhaps, in particular with regards to agreement negotiations and agreement administration dealings. Finally, it should facilitate research into labour-management relationships.

Possibly the most serious problem facing trade unions from a public policy viewpoint is that some trade union leaders, especially upon initially assuming office, lack expertise in agreement negotiations and agreement administration. This lack of expertise may lead to unnecessary work stoppages, poor resolution of grievances, and increase the level of conflict or antagonism within the affected labour-management relationships. In other words, some people, on both sides of the bargaining table, are placed in positions for which there are no procedures for acquiring the appropriate qualifications or experience and for which they are ill-equipped. Given the increasingly more public nature of labour-management relations, we find this to be a disconcerting feature of the labour-management system. In our opinion, this calls for greater commitment and preparedness on the part of trade unions, employers and their associations, as well as government to build up the expertise and knowledge of practitioners residing within the labour-management community of Alberta.

We believe that concerns with regards to the national/international composition of the Albertan and Canadian trade union movements should be balanced against the

freedom of choice, which is a guiding principle of our labour-management system in particular and our society in general. Workers are granted this freedom of choice and periodically are given the opportunity to exercise it in the course of labour-management relationships. In our opinion, they should continue to be permitted to do so. We note that the trend over the past two decades has been towards a declining percentage of Albertans and Canadians to belonging to the so-called internationals. We also note that this recent trend, combined with the threat of losing Canadian trade union members to national unions, either through breakaways or replacement, has caused many international unions to grant Albertans and other Canadians greater autonomy or authority over the decisions affecting them.

In summary, trade unions are constitutionally based representative democratic institutions much like many other organizations in society. The strengths and weaknesses of trade union democracy are, by and large, a reflection of their counterparts in our society. Our proposals have focused primarily on safeguarding the exercise of the individual rights and freedoms accorded to members of our society and on promoting responsible democratic decision-making in trade union matters by encouraging greater financial accountability than was heretofore statutorily required in Alberta.

Employers. ~~Probably~~ One of the most fundamental issues facing the labour-management relations system is the nature and extent of employer resistance to, commitment to and involvement in the system. Before stating concerns about management with regards to these and other issues we wish to point out that management is not homogeneous. It embraces a wide variety of employers' operations in the Provinces which vary widely as to size, scope and the nature ~~of their operations~~. Unionization or the threat thereof can have different impacts on management, depending upon such factors as the size of the operation, key personalities involved and the history of the labour-management relationship within the enterprise. For instance, although all management view

unions as being responsible for increased labour costs to the enterprise through their requests, we generally expect that this would have a greater impact on smaller firms and that they would be more hostile towards unionization, all other factors remaining the same. Of course, factors other than cost consciousness often are not the same across firms, and these other non-economic factors can temper or aggravate employer hostility and reluctance towards entering into and continuing to be involved in labour-management relationships.

The spectrum of management attitudes towards unions varies from outright rejection through toleration to acceptance. The reasons for rejection are both pragmatic and philosophical. On pragmatic grounds unions are rejected because they are viewed as obstructionist and non-productive entities. Managers usually oppose unions because they are inconvenient to deal with, challenge management prerogatives, and undermine employee loyalty towards management. Philosophically, the concept of collectivity clashes with the capitalist notion of individualism.

On average, however, management does not necessarily reject trade unionism as a part of our society. In particular, 67.5% of management strongly agreed or agreed with the following statement: labour unions are needed in our society. This question was one of several in a public opinion survey conducted in 1977 as background research for this report. Other responses to that question included 71.3% of the sample, 81% of university graduates and 84% of respondents affiliated with unions supporting it. However, there was less support for the extension of the labour-management relationship among occupations such as engineers, lawyers, doctors, architects and dentists. For instance, management opposed this by 57.4%. Hence, these results must be interpreted with a certain amount of caution.[2]

It is noteworthy that a few employers voluntarily recognize trade unions as exclusively representing their employees' interests in agreement negotiations or agreement administration. Voluntary recognition sometimes is conferred upon "in-house" unions, particularly when a more embracing union is "waiting in the

wings." We see no reason to restrict the employer's exercise of his freedom of choice in this manner, for other labour organizations can challenge at law that the voluntarily recognized trade union is employer-dominated. If this allegation be upheld by the Labour Relations Board, the collective agreement involving the so-called company union is deemed to be null and void and, therefore, no longer constitutes a bar to certification. In our opinion, such provisions should be retained, so that full-fledged labour management relationships cannot be blunted through voluntary recognition.

Our labour-management system generally reflects the hostility and resistance by some employers towards trade unions, in that the system historically has been regulated in a highly legalistic manner with recourse before quasi-judicial bodies such as labour relations boards. The relevant statutes provide against employer and trade unions engaging in fair labour practices. In other words, the statutes are oriented towards protecting employers and employees against those practices which inhibit them from exercising those rights accorded them at law. In short, the existence of protections against unfair labour practices encourage the formation of and participation in labour-management relationships.

Since employer resistance or hostility towards the union is inherent to the labour-management system but manifests itself in varying degrees and since employers can exercise considerable control over employees' livelihoods, we believe that the notion of unfair labour practices should be retained in labour-management legislation. In short, the employer's rights of free speech and freedom of action must be balanced against employees' rights to form trade unions and engage in their legitimate activities.

Management's resistance or hostility towards unions sometimes expresses itself in a reliance, and in some isolated cases in what we perceive to be an over-reliance, on labour-management resources external to the firm, including lawyers and labour-management relations consultants. On the one hand, management has a right to avail itself of such resources. This freedom of choice

is a right that we consider to be a fundamental labour-management right. Moreover, resources external to the firm are precisely that; they are resources which can provide management with specific expertise and competence in certain areas that do not reside in-house. Labour-management relationships are power relationships and powers may be lost or poor precedents established because management did not consult outside experts. In this sense, outside experts can provide potentially valuable inputs into the management of the labour management relationship. On the other hand, we wish to point out that there are certain potentially harmful consequences to the labour-management relationship which can be associated with the use of experts outside the firm, especially in the day-to-day managing and functioning of the labour-management relationship. Labour-management relations often are delicately balanced and latently explosive, as noted above. Over-reliance on external resources in managing labour-management relations generally can lead to such things as poor communications with attendant misunderstandings, the institution of goals and objectives which differ somewhat from those of the enterprise, a loss of trust and respect with a consequent lack of appreciation for one another, a decline in employee moral and subsequently in productivity, poor decisions because the outside "expert" lacked expertise or competence in certain areas, a loss of "hands-on" control and with it an abdication of primary responsibilities by management as well as a general deterioration in the interactions between the primary parties to the labour-management relationship.

Specifically, the "resistance at all costs" strategy involving considerable reliance on outside resources may backfire, since the law promotes the establishment of labour-management relationships. It may mean that the parties start their relationship "on the wrong foot" and continue to do so for many years. Other specific possible pitfalls are associated with the use of resources external to the firm. For one, if over-reliance upon such outsiders develops, the labour-management relationship may be transformed from a bilateral one into a triangular one with attendant complexity in dealings, communications problems, and

less clear lines of authority. For another, unfortunately, some parties external to labour-management relationships, as well as the primary parties to such relationships, have made some costly mistakes. It is an unfortunate fact that outsiders do not have to live with the consequences of such mistakes, unlike the primary parties. The lesson for management seems to be that it receives the kind of relationship it deserves. Consequently, if management elects to use labour-management resources external to the firm it should use them in a consultative or advisory capacity only and not in a reliant or dependent manner. Management, in our view, should not abrogate its responsibilities to make the final decisions in all areas, including labour relations. In short, management should remain "in the saddle." Abrogation of decision making responsibility and an apparent lack of commitment undoubtedly will cause the relationship to deteriorate. In order to avoid this, we believe that decisions should be made by those who control employees in the workplace. We also believe that just as most trade unions bring to the labour-management relationships a 24-hour a day commitment in time as well as energy and financial resources, so should management. Labour-management relationships to us are full-time relationships which require a commitment of resources, expertise, manpower and financial resources and which like so many other relationships to be effective, they must continuously be worked at. Such recommendations are oriented towards promoting greater self-reliance and responsibility.

Another concern is that some employers tend to be only passively involved in labour relations. The labour-management relationship often involves challenges and responses. It is not uncommon for managements to wait for challenges to arise, rather than seeking out new challenges and dealing with them in vigorous or innovative ways. We suggest that management seek out challenges and implement approaches in a constructive rather than a destructive manner. Otherwise, as noted above, it will get the kind of relationship it deserves. One avenue of constructively approaching labour-management relations is to be on the look out for issues of confrontation that are about to arise and "taking the bull by the

horns" in order to head off future confrontation. In a similar vein, we note that some managements tend to be secretive in their labour-management dealings. More open and less secretive dealings with regards to such issues as technological change and the scheduling of work may avoid major confrontations in future. If they do so, the benefactor of such enlightened behaviour presumably will be the labour-management relations system, in addition to workers in Alberta.

The government, in our opinion, could promote greater commitment, self-reliance and innovation on both sides of the negotiating table by expanding its funding for or provision of education in labour-management relations. This educational program could operate from inside or outside through sponsorship of workshops, seminars, and substantive courses.

Concern is expressed over abuses of employer authority and control in the work place. However, safeguards against this are provided at law as well as under collective agreements. Statutory protections against such abuses include The Employment Standard Act, The Occupational Health and Safety Act, The Workmen's Compensation Act, and The Individual Rights Protection Act. As well, the compulsory inclusion of grievance handling mechanisms in collective agreements provides a means for alleviating alleged violations of rights under collective agreements. Moreover, such mechanisms are intended to provide a measure of protection against capricious, discriminatory or arbitrary decisions by management, particularly with regards to discipline and discharge for "just cause". Thus, the employer who is not fair with his employees conceivably would lose in arbitration, if the grievance proceeds that far, or may become unionized if he previously was unorganized. Given these circumstances, it seems to us that it is incumbent upon governments and trade unions to be vigilent and carefully monitor in this area.

Finally, we consider that employer associations and organizations are appropriate institutions for labour relations, for at least two reasons. First, they typically provide professional services with regards to agreement negotiations and

agreement administration. Second, if employees are afforded the opportunity for collective action, employers to us should also be permitted to engage in collective action. Consistant with the principles of commitment and the "hands-on" management of labour relations, we urge managements belonging to employers' associations or covered by their agreements to not only manage their day-to-day affairs but also be mindful of and consult with the corresponding employers' associations so that uniform practices are maintained under master agreements. As a party to the collective agreement, employers' associations apparently have an exclusive obligation at law to "police" or act as a "watchdog" with respect to rights under collective agreements they negotiate and administer. They presumably can delimit or contract-out of some of these rights under the constitutions and by-laws which govern relationships within these organizations. Under The Labour Relations Act (section 29) an employers' association which contemplates seeking a registration certificate in the construction industry must file a copy of its constitution and by-laws with the Labour Relations Board prior to making such an application. Because collective action presumably confers exclusive representational rights upon employers' associations as well as trade-unions, we recommend that all employers' associations periodically be required to forward up-to-date constitutions and by-laws to the Labour Relations Board and that the duty of fair representation which applies to trade unions with regards to agreement administration be extended to cover employers' associations. (See section 138(i) of The Alberta Labour Relations Act.) This recommendation is based upon a desire on our part to provide a relatively inexpensive avenue of recourse against alleged abuses of exclusive agreement administration rights on both sides of the negotiating table. It has been implemented in other Canadian jurisdictions, including British Columbia. We shall address below the role and function of employers' associations within the legal framework and structure of agreement negotiations.

Labour Boards. The role and function of labour boards in the system was presented above. A brief recapitulation follows. Perhaps, the singlemost important feature of labour boards is that their scope of activity is narrower than the

scope of activities which take place in labour-management relationships and which are regulated by the relevant statutes. In addition, there is in our view what amounts to an artificial splitting of jurisdictions between the Labour Relations Board and the Public Service Employee Relations Board. As indicated below, we propose the establishment of a labour board with a broader involvement in labour-management relationships than has been the case so far in Alberta, partly in order to avoid duplication of effort by the two currently existing labour boards.

As a participant, a labour relations board is a quasi-judicial tripartite body which administers the labour-management relationships within the Act under which it is constituted. It is involved in guiding the labour-management relationship to a certain extent from its infancy, on to maturity. The labour board recognizes the employees' or employers' organization and "licenses" it by issuing a certificate, so that it can engage in contract negotiations and agreement administration. The labour relations board initially determines, and may periodically give explicit or tacit approval to ~~tacit~~ changes in, the structure of negotiations. That is, it determines whether or not negotiations will be single employer-single union, single employer-multiple union, single union-multiple employer or multiple union-multiple employer. Through unit determination, it determines which employees or employers the embryonic trade union or employers' association will represent in the labour-management relationship. A labour board also regulates the processes of organizing, agreement negotiations and agreement administration in the sense that it determines, upon application by either of the primary parties, whether or not any of the unfair labour practices associated with those processes were committed. If such violations or others occurred under the appropriate piece of legislation, the labour relations board statutorily is granted a choice of several remedial actions. The standard that tends to govern remedial actions taken is the standard of placing the person whose rights were ~~breached~~ violated under the statute in the position he would have been in had the violation not occurred. Of course, this same criterion is involved in civil actions. Broad investigatory powers and

evidentiary rules are conferred on labour relations boards so that they can effectively yet informally apply the act they administer. Two labour boards currently function in Alberta: the Labour Relations Board and the Public Service Employee Relations Board. These two boards do not exercise the same latitudes of authority with respect to third party intervention. Unlike the Labour Relations Board, the PSERB is responsible for appointing mediators during the contract negotiations process as well as grievance adjudicators and interest arbitrators, should the parties fail to agree on either a sole arbiter or adjudicator or on the chairman of an arbitration board. However, with the exception of third party intervention, the LRB and PSERB carry out virtually the same functions as explained above. It seems to us that this is a needless duplication. Indeed, there is at least one Canadian jurisdiction in which one labour board carries out the same functions under two labour relations statutes, one dealing with the private sector and the other with the public sector. Thus, it clearly is possible for one labour board to administer the labour-management in both the private and public sectors. Moreover, if one labour board administers the provision of third party intervention and this is the only major function differentiating one labour board from another, impliedly the other one could exercise this function, too. Alberta presumably has two labour boards conducting essentially the same functions largely because employees under the PSERA are not permitted to engage in lawful work stoppages but their counterparts under the LRA are allowed to do so. If the determination of the work stoppage availability resided with a labour relations board, and if all employers and employees were covered by one act conferring the power to make this determination on the labour board, only one labour board need be established.

We urge that only one labour board function in Alberta and that it be empowered to make determinations on the availability of the work stoppage. There are at least three reasons for this suggestion. First, we envisage a single act, The Alberta Labour Relations Code, governing all labour-management relationships in Alberta. Second, we recognize that the lawful work stoppage should not be

available to all labour-management relationships, especially those involving, for instance, police and firefighters. Third, there are several attractive features to having a labour board make the work stoppage availability determination. One attraction is the fact that labour relations boards are comprised of representatives of labour and management as well as from the public, all of whom possess a familiarity with labour relations. Another is that, as argued above, labour relations is a public affair, and, consequently, we envisage a labour relations board into which the public has input both through appointees on the labour board and through representations the public can make before it, just as the public enjoys the right to appear before certain other administrative tribunals. Finally, we have designed a set of criteria for the determination of the work stoppage availability which take into consideration not only labour relations but also the public interest and which the labour board must judicially apply.

The one labour board should be called the Alberta Labour Relations Board, or ALRB for short, in order to distinguish it from its predecessor organizations, the LRB and PSERB. The ALRB, like its predecessors, would have a tripartite composition, consisting of labour and management representatives as well as representatives of the public. However, unlike the current boards, the ALRB would be comprised of two sets of public representatives. One would be the current neutrals or, alternatively, the chairman and vice-chairmen who participate in the labour relations system and a number of whom are labour lawyers. The other public representatives would be drawn from the public at large. The rationale for their appointment to the board is to have direct representation from the general public, since labour relations, in our opinion, has "gone public." The current composition of the LRB and PSERB is designed for purposes of manning, being able to rotate board members among cases, and training labour relations practitioners in labour board transactions and affairs, as well as providing for intercourse between and feedback to and from the labour relations community that it serves. In our opinion, this is desirable and should be retained but expanded to provide for direct public input and feedback.

The parties' representatives on the LRB and PSERB currently are part-time members with fixed, but often differing terms of appointment. By contrast, the public representatives with labour relations experience and knowledge, who are the chairman and vice-chairmen and often are called "neutrals," serve "during pleasure." Having the neutrals employed during pleasure, unfortunately, may make them beholden to the politician/minister who has appointed them and to whom they report. Our objective, quite frankly, is that the ALRB be as independent of government as possible. One important reason for the desired objective of independence is that the third party intervention role and, perhaps most significantly, the work stoppage availability determination would be embraced within the jurisdiction and powers of the ALRB. As we see it, this kind of jurisdiction and power expansion is a very persuasive reason for granting the ALRB as much independence from government as possible.

We, therefore, suggest that full-time and part-time members of the board be appointed by the Lieutenant Governor in Council, that they have fixed terms of appointment ranging from three to seven years, that they answer and report to the Legislative Assembly of Alberta, and that they be capable of removal for cause by the Legislative Assembly. In our view, vacancies on the ALRB should be filled on a rotating basis so that new representatives of the primary parties and the public are periodically injected into the Board while simultaneously providing for continuity on the Board. In addition, members of the ALRB should have diverse backgrounds and possess high levels of competence in order to enable the Board to deal with a wide range of issues consonant with the broader jurisdiction and powers that are envisaged for it, as alluded to above.

The two policies, rotation but continuity and diverse backgrounds but high competence, are intended to promote responsiveness, adaptability, and flexibility in the administration of labour relations law by the ALRB. We noted above that labour relations are dynamic and often in a state of flux, chiefly because of changes in the environment and the ingenuity and originality on the part of some

participants. As a consequence, labour board concepts and jurisprudence frequently, if not always must be responsive, adaptable, and flexible. The fact that a labour board deals with questions of law in particular as well as questions of fact dictates, as we see it, that demonstrated legal competence reside within the ALRB. Consequently, the ALRB probably would engage in periodic training and development of Board personnel, particularly those members with lay backgrounds. The salaries of members of the LRB, as well as those of mediators under the LRA, currently are subject to government salary guidelines or collective agreements with their employees. We envisage that the members of the ALRB would be paid in accordance with the extent of their duties and responsibilities, particularly to the public they serve. There is a mechanism with the Provincial Government's organizational framework which would assist in ensuring the independence of the ALRB with respect to staff and the deployment of staff, including mediators who, in our view, would be housed under the auspices of the ALRB. The mechanism is spelled out in section 92 of the PSERA as follows:

> 92. (1) The Board may govern the remuneration, travelling and living expenses to be paid to
>
> (a) the chairman and other members of an arbitration board, and
>
> (b) a mediator.
>
> (2) For the purposes of The Financial Administration Act, 1977, the chairman has all the powers of the head of a department or the deputy head of a department.

In other words, the ALRB would become a department as the PSERB currently is. Presumably financial support for the ALRB under an arrangement of this type would be compatible with the role, functions, duties, and responsibilities of the Board. A quorum of the board would consist of the chairman or a vice-chairman presiding and three other members with one representative from each of the following: labour, management, and the public. It is important to note that the chairman or vice-chairman would be presiding and that the public representative would be able to fully participate in hearings rather than preside over them. If a

larger quorum were deemed to be appropriate, we propose that parity representation be maintained among labour, management, and the public.

It is our opinion that the parties involved in transactions before the Board be granted the authority to enforce and compel the attendence of witnesses without necessarily involving the Board, as is done in the judicial system. Permitting the parties to draft and serve notices to attend should expedite the proceedings before the Board and reduce costs to the extent that under our proposed scheme for the attendance of witnesses, the parties would become responsible for paying conduct money.

The voting criterion would remain as it currently is for the LRB and PSERB, namely, a majority of the members of the Board present and constituting a quorum. If there were a tie vote, the chairman or vice-chairman presiding at the meeting could cast a second vote, as currently is allowed under the LRA and PSERA. The project members suggest that dissenting awards be written, to stimulate debate, to promote free expression on the issues, and to highlight public policy considerations. In our view, the ALRB should be a forum for lively and agressive debate on the issues in Alberta's labour relations. In order to facilitate this, Board members should be required to express their views on labour relations, to vote and to have their votes recorded and reported.

We consider it right and proper that awards of a labour relations board be reviewable in a court of law, as currently is the case. The scope of judicial review which currently applies to labour boards is appropriate in our view. However, we strongly urge that the court before whom the review function be carried out be the Court of Appeal rather than the Court of Queen's Bench. Two administrative tribunals in Alberta, the Development Appeal Board and the Public Utilities Board, currently enjoy the privilege of review by the Court of Appeal. What we contemplate is an active, highly participatory labour board, which, in our opinion, should be accorded the same status. Some of the reasons for Court of Appeal review of Board decisions include the speed, probably cheaper, and more

This has to be argued better. eg – C.A. can develop expertise currently [redacted] in Q.B.

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definitive nature of review decisions by the Court of Appeal.

We envisage a labour board which will regulate and administer the totality of the labour-management relationship and be responsible for the entirety of adjudications under the statute it would administer, including sanctions for the breach of the Act. Accordingly, the jurisdiction as well as the powers of the ALRB would be more encompassing than those of either the LRB or PSERB, as explained below. Given the extent of the expected involvement of the ALRB in Alberta's labour relations system, we recommend that all decisions of the ALRB, as opposed to only some of the decisions of the LRB and PSERB, be capable of enforcement through registration with the Court of Queen's Bench.

What follows is the rationale for having a labour board invested in jurisdiction, powers, including remedial powers, and functions which touch on the labour-management relationship from its inception through maturity or possibly through termination. As presently constituted and explained above, our current labour relations system is balkanized. Jurisdiction over labour relations matters, for instance, is artificially fragmented between the two labour boards, currently operating in the Province. Varying amounts of authority and responsibility are allotted to the Minister of Labour, the two labour boards, and the courts. What this means is that the system, as it presently exists and functions, is very roundabout and there is not one central body which can exercise what it deems to be appropriate corrective measures without, perhaps, having them nullified or partially blunted by some other body. The labour relations system functions primarily to the extent to which the primary parties are capable or incapable of making it function. Little room is left for novel initiatives or innovation by the primary parties, since they are too busy attempting to keep the system operating. With the parties running the system and focusing solely on their immediate goals and objectives, the public interest in Alberta's labour relations system, which we argued above is an important feature of that system, is lost sight of or becomes swamped by self-interested concerns. Moreover, the system is highly vulnerable to

political and other developments which impinge upon it, rather than being buffered or insulated from them. With the primary parties at the controls, so to speak, and given the fragmented nature of the labour relations system, there is no one source of responsibility or accountability for guiding the system towards one overall objective, such as the smooth and efficient functioning of the labour relations system as a whole. Instead, what happens is that measures taken in one sector of the economy may adversely impact on another sector of the economy, and there may be a very long time before the system reacts or adapts to changes outside the system or new developments from within it.

A labour relations system with a labour board like our ALRB offers the following advantages. First, it ~~should~~ would have the time, expertise, skills, and commitment to address labour relations issues. Second, the nature and impact of its decisions should be an improvement to the extent that the ALRB would be an institution whose focus is the totality of the labour relations system and which can determine and apply the corrective action it considered best suited for the circumstances at hand. In short, it would have greater latitude for innovation. Third, it moves the day-to-day labour relations decision-making outside the political arena. Fourth, the consolidation of responsibility for administering the totality of labour relations in the ALRB would streamline the system to the extent that the parties need only approach one body to seek solutions to concerns or problems facing them. Fifth, the system hopefully would gain greater credibility and commitment from the primary parties because they could focus more time, energy, and money on the issues and concerns directly affecting them rather than in activities such as seeking assistance from a variety of sources or determining the impact of fragmented jurisdictions on their enterprise or operations if they happen to straddle the jurisdictional boundary. Sixth, it presumably would gain greater credibility and support from the public through the avenues provided by the ALRB into issues, problems, and concerns affecting the public interest. Seventh, the concept of one labour board exercising a broad jurisdiction and far-ranging powers means that public policy issues which sometimes are lost

I don't believe this (as understated)

track of in the process of frantically attempting to keep the system running, could be addressed. Eighth, this concept also enhances the response capability of the system in terms of flexibility and presumably speed of response. Nineth, it provides a means for returning this system which originally developed among the principal parties, labour and management, to them but subject to public inputs, feedback, and scrutiny. The study group urges that the role of intervenor in Alberta be given to the ALRB, as currently takes place under the PSERA with respect to the Public Service Employee Relations Board. In other words, the Board would be responsible for appointing mediators and Disputes Inquiry Boards, in addition to grievance arbitrators/adjudicators as well as interest arbitrators, should the parites fail to agree. Other than the fact that the PSERB presently exercises this function, another reason is to return to the primary parties through their labour board some measure of input into third party intervention in Alberta, which is provided at least partially to assist them in resolving their disputes. Other reasons will be given below.

The study group strongly suggests that the ALRB be given not only the initial but also an on-going plenary supervisory responsibility and authority with respect to negotiating structures. Mechanisms are suggested below for fostering or permitting more centralized and broader based negotiating structures. To the extent that various negotiating structures can have differing, possibly disruptive impacts on the public, they are an aspect of labour relations which can involve a very high degree of public interest. It is with issues like the negotiating structure in mind that we have proposed an expanded representation of the public interest on the Board. Historically, labour boards have exercised initial responsibility and power in determining negotiating structures. The parties, generally speaking, have been left to the own devices in determining the future evolution and development of negotiating structures, as a rule with little monitoring or input from labour boards, and primarily with foremost considerations to their own interests. Thus, public policy considerations have been greatly overshadowed by the parties' self-interests in regards to the on-going evolution and development of negotiating structures.

where do you argue this view fully?

As alluded to above, we envisage a labour board which can determine the availability of lawful the work stoppage to the primary parties. They may be denied access to the lawful work stoppage as a tool for engaging in agreement negotiations where the board deems this inappropriate for reasons set out below. Alternatively, they may be permitted to engage in full or partial work stoppages, as the board deems appropriate under the circumstances. The negotiating structure clearly is a key variable for determining the potential efficiency of negotiations and the potential impact on the public interest under the various negotiating schemes that the Board could deem appropriate. This makes it imperative, to us, that the Board be able to fashion initially as well as on an on-going basis in view of the feedback it receives, the negotiating structure as well as the negotiating framework for agreement negotiations. In short, we view these two variables as being integrally linked, since they can be adjusted in tandem in an effort at producing the best overall framework and structure for agreement negotiations. Moreover, the ALRB would be comprised in a manner to provide not only for representation by the primary parties but also the public in the determination of the framework and structure of agreement negotiations.

The project members recommend not only that the ALRB regulate access to the work stoppage activity and determine whether this activity be full or partial but also that it administer the work stoppage. The former concerns what we shall call the "scope" of the work stoppage activity. The latter refers to the actual conduct of the work stoppage through picketing and related activities. This will be referred to as the "form" of the work stoppage activity. It is partly in order that these functions be carried out in a proper manner, considering all points of view and bringing as much experience as possible to bear on these decisions, that we envisage a well-paid labour board independent of government, comprised of the best people with diverse backgrounds not only within the labour relations system but also from the public at large. In the administration of the work stoppage, the Board would exercise an enlarged jurisdiction partly in order to draw upon the expertise residing within the Board and chiefly in order to manage all facets of

the labour-management relationship in attempting to guide each labour-management to maturity. Specific provisions for the administration of the work stoppage are presented and discussed below. A particular remedial measure which the Board, as we view it, would require, would be the power to impose damages for breaches of the Act, ~~it administers~~. This expansion in remedies and total remedial authority, is intended to promote the objective that the ALRB manage all aspects of the labour-management relationship in Alberta.

In order to provide for flexible administration of the Act ~~that the ALRB administers~~ as well as the use of sound labour relations principles and practices, we propose three additional Board powers. They are, first, that the Board be able to abridge or enlarge time provisions in the Act ~~it administers~~ as it deems necessary, second, that the Board have the power to review terms of a collective agreement and declare void those terms unreasonably interfering with the carrying on of a business, having due regard for the reasonable protection of trade unions and their employees, and, third, that the Board be empowered to rectify collective agreements, just as the courts can rectify contracts.

The two labour relations boards currently operating in Alberta develop procedures guides or manuals and practice "open-door" policies. They tape record hearings, permit the public to attend, are receptive to discussions on issues concerning organized labour or management, and make their decisions available to the public. From a public standpoint these policies and practices clearly are desireable. We commend them accordingly and recommend their continuance in future. Along the lines of increasing public accessibility and monitoring, we will speak below to increased public input and representations in processes like the certification process.

Finally, in view of what was said above, we support the proposition that there be financial accountability in addition to Board review with regards to pension and health and welfare plans, notwithstanding anything in The Trustee Act. The preponderance of proposals on the jurisdiction and the powers of the Board were

set out above. Some additional proposals or more specific suggested provisions are spelled out below.

Government. As noted in Chapter I, government occupies a number of roles in Alberta labour relations. It is our opinion that it now occupies the dominant participant position in Alberta labour relations. It now attempts to be all things at all times to all people and it is our opinion that in so doing it does not serve the system well.

This emergence of the dominance of government and its multi-faceted role is not a development that occurred overnight. It has been a gradual process initiated primarily by the forces of government and in great measure aided and abetted, albeit unwittingly, by both labour and management interests, both of which saw advantage in government participation. This trend is not unique to Alberta or Canada nor to the field of labour relations and can be similarly observed in other fields of industrial and social endeavours. It is a development consistent with a frequently held view that in today's society government can solve all our problems and be all things to all of us. It is a development consistent with the general social milieu of our times.

Notwithstanding its acceptance in the general milieu of our times, we do not believe that serious participants in Alberta labour relations accept it as an operative principle in Alberta labour relations. Labour relations is not an activity that can be effectively shaped by government regulation, participation, nor control. Effective and constructive labour relations is built upon the efforts, commitment, and understanding between the principal participants of labour and management. It is our opinion, that effort, commitment, and understanding of labour and management are not commodities available to government nor are they suited to government regulation and control. Government simply does not have these commodities available and it does not have the capability of acting as a surrogate. In short, effectiveness in labour relations is not a commodity that can be generated from a regulatory activity. It is our view that the Alberta labour

relations community is presently faced with a difficult choice. On the one hand, it can continue to accept ever greater governmental participation or it can reject such a trend in favour of returning the effective functioning of the system to the remaining members of the community. It is our opinion that the latter alternative is the only meaningful choice available given the objective of effectiveness in labour-management relations. Without a dramatic reversal in direction, we clearly forecast the demise of the labour relations system as we now know it and with it the democratic qualities of self-determination, free choice, collectively determined decision-making, self-help, and the remaining vestiges of free labour market determination.

In Chapter I we identified the long-standing roles that government has assumed in Alberta labour relations. They are: intervener, facilitator, regulator, employer, and custodian. Placed upon the backdrop of time we note that in terms of the degree of participation the roles of intervener, facilitator, and regulator dominate the history of government participation, whereas, the roles of employer and custodian are, comparatively speaking, ~~virtual~~ newcomers to the scene. Historically speaking, government is not doing anything fundamentally different in its intervener, facilitator, and regulator roles. These traditions are not only well established but also well accepted and welcomed within the labour relations community. They are roles that, by and large, serve the system well. On the other hand, the roles of employer and custodian have experienced not only rapid growth and development but also have been assigned priorities that to us are unacceptable assuming that government is to continue to fulfill its intervener, facilitator, and regulator roles. On the one hand, we observe a direct conflict or contradiction among the new and old roles. Its employer and custodian roles and priorities lead to unreconcilable credibility issues in the performance of its intervener, facilitator, and regulator roles. As noted earlier, it simply cannot be all things to all aspects of the system. As it stands now, it is not effective in any of its roles, particularly the traditional and useful roles of intervener, facilitator, and regulator.

It is our view that the government participation syndrome is a premier issue in Alberta labour relations today. It is also our view that as with any syndrome the current state of affairs is totally unstable and, as noted earlier, instability is the enemy of any effective labour relations system. The future will bring forth still further changes in the roles of government in Alberta labour relations. The only real matter to be decided is the direction and character of these changes. The direction we urge in the name of effectiveness in our labour relations system follows.

As noted earlier, the emergence of the government participation role syndrome coincides with the emergence of the roles of employer and custodian. It should be obvious to all, that recent decades have witnessed not only ever-increasing extension of the labour-management relations system to government and its employees, but also ever-increasing attempts by government to influence negotiating outcomes and to terminate lawfully commenced work stoppages. We do not take issue with government with respect to either of these activities. Both represent to us right and proper government concerns and are quite consistent with a mandate to govern. However, we do take issue with the apparent view that government can quite properly perform these roles consistent with its other roles within the labour relations system. We do not believe that it can do so and still maintain intellectual honesty. It most certainly cannot assume these roles from a foundation firmly established as a direct participant within the labour relations system. On the other hand, we are quite prepared to accept the view that they can quite properly serve the labour relations system and assume traditional roles provided that these new activities function outside of the shadow of their direct participant role. In addition, given our acceptance and indeed encouragement of the employer and custodian roles, it is our view that the syndrome must be resolved by a direct redefining and rearticulation of government's role in the Alberta labour relations system.

Employer Role. With respect to its employer role, the traditional case has been

that the provisions of "private sector" labour relations should not apply to the Crown or its employees. It was argued that employment by the Crown was a right and privilege and for this reason, as well as because of national security and soveriegn immunity, it should be distinguished from employment in situations outside the Crown. While this view was acceptable at one time in the past, it lacks considerable validity today. There are at least wo reasons for this. First, governments in the interim have conferred the rights to organize, negotiate agreements, and to administer them on the governments' own employees and their trade unions. It clearly is not our mandate to re-think this decision for government. Indeed, for all prctical puroposes the decision to extend these rights may well be irreversible. Even if it were reversible, we would argue that the labour relations system is the best system available for dealing with employment relationships between governments and their employees. We fully endorse a labour relations system for governments and their employees. Second, government's role as an employer has undergone considerable transformation over the past few decades. Governments, as explained above, have grown to such a size and engage in such a variety of programs that they have become the major employer in the Alberta economy. In addition, they have diversified into activities and enterprises not previously considered within the domain of government activity. Public ownership of private corporations means, among other things, that the distinction between public and private sector employment, employers, and employees has become in many cases virually indistinguishable. There are many occupations in which individuals work for privately operated neterprises as well as enterprises sponsored and operated by governments. Governments are involved in parallel activities with the private sector in transportation, petro-chemicals, and other industries. The distinction between public and private sector employers is further obscured in the sense that government as well as private sector employers compete along side one another in the Alberta labour market. Both types of employers draw from the same pool of human resources in the Alberta labour market. Indeed, governments as major employers have a pronounced impact on the

level of wages, hours, and working conditions and to a large extent play a leadership role among their empoyer peers in these regards.

The fact that it is difficult and often impossible to distinguish between public and private sector employers as well as employees leads us to conclude that they should be placed under legislation setting forth a common set of principles having application to both private and public sector employers and employees in the Alberta labour relations system. We stress at this time that the concept of a single statute having application to all employers and employees does not necessarily result in the same set of rights, duties, and privileges being extended to employees and employers in both sectors. In other words, because an employer regardless of the sector in which he may function, all employers as well as their employees should fall within the ambit of one statute for labour relations purposes. However, in order to protect the public interest, the Alberta Labour Relations Board under our proposals would determine the availability of the lawful work stoppage. This determination would be carried out within the contest of full representation by all interested or concerned parties including public input. In short, we believe that government as an employer should be regulated under one labour relations statute just like its counterparts in the private sector except that the determination of the availability of the legal work stoppage would be a question that the Board would address during the establishment of the labour-management relationship. In addition, if the work stoppage availability were granted in a relationship, we also believe that the Alberta Labour Relations Board should determine the form of the lawful work stoppage. This means that there may be so-called partial or controlled work stoppages. Such an approach, in our opinion, would contribute to and lead to a flexible statute in its application providing a variety of ways for negotiating the collective agreement while simultaneously taking stock of and applying the public interest to the labour management relationship. This flexibility in approach would be determined and administered by the ALRB, which would be drawn from the Alberta labour relations community that it serves as well as from the public at large.

I wonder. Apart from other reasons why public sector labour relations are politized?

Let us return to the argument in favour of having one Alberta Labour Relations Code applying to all employers in the Province. As noted earlier, under present statutes not all employers and employees are regulated by the same provisions in Alberta's labour relations statutes. A comparison of The Labour Relations Act with The Public Service Employee Relations Act demonstrates notable differences. The ~~heretofore~~ commitment to differing priciples for the "private" and "public" labour relations sectors is not conducive to the effective functioning of our labour relations system. ~~Unfortunately,~~ it gives rise to invidiouscomparisons among public and private sector employee unions since the "rules" or framework under which they negotiate differ. It also results, at least in part, in much greater political undertones to public as opposed to private sector negotiations. The more highly political nature of public sector negotiations hopefuly would decrease if government involvement in the labour relations system, especially as intervenor, diminished, and perceived inconsistencies and anomalies with regards to the negotiating framework were removed. Therefore, it is our opinion that all employers and employees, including government employers and employees, should be governed by the same fundamental regulatory priciples. In other words, the existing differeneces in treatment are not appropriate to effective labour relations functioning and represent contradictions in its employer and regulator roles.

In summary, it is our view that Alberta labour relations statutes should extend a common set of principles and provisions having application equally to all employers, trade unions, and employees falling within its scope and jurisdiction. Our view on the common set of principles and provisions is set out in Chapter VI. By providing a common set of principles and provisions, it does not follow that all employers, trade unions and employees would enjoy identical rights, privileges, and duties within the Alberta labour relations system, ~~as discussed above~~.

Custodial Role. In its custodial role the government of Alberta attempts to influence the economical outcomes of the negotiating process. It also may direct

the discontinuation of the work stoppage activity. The former is expressed through publicly stated policy statements, and the latter in the regulatory statute governing the system. Although the custodial role is appropriate to government, its activities in the fulfilling of its role undermine the effective functioning of the Alberta labour relations negotiating system. It is also our view that the government practice of announcing negotiating guidelines having application solely to its own employees, is distinctly discriminatory and frustrates the negotiating process. It represents a contradiction in government's employer and custodial roles and assuch can cause great harm to the functioning of the system. If in its wisdom the government elects to influence negotiating outcomes either in its employer role or otherwise it should be done only to support social, economic, or political goals it may otherwise have and should not be done in a discriminatory manner. Further, statements attempting to influence negotiating economic outcomes only erode the negotiating process by putting into question government's confidence in the system and have little effect on negotiating outcomes other than aggravating the negotiating process. Similarly, the discontinuance of the work stoppage demonstrates little confidence in the negotiating process as we view it. This authority should be exercised only for reasons outside the functioning of the labour relations system such as economic, social, or political considerations or imperatives.

To us it is quite understandable that government seeks to insure that the functioning of our labour relations system is compatible with its social, economic, and political goals. However, it is our view that the pursuit of such goals, which are primarily related to its custodial role, does not justify government participation in the functioning of the labour relations system and its activities. It is for just such a reaason that we believe the role of government as a direct participant, other than as employer, within the system is no longer tenable. It is our view that the response by government to matters relating to labour relations should be taken by government not as a participant within the system but from outside the system and upon a rationale which reflects its legitimate social,

economic, and political goals and activities. We believe that government by its very nature and powers has ample and appropriate remedies available to it in order to respond to any development within the labour relations system which may be of concern to it. For instance, government can order strikers back to work and even impose settlements. The statutes governing labour relations in Alberta, in our view, should be such that they regulate union and employer recognition, agreement negotiations, agreement administration, and unfair labour practices independent of government as an intervenor in the labour relations system. Accordingly, it is our view that the existing strike-stopping activity set out in Division 4, sections 148-150, of The Labour Relations Act and known as "emergencies" should be removed from a labour relations statute of general application in favour of its own statute.

Regulator Role. Through its regulator role and the medium of the statutes government in effect sets up the statutory legal framework that governs the labour relations system. It is our view that the statutes currently in effect represent the products of an organic evolution governed in part by periodic labour-management practitioner lobbying and in part by conscious government decisions on the kinds of statutory provisions it wants. However, the statutes are not the product of an effort on the part of government to set out in its entirety a cohesive framework to govern the Alberta labour relations system. Our analysis did not find statutes that set out a clear statement f overall government purpose or view of the kind of labour relations system it wants for this Province. As a result, the labour relations community is forced to function in a statutory framework that gives no clear statement of the purpose or view of its creator. On the other hand, it is readily apparent from our review of Alberta labour relations legislation and government behaviour that the Government of Alberta does seem to have a purpose and view and even goals, expectations, policies, and principles with respect to the functioning of the labour relations system of Alberta. However, this purpose, view, goals, expectations, policies, and principles are not clearly defined or clearly set out. In our view, legislation and government

behaviour has evolved in a reactive manner and primarily in response to crisis circumstances and periodic lobbying by the principal participants. In the result, we have statutes that contain anomolies and inconsistencies.

Intervenor Role. It is our opinion that the evolution of labour relations activity in Alberta has lead to ineffectiveness in the traditional activities pursued by government in fulfilling the intervenor role. As is noted earlier, government's role as intervenor includes intervention in the negotiating process by way of mediation or Disputes Inquiry Boards in an attempt to avoid a work stoppage, with conciliation in an attempt to aid the negotiating process involving police and firemen, appointment of members to a grievance arbitration board, appointment of members to an interest arbitration board, appointment of members to a Voluntary Collective Bargaining Arbitration Board, and extension of the right to prosecute.

In part, this ineffectiveness is the result of (i) increased role of government in the labour relations system (employer role), (ii) increased commitment and efforts to influence the outcome of the negotiating process (custodial role), and (iii) its propensity to intervene during the course of a work stoppage (custodial role). Because of these developments, we sincerely question the ability of governnent to effectively continue the traditional roles of intervenor, employer, and custodian all at the same time. There is today a direct conflict between these three roles and its employer and custodial roles, and this renders government participation suspect. To us, this conflict creates a credibility gap and raises major doubts about the neutrality of government participation in the system. As a result of increased employer and custodial role activities, we do not believe that government can be effective in its role as an intervenor. In other words, trade unions and employers alike may question government's motives in carrying out its intervenor and custodial roles recognizing that government itself is an active and indeed dominant employer in the Alberta labour relations system. Given this situation and, in our opinion, the paramouncy of the employer and custodial roles, the intervenor role must yield. Government must remove itself from its present

direct intervenor participation in the labour relations system and from all procedures currently in effect relating to such activities. It is our opinion, that the labour relations system should be free to develop on its own and independent of government subject, however, to government continuing to act in its custodial role. An identification of the government intervenor activities for each of the for statutes covered in our review follows below.

In summary, the Government of Alberta currently assumes five major roles necessary to the proper functioning of the Alberta labour relations system. We do not believe that all these roles are appropriate nor can they be fulfilled through direct government participation. Given the current dominance of the employer role, it leads to internal inconsistencies, contradictions, and credibility issues in the government's other role participation, particularly with respect to its intervenor role. The intervenor role can best be assumed by other institutions in the system.

Facilitator Role. As noted earlier, government currently assumes a number of activities designed to facilitate the smooth functioning of the Alberta labour relations system. It is our opinion, that government's role as a facilitator needs to be vigourously upgraded by not only upgrading existing activities but also participating in new facilitator activities. The government should be able to effectively assume this role since its role as intervenor would be greatly diminished as proposed above. We believe this role change should enable the Department of Labour, in particular, to assume a much more independent and perhaps be perceived in a more neutral role in fostering both agreement negotiation and agreement administration by acting as a resource to both labour and management. We envisage the establishment of an expanded information centre based within the Department of Labour as one basis for its upgraded facilitator activities. In general, we believe that government should give greater priority and commitment to the activities of education, research, publications on labour relations matters, and labour relations information and statistics. With respect to new facilitator activities we believe that the labour relations system

would greatly benefit by an institution that provides a direct interface between the labour-management relations community and the Lieutenant Governor in Council.

In summary, in its facilitator role the Government of Alberta facilitates the functioning of the labour relations system through education, information, and research. This is a most appropriate activity. In addition, unlike other industrialized jurisdictions, there is currently no institutional structure through which the labour relations community and the government of Alberta can interact to identify and discuss issues and concerns with the fundamental functioning of the Alberta labour relations system.

Legal Counsel and Consultants. We accept the fact that legal counsel and consulants have a definite role to play in the labour relations systems of Alberta. However, in our opinion, their role and participation should be subordinate to the primary roles and participation of labour and management to the relationship. It is our view that lawyers and consulants should represent only one of several inputs into the decision-making process of both management and labour. On the other hand, they bring with their participation technical knowledge, experience and expertise. It could be that the ideal resource within the community would be a combination of the existing legal and consulting resources working in tandem. Such a full service capability os an important backdrop against which we can evaluate the participation of lawyers and consulants in the system. It is our opinion that there is a need to upgrade lawyers' experience and understanding of labour relations and indeed often of labour law. In addition, consulants' knowledge of labour law should be upgraded. However, it is not our intention to encourage consultants to practice law without a license.

Law faculty curiculae generally are generalist in nature and some lawyers who become involved in labour law initially, if not subsequently, do not necessarily possess an adequate nor appropriate background or exposure to either labour relations or labour law. Some legal counsel become involved with little

commitment to the labour-management relationship but with a great deal of commitment to the practice of law. Often, it seems, legal counsel tends to become preoccupied with the legal issues and legal ramifications. On the other hand, this may be quite understandable. It may also be the result of instructions from the client who has the short run view in mind. Consequently, organized labour in particular as well as management note that lawyers are trained and skilled at arguing the technicalities. However, the technicalities approach may result in undue tensions or misunderstandngs and may also jeopardize the trust and labour relations understanding built up by the parties to the relationship. In short, the parties should be cognizant that short term gains, however they are obtained, may not serve long term needs, objectives or interests. Obviously, the source of these complaints and concerns often is the primary party that found the result unfavourable to him in a particular case. This reaction reflects the winner-loser syndrome which is part and parcel of our adversarial legal system. It is significant that these concerns and observatins stem from the primary parties because the primary partis are the ones that lawyers have been retained to serve.

By contrast, although consulants frequently bring to labour relations considerable practical experience, their experiences may in reality be somewhat narrower than what is called for in their consulting practice. They may well lack sufficient depth or breadth in the nuances and subtleties of the law governing the activities they are involved in. To reiterate, we are not arguing that consultants should practice law without a license. However, we are cognizant of the fact that consultants like the primary parties to the relationship operate within a highly regulated area of activity and as such their suggestions, recommendations, or courses of action could have direct impct on the prties' rights and responsibilities at law. Inexperience in certain facets of labour relations and a lack of a thorough grounding by consultants and lawyers alike has resulted in major and very costly mistakes in the past and presumably will continue to do so in the future. What is called for, in our opinion, is a greater commitment to the professional development and broadening of both legal counsel and consulants' exposure to

and background in activity areas such as labour relations law, the nature and functioning of the labour relations system, and the possible impact or ramifications of various strategies and tactics during the process of certification, agreement negotiation, agreement administration. All these qualities impact on the tenor, viability, and longevity of the labour management relationship. Perhaps, government is in the best position to facilitate professional development of this nature.

Both legal counsel and consultants are subject to the rigorous tests of competition in the market place. This is good and as it should be. However, we are still left with the issue of how to protect the client against potential harm that legal counsel or consultants can bring to a long standing labour-management relationship. Lawyers and consultants are not direct parties to this relationship. Some possible avenues of protection include closer scrutiny of credentials, licensing, and self-regulation. However, this raises the question of the agency that should be employed to administer these kinds of tasks and responsibilities. As it relates to lawyers, inasmuch as the Law Society already is involved in most if not all of these functions and activities it could presumably expand its role to the training, licensing and regulating of labour relations legal specialists. As for consultants, they probably would be well advised to establish their own association with a code of professional ethics to which its members must adhere as a condition of membership. In making these recommendations, we are mindful of the possible pitfalls of self-regulation and licensing such as the erection of barriers to entry and the monopolization of markets.

Courts. We have already discussed above the vastly expanded role which in our view the Alberta Labour Relations Board has in overseeing the totality of the Alberta labour relations system. Given this expanded role of the Board, we envisage the continued role of the courts in three areas of activities: concurrent

jurisdiction of first instance in respect of matters which are both unfair labour practices and torts and crimes; a review jurisdiction over all administrative tribunals including the Board, grievance arbitrators and boards, and interest arbitrators and interest arbitration boards, and an enforcing function in respect of orders of all the administrative tribunals provided for under the code.

Jurisdiction of First Instance. Crimes such as assault, trespass and willful damage to property which can arise in the course of a labour dispute would of course continue to be trialable as such in Provincial Court and the Court of Queen's Bench as the case may be.

This type of conduct as well as nuisance, defamation, and intimidation also amount to a tort or civil wrong and thus the Court of Queen's Bench would have jurisdiction to hear and determine these matters and grant injunctive relief and damages. Such a role for the courts should and must continue. We are, however, concerned that interim injunctions might be granted in certain situations which have the effect of undermining the bargaining of the negotiating process and at the same time tilting the balance of power in the negotiating process in favour of one side before the full issues of the dispute can be considered. This reslt has always made the courts appear to be on the side of management. Accordingly, we believe that the code would provide that the granting of any interim injunction in a labour dispute would be limited to those situations where the wrongful act causes immediate danger of serius injury to an individual or causes actual obstruction or physical damage to property.

Judicial Review. Decisions of administrative tribunals under the Labour Relations Act are all currently reviewable by the Court of Queen's Bench. Such a review by the Court of Queen's Bench is appealable to the Court of Appeal and ultimately appealable to the Supreme Court of Canada by leave of that court.

The decisions of certain administrative tribunals are made reviewable directly by the Court of Appeal. Examples are the decisions of the Development Appeal

Board and the Public Utilities Board. We believe that the review of the functioning of the various boards under the proposed codes should also be carried out by the Court of Appeal. Such a more would expedite matters within the labour relations system as a whole, would create greater uniformity, reduce costs resulting from delay, and accord to the administrative tribunals in the labour relations system a degree of respect at least equal to that received by the Development Apeal Board!

As far as grounds for review are concerned, we do not believe there are currently any difficulties with those currently applied, that is, error of law on the face of the record, breach of the duty of fairness or or natural justice, and jurisdictional defect. However, in view of our proposals with respect to the new role and functioning of the Alberta Labour Relations Board and its jurisdiction over unfair labour practises and to allow it to broadly fashion appropriate remedies including the imposition of fines, we believe that any fines imposed by the Board should be appealable to the Court of Appeal as they would be from a Provincial Court.

Judicial Enforcement. Under the varius Acts presently in effect certain of the administrative tribunal's orders may be filed with the Court of Queen's Bench and become enforceable as court orders. In the restructuring of the legislation into the Alberta labour relations code we believe all administrative Board orders, in the case of non-compliance, should be fileable with the Court of Queen's Bench and enforced as such.

To assist in the enforcement of Board orders in the courts system and to preserve the integrity of the system and our respect for law and order we envisage the Attorney General's Department taking an active role but separate and apart from the parties.

GOALS

Trade Unions. Trade unions have conflicts in goals in the sense that not all goals can be fully satisfied at the same time. The priorities attached to different goals vary from one union to another depending upon such factors as the internal demographic characteristics of the unit, the distribution of political influence among different factions or sub-units of the unit, and the goals that trade union leaders pursue in attempting to stay in office, yet effectively respond to pressures from the unit they represent as well as to pressures from above within the trade union organization. Although unions strive for the maximizing of goal satisfaction, they very rarely can unilaterally achieve this end and must, therefore, accept partial solutions, particularly the leaders if they wish to avoid creating false or unrealistic expectations on the part of their constituency.

There is a major source of possible pressure on union goals. It is society. Society seems to be placing trade union goals under greater examination and closer scrutiny. This is particularly the case with respect to the manner in which some trade unions seek to attain the goal of the availability of the lawful work stoppage in the public sector. In short, some trade unions may not be able to force changes in legislation or to influence the design of the labour relations system by engaging in unlawful work stoppage activities, particularly if their resort to these tactics alienates the public, as it presumably does.

The value of the trade union lies in its democratic nature. It is a vehicle for people to participate in a democratic institution. Trade union leadership should recognize this inherent value and work towards preservation of these qualities in their organizations. Failure to do so could generate greater constraints being placed placed on trade union officers and inta-union activities.

Management. Our evaluation and comments on management's goals are essentially the same as for trade union goals. They are that management pursues legitimate and valid goals. However, if management fails to be responsive to public scrutiny

and public interests in pursuing its goals, greater third party restraints may be placed on the exercise of managerial discretion. Management, like trade unions, must realize that the simultaneous satisfaction of all goals may be impossible to achieve. Because it is difficult, if not impossible, to maxisize all goals simultaneously, priorities must be attached to goals. We suggest that management place higher priority on the quality of working life and the workplace environment, but we also recognize that sometimes improvements in these areas for employees become translated into direct costs to management with little in the way of tangible benefits flowing to the employer. Dilemmas and paradoxes, unfortunately, are involved in these areas.

In our opinion, management needs to give greater acceptance to the labour relations system. It is recognized at law and promoted at law. Perhaps, management should move farther towards philosphically recognizing the labour relations system. There are certain advantages to the labour relations system, as indicated above. Labour-management relations, for instance, can provide stability, continuity, and the possibility of achieving goals. However, there may be no goal achievement without an effective system. We suggest that the cost to management of not promoting effective labour relations can be substantial and that ineffective labour relations may deflect the organization from meaningfully attaining its goals and objectives. Greater acceptance of and commitment to labour relations by management could promote greater effectiveness in the labour-management relationship. One manner in which we seek to generate greater commitment to labour relations on both sides of the negotiating table is by giving the principal parties greater input into the shaping of the Alberta labour relations system.

Government. In Chapter I at Pages 52 - 53 supra we set out what we believed to be the goals of government as a participant in our labour relations system. They were: encourage and maintain industrial peace, education and training to promote greater productivity, manpower planning and labour market intervention to

maximize economic growth potential, protection of human resources at the workplace, avoidance of exploitation, improvement in the quality of working life, and health and injury compensation programs.

In general, it is our view that these goals are in all respects quite right and proper and properly fall within the domain of government. We believe they should be not only recognized, but also actively encouraged. On the other hand, we sincerely question the off stated and indeed trite goal of "industrial peace."

It is our view that the term "industrial peace" is not a particularly useful phrase to describe a goal of government in Alberta labour relations. In part it may mean different things to different people and in part it is a quite unrealistic objective. If by industrial peace is meant the absence of work stoppages, this is neither desirable nor realistic. Work stoppages serve a most useful function in the labour-management relationship and, as noted earlier, is an essential element within the process of negotiating the collective agreement. However, there are situations where the work stoppage is either unnecessary or serves no useful purpose. In such cases, the goal of eliminating unnecessary work stoppages is quite appropriate. However, the pursuit of such a goal is necessarily predicated upon some mechanism for determining if the work stoppage is necessary or not and, if not, of having some form of a remedy or negotiating mechanism readily available for implementation. With the possible exception of compulsory arbitration, we do not believe that a system for such a determination nor remedial mechanisms are presently in place in Alberta. If by industrial peace we mean stability within the functioning of the labour relations system as evidenced by effort, commitment, and understanding then we believe that not only is such a goal desirable but also quite attainable. It really boils down to setting of a realistic goal recognizing the nature, complexity, and qualities within the Alberta labour relations system. We must be realistic in terms of what we ask of the labour relations system.

Our second concern relates to the degree to which the Government of Alberta has

articulated the goals it has for the functioning of our labour relations system both as a participant and as observer of the system. The source of the goals of government as stated earlier are drawn from several general sources and considerations, including labour statutes, and may or may not be representative of the view of the Alberta Government. On the other hand, we are without any sources whatsoever that represent explicit goal statements in Alberta and, to the best of our knowledge, no such goal statements exist. It is our opinion, that it is imperative that government articulate whatever goals it may have for itself and the system in a clear, specific, and visible manner. Such a step represents to us a most desirable act of leadership and would prove invaluable to the labour relations community by setting out clearly what the government expects of it and the Alberta labour relations system. This could be accomplished, for instance, by writing preambles into labour statutes or even better by setting out a policy statement on its expectations for the labour relations system of Alberta.

Finally, in the setting of goals, government must accept the proposition that it cannot ask of the system that which it does not have the capability of delivering. Nor should government set goals for itself in labour relations that it equally is uncapable of attaining. In other words, government must take great care in goal formulation and should set goals only after extensive efforts to relate a given goal to the functioning of the labour relations system and satisfying itself that there is available some system for monitoring goal attainment. Goals of the motherhood and apple pie variety have little if any merit and serve no useful purpose. Our views on the appropriate goals of government in and of the system are set out below in Chapter VI.

Labour-Management Relations System. As noted earlier, our canvassing of the topic of labour relations system goals leads us to conclude that they are largely undefined. Pragmatism is certainly a characteristic of labour relations and it is most evident in the topic of system goals. This result is also a product of self-interest in labour relations and its failure to encourage a vision beyond

oneself to the system as a whole. However, as authors of this study, we need not accept such a limitation.

It is our view that the primary and fundamental goal of the system is stability. By stability we mean that participants, processes, and the law are in harmony with one another, that the system generates a solution to each and every issue in the relationship using the established processes provided for difference resolution, and that participants are prepared to accept the solution that these processes generate, although possibly reluctantly. A second goal is acceptability of the system by all who participate in it. By acceptability we mean that all participants regardless of their role and function have a high degree of pride and confidence in the system and a belief that it acts fairly and justly towards all and without any particular bias, preference, or favour. A third goal is validity. By validity we mean that observers outside the system, such as Alberta society as a whole, view the system with approval and a belief that the system is a valid and useful institutional structure in society and, as such, it is to be nurtured, cared for, and protected.

It is our opinion that the Alberta labour relations system has advanced a high degree towards the attainment of the some of the goals set out above. Of the three goals stability, acceptability, and validity, we believe the system has best achieved stability followed by acceptability with validity a distant last. Looking first at stability, it is our view that the degree of harmony among participants, processes, and the law is about as good as can be expected of any system. But, we do have disharmony emanating from government participation activities and the refusal of some participants to live within the regime of law governing the system. The system is capable of generating a solution to each issue in the relationship although we have evidence of increased refusal to accept a given solution. In addition, it is our view that some of our processes, such as disputes settlement, function without sufficient flexibility and that others, such as interest arbitration, as currently practiced, are not sophisticated enough or lack much of

the capability to deal with the issues facing them. Finally, and in general, we believe that we are facing and will continue to face more and more cases where participants adamantly refuse to accept the solutions that some of our processes generate. While the level of stability has been a source of pride in system goal fulfillment, it is our belief that the evidence of recent years does not necessarily support the continuation of the current level of stability goal attainment.

The Alberta labour relations system is failing in its objective of participant acceptability. First, it is our experience that participant's pride and confidence in the system is gravely in peril. While a labour relations community is pessimistic even at the best of times, seldom do we observe a degree of optimism or buoyancy towards the future directions of labour relations in Alberta. Second, and of principal importance, we detect within many participants a fundamental and strongly held belief that the current system demonstrates a distinct bias, preference, or favour. This bias, preference, or favour is not towards any of the labour or management participants but towards interventionist activities of government, particularly those over and above what is presently provided within our statutory framework. It is in effect a bias, preference, or favour against the established labour relations processes and against permitting these private processes to generate a solution. Coupled with this is a feeling of unfairness or a double standard as a result of quite different regulatory systems in the "private" and "public" sector fields of employment.

The Alberta labour relations system has made little progress towards its attainment of validity. It is our experience that Alberta society offers little in the way of system approval and does not view it as a useful institution within Alberta society. It is our opinion, that the blame in part resides from poor system public relations from participants within the system and in part a distinctly anti-system bias maintained by the Alberta media. The Alberta system and particularly its participants do not individually nor collectively project to society a confidence-building image. We have within Alberta a media

establishment that repeatedly demonstrates little understanding of our labour relations system, permits itself to be used by one or several participants, often has inaccurately portrays what is going on, has inclination to do anything about it, what is going on, and at times chooses an inappropriate moment to interject or comment on what is taking place. This results in a presentation devoid of constructive observations and a decided preference to focus on the more spectacular aspects of labour relations such as the work stoppage and a participant's refusal to accept the force of law. It is no wonder that Albertans with a view of labour relations totally immersed in a media circumscribed conflict context begin to question the usefulness of our labour relations system. The problem is that labour relations is far more than simply conflict manifestations but few Albertans know that nor are given an opportunity to learn otherwise. This absence of validity calls for a decisive response as the labour relations system as we know it cannot for long survive without the clear attainment of its validity goal. It is our belief that the labour relations system of Alberta is deserving of a high degree of societal approval and deserves to be viewed by all Albertans as a valid and useful institution in Alberta society. It is to be nurtured, cared for, and protected from all who would wittingly or unwittingly do it harm.

Society. When compared with the goals of employees, trade unions, management, government, and the labour relations system itself the goals that society holds for itself or for the labour relations system are not as distinctive nor are they clearly articulated. In addition, the linkage between societal functioning and the labour relations system are not as direct and immediate. The goals of society for itself were set out earlier and emphasized the commitment to freedom of the individual and the reconciliation of differences between the individual and society at large. This goal is totally complementary to the functioning of our labour relations system as the system in a very real sense stands for the same propositions. In this sense, we see no conflict nor incongruancy with the goals of society and the goals of our labour relations system. Both stand for the proposition of self-determination.

It is our opinion that the major frictional interfaces between society and the system is the expectations of the former with regard to the functioning of the latter. The best illustrations of these divergent goal expectations are society's concerns over the impact of the work stoppage and the consequences of negotiated economic outcomes. While it is our opinion that these concerns are quite valid, we believe that the responsibility for their eventualities cannot solely be placed on the shoulders of the labour relations system and, in fact, both the system and society must accept responsibility. In other words, it is our view that society's goal expectations for the system are not fairly determined and it cannot assign to the system consequences that society itself is equally responsible for. In reality the labour relations system is only demonstrating the same characteristics and qualities that make up society as a whole. The labour relations system is a part of the Alberta social system and is not separate or divorced from it. Just as the labour relations system needs to move to improve its performance, so also society needs to move to temper or establish more realistic goal expectations for the system. It is our view that harmony between the system and society is in part a matter of improved system performance and in part a matter of society extending a much higher degree of tolerance to the system and the processes that are part of it. It is our view that society seems to say that we approve of the functioning of the system just as long as that functioning does not affect the functioning of society. To us, this is a totally irresponsible and unacceptable position. Society is as much responsible for the functioning of the labour relations system as the system itself. A repudiation of the system is not an appropriate response to societal concern.

The degree of tolerance of Alberta's society towards matters of labour relations appears to have sharply declined during recent years. While its rebuilding is an absolute necessity, it will not be easy. In part this decline is the result of admitted failures of the system and in part the apparent inability of the labour relations community to present the system in a positive and confidence building way. Lack of tolerance is in part the product of ignorance. Albertans generally,

and indeed members of the labour relations community, are ignorant with respect to the functioning of our labour relations system. It is our view that the system has much homework to do on its ability to improve the average Albertan's knowledge of labour relations, particularly the nature of the issues and processes used within the system. It is equally true that the system and its community cannot continue to treat society's goal concerns with its traditional abject indifference. Given the close relationship between societal concerns and government governmental action, the apparent failure of the labour relations system to command tolerance from society represents one of the greatest threats to the continuation of the labour relations system as we know it. Alberta labour relations must achieve public confidence.

PROCESSES

Labour Board Transactions.

Certification. The open period during which certificates may be challenged under The Labour Relations Act currently coincides with the commencement of agreement negotiations. It is slated for the last two months of a collective agreement having a term of two years or less. For an agreement having a term of more than two years it takes place in the eleventh or twelfth months of the second or any subsequent year of the term or in the two months prior to the end of the term. The simultaneous timing of the open period with the commencement of agreement negotiations can protract or delay negotiations as well as confuse or restrain negotiations in the sense that the employer, for instance, may face an unfair labour practice complaint that he allegedly favours one of several competing unions and has based his negotiating strategy on this favouritism. So that the certification issue and exclusive bargaining rights can be determined prior to the commencement of agreement negotiations, we urge that the open period take place earlier than currently is the case. In particular, we propose that it occur during the seventh or eighth months of an agreement having a term of two years or less as well as during the seventh or eighth months of the second or

any subsequent year of the term or in the two months prior to the end of the term of an agreement lasting more than two years. This shift of the open period is especially important with regards to the Alberta Labour Relations Board we propose establishing the reason for this is that the board would be required to have determined or revalidated the availability of the work stoppage right and structure of negotiations prior to each round of agreement negotiations.

Indeed, it would be required that each party to the agreement serve on the Board notice that the current agreement will expire at least six months prior to the expiry of the agreement in force. The notice of expiry would indicate whether the party signatory to the notice sought to maintain or have amended the work stoppage right and the structure of negotiations. The legislation establishing the ALRB also would require that an application for certification stipulate not only unit desired for representation purposes but also the applicant's preference with regards to work stoppage availability. Moreover, it would enable the Board to make an inquiry into the appropriateness of the work stoppage and a determination as to the availability of the work stoppage. We discussed above the manner in which the composition of and input both before and into the Board should render it capable of making this determination.

Before we decided to recommend that the Board determine the availability of the work stoppage, we considered the options of a blanket permission to engage in the legal work stoppage and of a universal imposition of compulsory interest arbitration. A blanket permission to engage in the work stoppage was deemed inadvisable with regards to police and firefighters, in particular. Our canvassing the literature on police and fire agreement negotiations indicated that typically police and firefighters felt hamstrung when permitted what they termed the "artificial" availability of the lawful work stoppage. They customarily did not want to engage in lawful work stoppages in order to safeguard the public. Alternatively, they might be restrained at the last minute from engaging in lawful work stoppages or that they might be ordered back to work if they did engage in them. These kinds

of considerations led many police and firefighters' organizations to lobby legislative assemblies in Alberta and other Canadian provinces to lobby for compulsory arbitration frameworks of agreement negotiations. The Firefighters and Policemen Labour Relations Act is the end-product of these lobbying efforts. Consequently, it would be inappropriate for us to propose a blanket permission to engage in the work stoppage. A universal imposition of compulsory interest arbitration, likewise, would be fraught with difficulties. Although the lawful work stoppage is prohibited in Australia, illegal work stoppages take place there. Furthermore, there are large portions, in particular, of the private sector, where the lawful work stoppage regime for negotiations was developed and where effective negotiations take place under this regime. In short, the threat of the lawful work stoppage there very often induces the parties to make concessions and achieve a settlement without resorting to the lawful economic sanction.

The end-result of these deliberations was our suggestion of a flexible method for determining the availability of the work stoppage in which the parties could fully engage in lawful work stoppages or partially engage in them or resolve their agreement differences through compulsory arbitration. As explained above, we suggested establishing and staffing the LRB in a manner enabling it to make the work stoppage availability determination.

The criteria for the work stoppage determination would be the following:

(1) the effectiveness of the negotiating process,

(2) the availability to the public of substitute products or services, and

(3) any other matter that is, in the opinion of the Board, material to the question at hand.

These criteria would be used to determine the appropriateness of the availability/non-availability of the work stoppage and, if the work stoppage be deemed appropriate to the negotiating relationship, whether it should be granted on a full or partial basis. The effectiveness of the negotiating process is a labour relations consideration; whereas, the availability to the public of substitute products or

services is primarily a public interest consideration. The ALRB would be empowered to inquire into and make a determination as to which parts of the unit or employer's operations would be allowed to engage in a work stoppage, namely all or some of them. The three criteria would apply in determining work stoppage scope. As noted above, the scope of the negotiating unit and structure may have some impact on the work stoppage determination and vice versa. When the Board is satisfied that the work stoppage is or is not appropriate to the employee unit and the negotiating structure, it will issue a certificate which sets out scope of the employee unit, the scope of the employer unit and the work stoppage availability. The certificate for the unit that can engage in lawful work stoppages would be called a "negotiating certificate". It also would indicate the scope of the lawful work stoppage, either partial and full, and those parts of the bargaining unit or the employer's operations that will not be permitted to participate in lawful work stoppages. The certificate for the unit negotiating under a compulsory interest arbitration regime would be termed a "bargaining certificate." The terms, negotiating certificate and bargaining certificate, were chosen to emphasize the fact that the two basic frameworks for negotiations are intended to foster agreement negotiating or bargaining. The determination of the negotiating structure, which goes hand-in-hand with the work stoppage availability determination, is explained below.

The effect of a new certificate would be the establishment of terms and conditions of employment as set out in a collective agreement. This agreement probably would differ from renegotiated collective agreements, as explained below, and it would not operate if the certificate replaced, amended, varied, or otherwise modified a previously existing certificate. Under the current labour relations law in the Province, the newly acquired certificate confers recognition by the employer on the trade union(s) and sets forth the scope of the "appropriate bargaining unit." In addition, from the date of the application for certification until either the application is denied or 30 days later, the LRA and PSERA establish a "freeze" against the employer's altering the rates of pay or any term or condition of

employment or any right or privilege, except certain circumstances, as explained above. Under recent amendments to the LRA, the trade union can extend this freeze to gain an additional sixtys' coverage by serving notice to negotiate within 30 days after the date of certification. The latter freeze extends 60 days from the date on which notice was served. Finally, both the LRA and PSERA set out "model clauses" which will be read into those parts of the grievance handling procedure of a collective agreement that are silent as compared with the model clauses. What is significant about these features of the current legislation is that they place employees in the newly certified unit extremely close to having a collective agreement consisting of the following: a recognition clause, a scope clause, the frozen terms and conditions of employment, and a grievance machinery.

Our proposal involves taking the current legislation slightly further and conferring a collective agreement upon the newly certified unit. The agreement would be comprised of the following provisions: a recognition clause, a scope clause identical to the scope clause on the certificate, the terms and conditions of employment as they were frozen on the date of application for certification, a dismissal for cause provision, Rand formula and compulsory cheque-off provisions, and a term of four months, during which either party can serve notice to negotiate. The dismissal for cause provision is intended to protect employees against summary discharge at common law. The Rand formula is to provide the union with a modicum of security, while the compulsory cheque-off would grant the union funds from the unit it is to represent in negotiating the agreement. Ontario has provision like this in its labour relations statute. The term of four months hopefully would facilitate the parties' adjustment to each other.

Perhaps, the most important feature of the collective agreement for the newly certified unit is that it avoids the current hiatus between certification and the attainment of a collective agreement, if it takes place at all. Labour relations laws incorporated the statutory procedures of certification in order to obviate the

recognition strikes that preceded the certification process. However, a number of long drawn-out first agreement strikes take place during the hiatus spoken of above. The key issue in these strikes often is recognition. The collective agreement for newly certified units, as proposed above, may reduce the incidence and duration of first agreement strikes. The agreement would provide a basis for the parties' first round of negotiations, and the trade union entering into these negotiations would possess some degree of financial support from the unit it represents, even though the financial support may be somewhat limited. In other words, the collective agreement for newly certified units may provide greater stability to newly certified labour-management relationships.

It is noteworthy that what we have proposed differs from the approach taken under The Canada Labour Code as well as under The Labour Code of British Columbia to first agreement negotiations and employer resistance against unions during first agreement negotiations. Those two jurisdictions maintain the hiatus spoken of above. As a remedy against breaches of the duty to negotiate in good faith if the allegation of a breach is sustained during first agreement negotiations, labour boards in those two jurisdictions will impose an agreement via interest arbitration. By contrast, our proposal automatically establishes the collective agreement upon certification and is intended to set the parties off on an even keel, so to speak, on their agreement administration and negotiation relationship.

In order for the ALRB to regulate the work stoppage availability and scope as well as the negotiating structure, it is imperative, in our opinion, that voluntary recognition be abolished. Otherwise, the parties could establish negotiating relationships voluntarily and circumvent our proposed legislation. Abolishing voluntary recognition requires that the statute establishing the ALRB not recognize non-certified bargaining agents.

Structure. With the exception of the single large unit established under the PSERA, Alberta's labour relations laws generally contemplate a single union, single employer negotiating structure. Alberta's bargaining structure, largely because of

this is fragmented. The LRA, however, does provide for multi-employer bargaining in two forms. One is through the voluntary association of employers in any industry covered by the LRA, and the other is the single trade, geographical registration scheme for employers' associations in the construction industry. The former association can enforce solidarity among those employers authorizing it to bargain for them until a lawful work stoppage commences. By contrast, the registered employers' association receives exclusive bargaining authority on the part of all unionized employers in the given trade and geographical area, regardless of their membership status, and there is a 60-day enforced solidarity clause which becomes operative when a lawful work stoppage commences. In addition, the LRA sanctions the coordinating of agreement negotiations presumably within a single trade in the construction industries. There currently is no mechanism in Alberta labour relations statutes for on going monitoring or control of negotiating structures. Instead, they tend to grow according to the parties' interests and desires. Public interest considerations are chiefly brought to bear during the initial unit determination, but not subsequently. However, public policy infrequently applies in the sense that the LRA, in particular, permits trade unions to join together in seeking one certificate. It may also impact on the registration of employers' associations. Significantly upper bounds have been placed on the extent to which centralization and consolidation of the negotiating structure can take place. For instance, employers outside the construction industry cannot gain exclusive negotiating rights through registration nor avail themselves of the 60-day escape provisions of the LRA. Employers in the construction industry cannot negotiate agreements on a multi-trade basis. The LRA does not promote the development of formal councils of trade unions. In spite of these inhibiting factors, there is a trend in some industries towards the centralizing of negotiating structures.

We urge that the bounds constraining the growth and development of negotiating structures be removed and that authority be conferred on the Board to monitor and shape, and reshape negotiating units on its own motion as well as through

applications by the primary parties. We presume that the Board would very sparingly invoke its authority to reshape negotiating structures on its own motion. However, it is important that the Board be able to exercise this power for two reasons. First, the public has an interest in bargaining structures because they can have an impcat on the public. The traditional view is that fewer strikes will occur, everything else the same, where the negotiating structure is centralized, as opposed to fragment, but that the former generally will give rise to work stoppages of longer duration. Second, the nature of the negotiating structure well may influence the availability of the lawful work stoppage, as discussed above. The availability of the work stoppage would be determined by the Board.

Specifically, we propose that the concept of registration be expanded to include all industries in Alberta and that the restrictions against multi-trade bargaining in construction be lifted. In other words, "registration certificates" would be issued in those instances where a majority of the unionized employers in the unit favoured participating in a certain employers' association and the master agreement would apply to all unionized employers in the appropriate bargaining unit. Statutorily precluding multi-trade construction negotiations may deny Alberta a negotiating structure which is not only desirable but also more stable in the long term. We also propose that there be a form of employers' association lying somewhere between no association and the registered association and that unregistered or uncertified employers' associations not be recognized at law. The former would be available in all industries in Alberta. It would be termed a "certified" employers' association, once certified, in order to differentiate it from a "registered" employers' association. There would be voluntary membership in the certified employers' association. A certified employers' associate would enjoy exclusive bargaining rights on behalf of its members and the current 60-day escape clause provisions for the registered employers' association would apply to it, so that it could attempt to enforce solidarity. In this scheme of things, the certified employers' association possibly would be a stepping stone for a minority of employers in an industry from no employers' association to a registered

employers' association. The Board also may deem it necessary under a certain set of circumstances to place a majority of employers in a certified as opposed to a registered, employers' association. Like voluntary certification, non-certified and non-registered employers' associations would not be recognized at law, since the LRB is to monitor and shape the negotiating structure on an ongoing basis. Otherwise, employers could by-pass the Board. As suggested above, it is our view that the duty of fair representation should apply to both registered and certified employers' associations, as the duty relates to agreement administration. Finally, the project members suggest that the Act establishing the ALRB provide for the formation of councils of trade unions and that the definition of "certified bargaining agent" be amended to include councils of trade unions in order to give force to our suggestion. Councils of trade unions are a mechanism for wider-based negotiations.

Unfair Labour Practices. Breaches of the act may be unfair labour practices and subject to the initial jurisdiction of the board or offences under the act and subject to the jurisdiction of the Provincial Courts. We have come to the conclusion that the use of an initial criminal process for violations of the act does not serve the Labour Relations system well. It seems to us that in an on-going labour-management relationship the use of criminal proceedings only embiters and inflames. In addition, with the dirsity of Provincial Court judges it would be difficult to establish a uniform approach to sanctions in the enforcement of the Labour Relations law. Finally, as a practical matter, possibly in part because of the heavy onus of proof beyond a reasonable doubt, criminal proceedings have rarely been used in Alberta. According to our information consent to proecute has been granted by the Minister of Labour within the last five years. Accordingly, we are of the view that all breaches of the Act should be viewed as unfair labour practices and heard by the Alberta Labour Relations Board. As previously discussed, non-compliance with a board order would result in the filling of the board order in the Court of Queen's Bench and its enforcement as an order of that Court. An important task of the Attorney

General's Department should be to ensure the enforcement of board orders through the Court system.

As all breaches of the Act should be unfair labour practices, it will be necessary to expand the Board's jurisdiction to include the imposition of fines. The Board could impose fines for the infraction and the effective functioning of the Labour Relations system. Fines, as at present, would be paid through the general revenue fund. If the jurisdiction over all breaches of the code is given to the Labour Relations Board, then Part 8 of the Act would be repealed.

An additional remedy which the Board should have in unfair labour practices is the power to award general damages. Thus, damages caused by illegal strikes or picketing would be available to the Board in anti-union discharge cases where the remedy of reinstatement might not be appropriate in the circumstances and damages in lieu being the preferable course of action. The awarding of damages or other Board remedies would be subject to review by the Court of Appeal.

After considering the list of unfair labour practices currently in the statute we believe that certain typs of conduct should be added to this list. First of all, breaches of collective agreements should be treated as unfair labour practices. The rationale for inclusion would be to ensure that the Labour Board has a total jurisdiction over the entire labour relations system. Thus, in a cease and desist application involving an alleged illegal strke during the term of the collective agreement in which it was alleged by the union or employees that they proceed breaches of the collective agreement by their employer, the Board could not only review the illegality of the employees' conduct but also be able to review the causes such as the alleged breach of the collective agreement by the employer. Thus, a total remedy could be fashioned by the Board.

It should be pointed out that concurrent jurisdiction between the Board and an arbiration board exist under the present Act. Thus, an unlawful strike may give rise to a complaint under Section 113 of the Act and the Board would hear the

complaint. An unlawful strike could also be a breach of the collective agreement and the arbitration process would hear this matter. If an employee is discharged for union activity during the existence of a collective agreement, both Boards would have jurisdiction. The inclusion of breaches of the collective agreement into unfair labour practices would simply enlarge the concurrent jurisdictions. We presume, however, that the Board, as even now, would normally defer jurisdiction to an arbitration as specifically provided for in Section 142(iv).

Negotiations. The project members are concerned about the quality and effectiveness of negotiations in resolving differences or impasses between labour and management. There undoubtedly are many sources of qualitatively poor or ineffectual negotiations which occur, for example, when inexperienced negotiators are involved, when negotators skirt extremely close to the fine line that is so difficult to draw between "surface negotiations" and hard bargaining, when intangible factors such as personality differences or insensitivity towards the other side are involved, or when the primary parties are not self-reliant, abdicate their bargaining responsibilities, and are looking for a scapegoat and/or saviour to "bail them out."

There are at least four approaches which can be taken towards improving the quality and effectiveness of agreement negotiations. One is to restrict the latitude permitted to negotiators with regards to the hard bargaining tactics they may use as governed by the duty to bargain in good faith. Perhaps, the "reasoned dialogue" standard adopted by the Ontario Labour Relatons Board represents a step in the right direction as it relates to hard bargaining. However, there are the usual dilemmas and paradoxes as to the increased administration, surveillance, and monitoring of negotiations which are associated with an expansion of what constitutes bad faith negotiations. In many ways, they ultimately may have to be resolved by the Alberta Labour Relations Board. In so doing, the Board may wish to clarify the status of issues in negotiations, yet continue to maintain flexibility both in jurisprudence and administration.

Another approach would be to improve the professional skills and training of negotiators. The government, through its expanded facilitator role as proposed above, presumably could play a major role in this. Alternatively, the primary parties could expand their own efforts in these directions. Another means to achieve these ends would be the licensing of negotiators, possibly by the Alberta Labour Relations Board. It is anticipated that the licensing of negotiators, among other things, would increase their commitment to the negotiating process in particular as well as to the labour relations system as a whole.

A third approach would be directed towards increasing the parties' concerns about the consequences of the process to others. One means by which we have sought to promote this greater regard for others is through having greater public involvement in the determination of the work stoppage availability and its administration when used as well as in the determination of negotiating structures. Public scrutiny and input of this nature hopefully would breed greater responsibility.

A fourth way involves generating greater self-reliance and responsibility by the principal parties through making lawful work stoppage action more costly to them. Two methods for implementing this policy are spelled out below under work stoppages. They basically involve making resort to the lawful work stoppage more costly to the primary parties. In addition, the repealing of The Alberta Labour Act, 1973 and its replacement in 1980 by The Labour Relations Act had the desired effect of forcing the parties to "get down to brass tacks" earlier, as a rule, and to become less reliant upon compulsory forms of dispute resolution.

Dispute Settlement. The current scheme for dispute settlement under The Labour Relations Act is, in the study group's opinion, useful and viable. We think that it also is flexible in the sense that it presents the primary participants with a variety of methods for resolving differences and impasses. It provides options ranging from negotiations without third party assistance through primarily voluntary mediation and possibly through factfinding or mediate outside the Labour Department via a Disputes Inquiry Board (DIB) to voluntary interest arbitration

under a Voluntary Collective Bargaining Arbitration Baord (VCBAB).

The primarily voluntary mediation services, in particular, seem to have inspired greater confidence in the minds of many negotiators in Alberta than the former conciliation procedures. Alberta negotiators now tend to regard mediation as a means to a settlement, as opposed to under two-stage compulsory conciliation, as a means to activating the capability of engaging in the legal work stoppage. It is our observation and feeling that self-reliance is fostered on both sides of the negotiating table by the coupling under The Labour Relations Act of primarily voluntary mediation with the general possibility of the parties' being confronted by the lawful work stoppage capability earlier on during agreement negotiations. Mediation sevices branches for many, if not all governments in Canada typically experience recruitment and especially retention problems. In order to partially alleviate these problems we proposed above that the Alberta Labour Relations Board be established as a governmental department, as the PSERB currently is established. DIBs are an alternative means for attempting to effect a settlement and possibly permitting the parties to "cool off" prior to a lawful work stoppage. They typically are used where there is a high degree of public interest and they are seldom used. Both these aspects, to us, are highly desired. When judiciously used with careful timing, the DIB, in our opinion can well serve the primary parties. Government funding for voluntary interest arbitration boards creates an incentive to use them and thereby is consistent with the government's custodial role.

Although several dispute settlement mechanisms are available under the LRA, and would continue to be available under the Code we propose, we would encourage the parties not to let this flexibility detract or deter from efforts on their part to be innovative in the ways in which they attempt to settle their disputes. We presume that the Alberta Labour Relations Board would encourage innovation of this kind by interpreting that it is consistent with the definition of "collective bargaining" currently found under the LRA, namely, "to negotiate or negotiation

with a view to the conclusion of a collective agreement or the revision or renewal of a collective agreement."

As argued above, the Alberta Labour Relations Board should assume government's intervenor role, in order to remove it from the political arena and to attempt to permit the principal parties, labour and management, as well as the public at large somewhat greater input into this role, since, in the final analysis, third party intervention is oriented towards serving the principal parties to the labour-management relationship.

Work Stoppages. Earlier, in Chapter II, we reviewed the work stoppage in terms of Alberta statistics as well as its role and function in the collective agreement negotiating process. It is our view that as measured by the numbers of work stoppages, duration, or working days lost Alberta does not necessarily have a work stoppage "problem." This is particularly so in comparison with certain other Canadian jurisdictions. However, the statistics presented above may only be the "tip of the iceberg." Nonetheless, it seems to us that, considering the nature of the system and the benefits extended, our work stoppage losses represent a quite reasonable price to pay. Further, and as noted earlier, it is our view that the work stoppage possibility is an indispensable part of the functioning of our collective agreement negotiating system. We simply do not understand nor accept the proposition that a negotiating system can meaningfully function in the absence of a work stoppage possibility. As a result, we seriously question the establishment of a collective agreement negotiating system that specifically eliminates the work stoppage possibility. It is our view that, given the nature and functioning of the negotiating process as described earlier, a decision to eliminate the work stoppage possibility effectively eliminated the collective agreement negotiating process. As a result, you have the application of the negotiating process in situations in which it simply will not work. We have in Alberta much evidence of the frustrations resulting from such an ill-advised approach. We submit that in such circumstances the failure of the negotiating process cannot be

negotiating relationships in the absence of a work stoppage possibility when the possibility, if available, would serve the negotiating process extremely well. Clearly, the designers of the current system must have had some criterion in mind in taking the decision on the work stoppage possibility elimination. It is not clear to us what these criteria were. In any event, they produced the wrong result and have seriously impaired the ability of our system to function effectively and have frustrated the collective agreement negotiating process.

The second consideration upon which the work stoppage possibility should be decided is the impact of that stoppage on third parties outside of the labour relations system. We readily accept the view that there are circumstances where, because of its impact on third parties, the work stoppage possibility must be eliminated. We say this even if the possibility is an essential requirement for the functioning of the collective agreement negotiating process. In this case, we believe that the negotiating process must yield in the face of the degree of work stoppage impact. It is our view that we do have activities and occupations where it is absolutely essential that the activities and occupations continue to serve the people of Alberta without interruption. To be sure, the decision on essentiality represents a judgment call and there is certainly plenty of room for differences in judgment. However, it is our view that decisions on this question to date in Alberta are more the product of random selection and were made in the absence of operationally defined criteria against which the degree of impact could be judged. It is our view, that such criteria can be developed and applied in a meaningful way. The major question is not criteria nor judgment but what system is to be introduced to determine wages, hours, and working conditions where the work stoppage possibility and, in our view, the collective agreement negotiating process are eliminated. We currently do not have a good answer to that question. However, we do support limited application of the interest arbitration process.

Finally, it is our view that the question of the work stoppage possibility is an integral and fundamental part of the construction of the individual

labour-management relationship. At the present time the question is not one considered when the relationship is established but comes from the outside as part of the overall statutory regulatory relationship. We seriously doubt that this approach serves any useful purpose. The utility of the work stoppage possibility under either of the criteria discussed above must be determined on an individual relationship basis in order to recognize the detailed circumstances of that particular relationship. The current approach of general prescriptions both for and against the question denies the relevance of the question to the details within the individual relationship. That is, it represents a blanket prescription based on fuzzy or not well thought out criteria and it does not stand up to critical reasoning and creates, upon closer or more detailed examination, anomolies or inconsistencies. It is our opinion that the application of the above criteria to The Labour Relations Act, 1980, which grants the work stoppage possibility, would produce quite differing answers to the work stoppage possibility from one relationship to another. Similarly, under The Public Service Employee Relations Act, 1977, the work stoppage possibility is eliminated but the above tests would result in differing answers from one relationship to another. In short, the answer to the question should not only adopt the criteria noted above, but also be decided along with other questions at the time of the establishment of each individual labour-management relationship. As with other questions dealing with relationship establishment, it is a matter quite properly within the purview and competence of the Labour Relations Board.

We already have addressed the issue of the respective jurisdictions of the Board and the Court in the area of industrial disputes. We believe, in addition, that the underlying applicable law should be clarified in certain respects. First, a refusal to cross a lawful picket line should not be viewed as constituting a "strike." It is a mockery of the law to permit picketing, that is, persuasion not to do business with the employer, but at the same time to make the conduct of the "persuaded" person illegal if he responds to the lawful persuasion. The proper approach to the problem, as we see it, is to ensure that the picketing is within lawful bounds

and not to label refusal to cross a picket line as unlawful. Second, trhe reight of a lawful striker to get his job back from a strike replacement should be clearly established. Our view in this regard is, of course, simply a value judgment, but one which we believe in the long run would enhance the labour-managment relationship and reduce possible strike violence. We also find that this proposition has support from our public opinion survey cited earlier. For administrative purposes, it might be useful to place a time frame on such a right. In this regard, Ontario has a six-month limitation. We suport such a time limitation and suggest its adoption. To act as a balance to the right to obtain one's job back should be a provision that where an employee has accepted a job on a full-time indefinite basis with a new employer, his status as an "employee" of the struck employer should terminate.

The present law as to picketing, which permits primary picketing but prohibits secondary picketing, appears to be in accordance with generally accepted views of Albertans as supported by our public opinion survey. It seems to us, however, that where another business operation has allied itself with an employer involved in a lawful work stoppage, equity then demands that the corresponding union be able to impose sanctions on such an "ally" including picketing his operation. An "ally" would be defined as "a person who, acting in combination with or in consort or in accordance with a common understanding with the employer, assists him in a lockout or in resisting a lawful strike." Common situs picketing, which is at the same time both primary and secondary picketing, poses difficult problems of balancing economic interests and rights. The total prohibition of common situs picketing , as was the result of the decision in the Lollipop case, is unacceptable in the modern labour relations setting. A more sophisiticated and just result must be achieved. The only way we believe it can be resolved is by giving specific jurisdiction to the Board to consider, on application or on its own motion, a common situs picketing problem and to give directions respecting the picketing to reasonably restrict and confine the picketing to the primary employer. In addition, we have concluded that the words, "without acts that are otherwise

unlawful" in section 114(1) of the Act, leave the legality of picketing in too uncertain a state, having regard to existing tort doctrine. Accordingly, we suggest that provisions in the Act be added to make it clear that "no action lies for interference with contractual relations, economic loss, and trespass to land to which a member of the public ordinarily has access, arising out of a strike, lockout, or picketing permitted by the Act." Our suggestion would specifically make inapplicable the tort of inducing breach of contract in lawful strikes, lockouts, and picketing. The elimination of trespass action in the context suggested would adopt the law proposed by the strong dissent of Chief Justice Laskin in the Lollipop case. Finally, the tort of conspiracty in lawful labour disputes should be eliminated. Thus, it should be specifically provided in the Code that "an act done by two or more persons acting in agreement or in combination, if done in furtherance of a labour dispute, is not actionable unless it would be wrongful without an agreement or combination."

Grievance Arbitration/Adjudication. On June 28th through 31st, 1980 the Alberta Department of Labour sponsored seminars in Calgary and Edmonton on the subject of Labour-Management Arbitration/Adjudication in Alberta. It brought together individuals from all segments of the Alberta labour relations community. The report of these proceedings, prepared under the editorship of Edmonton lawyer Tim Christian, were subsequently published in Grievance Arbitration in Alberta: Proceedings of a Workshop. Alberta Labour, Preventive Mediation Services: Edmonton, 75 pp. It is our opinion that these seminars provided a comprehensive and contemporary review of all issues relating to the arbitration/adjudication process in Alberta. As such, we have used these proceedings, together with the studies done by this project, as the basis for our evaluation of the Alberta system.

The central and major issues and conclusions identified in the Calgary and Edmonton proceedings were as follows:

1. The form and content of arbitral awards. Arbitral awards ought to contain

the following:

a) A treatment of preliminary issues of jurisdiction;

b) A statement of the general issue in question;

c) A statement of the findings of fact and the reasons therefore;

d) A clear indication of the major and minor issues in the case;

e) A summary of the arguments of the parties;

f) A description of the reasoning process;

g) An analysis of precedents, where applicable;

h) An unqualified, definitive and concise decision;

i) A reservation of jurisdiction where necessary;

j) Dissenting opinions where applicable.

Bench awards are desirable only in exceptional circumstances.

2. The appropriate role of Government in the grievance arbitration process.

a) Grievance arbitration ought to remain a private dispute resolution process,

b) Government should limit its role to providing facilities and services to support the arbitration system - such as the following:

(i) Meeting rooms and stenographic services;

(ii) Arbitration advocacy training programs for labour and management personnel;

(iii) Support of an Alberta arbitration and labour news reporting service;

(iv) Continuation of present role in the appointment of arbitrators;

(v) No appropriate role in monitoring the performance of arbitrators (the opposite position was taken by the participants who dealt with question 5);

(vi) There should be no increase in Government regulation of the arbitration process.

3. Criteria for admission to a roster of arbitrators and the method of recruitment of qualified persons.

a) Rosters should be available for use by the labour relations community,

b) Rosters should contain:

(i) Biographical information on each arbitrator;

(ii) Suitability of arbitrators for particular disputes and industries;

(iii) A record of the cases heard by each arbitrator;

(iv) A record of the number of times each arbitrator was voluntarily appointed by the parties.

c) Criteria for admission to the roster are:

(i) An interst in the area and a feel for arbitration work;

(ii) An availability sufficient to avoid delay;

(iii) An ability to conduct meetings;

(iv) Experience as a decision maker;

(v) An adequate perception of the work place;

(vi) No single profession should dominate the roster.

d) The method of recruitment to the roster should be:

(i) Interviews of prospective arbitrators;

(ii) Prospective arbitrators to be suggested by labour, management, Board of Industrial Relations.

(iii) Labour should appoint arbitrators from management ranks and management should appoint arbitrators from labour ranks. (This suggestion was made by one group only.)

e) Which agency ought to be responsible for the roster and for appointments from it:

(i) Deputy Minister and Conciliation and Mediation Services;

(ii) Labour Management Services (there was no consensus on which of these agencies ought to perform this role).

4. Arbitrator and counsel upgrading/training program.

a) The majority of participants favoured the creation of a comprehensive training program.

b) Labour Management Services should initiate the program.

c) The curriculum of such a training program should include:

(i) Discrete subject areas that can be treated in separate seminars (e.g.: rules of evidence, preliminary objections, format of arbitration awards);

(ii) A practical component consisting of mock arbitration hearings and the preparation of practice awards.

d) The existing programs in other jurisdictions ought to be reviewed prior to the establishment of a course for Alberta arbitrators.

5. Practical approaches to expedite the process and reduce the costs of grievance arbitration.

a) Expedite the process:

(i) Collective agreements should contain provisions allowing for the expedited arbitration of discipline and discharge cases;

(ii) When the Department of Labour is requested to appoint an arbitrator in a case calling for expeditions treatment, the appointment ought to be made conditional upon the arbitrator's ability to conduct a hearing within a specified time;

(iii) Union officers must be firm with their members and decide not to proceed with unmeritorious cases. The duty of fair representation encourages unions to proceed with even unmeritorious cases. (This view is based on a misunderstanding of legal requirements of the duty of fair representation. - ed.) Similarly employers should settle meritorious grievances and not deny them for tactical

reasons in order to weaken the union;

(iv) Chairmen ought to be responsible for setting hearing dates expeditiously;

(v) A joint labour-management committee should be established and charged with the responsibility of creating and maintaining a list of acceptable chairmen. The performance of incumbents on this list should be monitored and the criteria of assessment should include availability of the individuals. The list should be available for use by the labour relations community;

(vi) Training programs for union and management personnel should be established. This would make more skilled persons available and decrease dependence on busy, current practitioners;

(vii) Advance notice of preliminary objections should be given to avoid the necessity of last minute adjournments;

(viii) There should be no statutory provisions setting out rigid time limits for the issuance of arbitration decisions;

(ix) There should be recourse to a single arbitrator even where an agreement calls for a board where circumstances are appropriate and the parties mutually agree.

b) Reduce Costs:

(i) There was no consensus on the desirability of fee schedules;

(ii) The Government should not bear the costs of arbitration.

6. Is there a role for mediation in the arbitration process?

a) There should be no statutory requirement of mediation prior to arbitration. The parties can provide for mediation in their collective agreements if they wish.

b) Mediators should be made available to support the existence of a voluntary system of mediation of grievance disputes.

c) The process of mediation and arbitration of grievance disputes should remain separate.

7. The discussion on arbitral developments in other jurisdictions was of a very general nature and generated few conclusions. Reference should be had to the more detailed summary for details of the deliberations.

8. The appropriate role of nominees on an arbitration board.

a) Nominees are and ought to be partisan.

b) Before the hearing nominees ought to:

(i) Familiarize themselves with every aspect of the case;

(ii) Advise the nominator as to the desirability of proceeding with the case and;

(iii) Co-operate with the nominator in selecting a chairman.

c) During the hearing the nominee ought to:

(i) Listen and ask questions of clarification and;

(ii) Develop the evidence and engage in cross-examination (this view was not universally shared).

d) During the deliberation the nominee ought to:

(i) Ensure that the chairman understand the issues and points in favour of his nominator;

(ii) "Arm wrestle" the chairman to his perspective;

(iii) Prepare a dissenting award if necessary;

(iv) Retain his integrity and join in a unanimous award against his nominator if necessary (this view was not universally shared);

(v) Not communicate the decision of the chairman to his nominator until a written decision is issued;

(vi) Respond to draft awards with courtesy and dispatch;

(vii) Apply gentle pressure to speed up a tardy chairman.

In our opinion, the legislation in respect of grievance arbitration is reasonably flexible and accommodates the interests of the parties as it relates to the process. Arbitral jurisprudence is extensive and has basically come of age. On the whole, the system as now established works as well as can be expected.

We do, however, believe some changes should be made to the procedures and powers of the grievance arbitrator/adjudicator. The Act now permits the calling of witnesses by the arbitrator or adjudicator. It should also provide a system forr the calling of witnesses directly by the parties as is currently provided uncer provisions of The Arbitration Act.This would reduce the burdens placed upon the arbitrator/adjudicator and thus save some time and expense. We also believe that our proposed act or Code should give arbitrators/adjudicators the power of rectification and the power to relieve on equitable grounds any non-compliances with the grievance procedure as set forth in the collective agreement including any time limits specified. We believe that these powers are needed in order to free the grievance arbitration/adjudication process from excessive formalization and technicalities and to insure that justice be rendered. Finally, as already mentioned above, arbitration/ adjudication decisions should be reviewed by the Court of Appeals an not the Court of Queen's Bench.

Interest Arbitration. At pages 131 to 141 Supra we outlined the current functioning of the interest arbitration process in Alberta. Clearly the Alberta jurisdiction makes considerable use of this process. At the present time the interest arbitration process is deployed exclusively as an alternative to the negotiating system with the work stoppage. It is important to remember this fact as the process was not selected because of any inherent dispute settlement qualities it may bring to the functioning of the labour relations system. Its value today is purely and simply the relief it gives from the work stoppage eventuality.

Consequently, the use of the process raises at the outset three fundamental questions. First, can the process in reality, even when coupled with pre-arbitration negotiations, truly act as a substitute or surrogate for the negotiating system with a work stoppage right? Second, if it is to act as a substitute or surrogate for negotiations with the work stoppage right, what determines its acceptability as a legitimate process within our labour relations system. Third, what determines its acceptability as a legitimate process in the minds of the parties that choose or are required to use it.

Alberta's experience with the interest arbitration process is greatest in its application to the occupation of firefighters and policemen. It is our view that its use has found general acceptance and the parties appear to be reasonably satisfied with the kinds of results it has produced. However, we must keep in mind that in these cases its use is coupled with the mediation process. According to Moroni over one-half of the references to arbitration of firefighter and police disputes were in fact mediated to an accommodative settlement making the arbitration process per se unnecessary. In reality, the dispute procedures applicable are negotiations followed by mediation followed by arbitration. Thus, in our view, the resource talents called for are individuals who are effective in mediation as well as arbitration. Actually, classing police and firefighters disputes as being handled by "interest arbitration" is a bit of a misnomer. What we really have is a system of the post negotiations dispute being referred to a mediations/arbitration process. It combines elements of an accommodative as well as the adjudicative process.

However, Alberta's experience with interest arbitration in other applications is quite a different story. First, the process is not applied and administered in quite the same manner. Under the LRA the sequencing of dispute settlement procedures is negotiations, threat or actual work stoppage, a possible Disputes Inquiry Board, possible mediation, and finally use of Section 138 Authority which has meant to date interest arbitration. Under the PSERA the sequence is negotiations, possible

mediation, and finally interest arbitration. In short, the application and administration is quite different. We do not believe these differences are by design but are simply the way it has worked out. If interest arbitration is to become a successful and useful process we need to start to think out more fully its proper application and administration. We believe that three differing applications and administration of the process is without valid explanation and otherwise makes little, if any, dispute settlement sense. Second, and as a consequence of the foregoing, the interest arbitration process is virtually solely adjudicative in nature. That is, that the sole function of the process is to decide the outcomes of the issues placed before the arbitration process. This assumes that the issues placed before the process are capable of a black or white or yes or no outcome, which may not be the case, and that there exists a body of arbitration jurisprudence upon which not only the issues placed before the process can be ajudged, but also the arbitration decision can be founded. We do not believe that the interest arbitration process is at this time sufficiently sophisticated to handle the implications that these assumptions present. Third, we do not find even general acceptance of the interest arbitration process outside of its firefighter and police application. The trade unions subject to its application categorically and vigorously reject it and call for the reinstatement of the work stoppage right. Most employers, although not with the same degree of enthusiasm nor response, view the process with at least a similar degree of suspicion and concern. The singular exception appears to be the Government of Alberta in its employer role. In summary, the interest arbitration process receives less than a warm welcome outside of the firefighter and police jurisdictions. It is our opinion that the acceptance of the interest arbitration process by the parties is an indispensable requirement if the interest arbitration process is to obtain legitimacy as a dispute settlement process in the Alberta labour relations system. It certainly does not enjoy acceptance at this time and it appears that little is being done to improve its acceptability in the view of the parties affected by it.

Given the existing use of the process we believe it is imperative that steps be

taken to improve interest arbitration's acceptability. We believe that its application and administration in the firefighter and police jurisdictions presents useful insights for us. First, its adjudicative character must be dampened through its universal coupling with the mediation process. That is, if interest arbitration is to be used it should be applied and administered only in a mediation/arbitration context. Second, we must develop a stock of mediator/arbitrators. We need individuals who can not only combine mediation and arbitration skills but also possess knowledge and appreciation of the enterprises and industries they will be involved with. They must be remunerated comparable to competing competing opportunities and be prepared to give to the activity the time and effort it deserves. We do not believe that to date much care and consideration has been given to the selection of Alberta interest arbitrators. Third, as noted in the Moroni study, we must develop in the minds of the parties a greater awareness of the process to insure that they not only are aware of how the process will function but also come to it prepared, committed, and in all respects ready to represent their best interests. We believe that the interest arbitrators themselves to their own modus operandi can greatly contribute to the awareness, participation, and preparation that the parties bring to the interest arbitration process. There is no finer teacher than experience and no better leader than example. Fourth, and by far the most important step, we must develop interest arbitration jurisprudence not only to give guidance to the parties in preparing for participation in the process but also to establish a foundation and rationale upon which the arbitration decision can be built. At the moment, as the Moroni study concluded and unlike grievance arbitration, there is little in the way of an interest arbitration reasoning process used by Alberta interest arbitrators and what there is varies from one arbitration to another. In short, the approach of the parties is simply "you pay the money and take your chances." The response of the arbitrator is "I'll take your money and here is your answer." According to the Moroni study, some 65% of the arbitration decisions reviewed contained little reasoning in support of the arbitrator's conclusions. In his opinion only 15% contained what he considered to

be full and well-developed reasoning. To be sure, the question of whether the arbitrator should provide reasoning is certainly an arguable matter within arbitration circles. The profession is certainly not of one mind. However, notwithstanding the views of interest arbitrators, we believe that the reasoning process, or lack of it, certainly affects the attitudes of the parties to the process and to the arbitrated outcomes. In our opinion, the contribution of a reasoned decision to acceptance of the process and the outcomes at arbitration cannot be allowed to yield to the views of an ad hoc arbitration community. The preparation of full written reasons should be part and parcel of the duties of any professional interest arbitrator.

CHAPTER VI

THE ALBERTA LABOUR RELATIONS AND LABOUR RELATIONS LAW: RECOMMENDATIONS

In the paragraphs that follow we set out in summary our recommendations for changes in the law and related subjects affecting the Alberta labour relations system. The case in support of each was set out above in Chapter V. As noted at the outset of this report, our focus is on basic principles governing the functioning of the system and its basic foundations.

While we believe the existing labour relations system functions reasonably well and that Albertans are well served by it, it is our opinion that the passage of time and the subsequent evolution of the system dictates changes not only to ensure the continued effective functioning of the system, but also to respond to contempory issues we believe are now at hand.

In Chapter V, above, we presented in detail our evaluation on and issues in selected elements in the existing structures governing the functioning of the labour relations system in Alberta. In the case of some elements, our views do not lead to the formulation of any specific recommendation. In part, this is because it is not within our mandate to do so and, in part, because we are without an instrument through which meaningful recommendations can be made. As such, our recommendations are primarily on subjects falling within the statutes governing the relationship and call for actions to statutory changes upon the initiative of the Government of Alberta in its regulatory role.

Our recommendations have been presented within the overall framework adopted for this study. Succintly stated, the subject matters of our recommendations are the following:

i. Roles of government in the system particularily the role of intervenor, facilitator, regulator, employer, and custodian.

ii. Principles governing the statutory regulation of the labour-management relationship.

iii. Provisions governing the statutory regulation of the labour-managment

relationship.

a. Alberta labour relations code
b. Application and defination.
c. Alberta Labour Relations Board.
d. Certification processes.
e. Negotiating structures.
f. Role of the courts
g. Strikes and picketing
h. Grievance Arbitration
i. Unfair labour practices
j. Interest arbitration

When taken together, our recommendations are designed to introduce the following characteristics to the statutory regulation of our system:

1. ~~i.~~ Redefined government roles ~~&~~ WITH
   ~~a.~~ ~~D~~ecreased ~~in~~ direct goverment participation in the system.

2. ~~ii.~~ A clear identification of the purpose and principals of statutory regulations

3. ~~iii.~~ A redefined Alberta Labour Relations Board with expanded powers, functions, and activities

4. ~~iv.~~ Uniform application of principles to all employers, trade unions, and employees.

5. ~~v.~~ Recognition of the need for THE application of statutory provisions to recognize the circumstances and context ACKNOWLEDGE of a particular labour-management relationship.

6. ~~vi.~~ Flexibility in application.

ROLES OF GOVERNMENT IN THE SYSTEM

~~Roles of Government in the System~~ It is our belief that in terms of basic principles and fundamental functioning of the labour relation system, the contempory Alberta system suffers from excessive, inappropriate, and contradictory government participation and involvement. Historically, there has been a trend towards greater and greater governmental intervention into the labour relations system in Alberta, Canada, and other industrialized nations. ~~Prom-~~ CONCOMITANT ~~inenant~~ with this trend has been the growth in the size of governments so that governments are now major employers. For these reasons, the degree of government participation and involvement dominates the functioning of our labour relations systems to the point of obscuring labour and managements participation and involvment. In our opinion, this dominance leads to emasculation of the systems

free and effective functioning. This result follows from most dramatic shifts in the traditional roles of government both within and outside the system. As noted earlier at Page 209 Supra government participation and involvement has been founded upon its desire to fulfill some five roles in the system: intervenor, facilitator, employer, regulator, and custodian.

The history of government participation and involvement demonstrates clearly a dramatic shift in role emphasis and with it increased contradictions, anomalies, and ambiguities that not only question the value of government contributions to the system, but also, in our opinion, detract from the systems effective functioning. Specifically, we have witnessed increased emphasis on the roles of employer and custodian and as a result direct impairment of ~~its~~ government's ability to function in its roles as intervenor, ~~conciliator~~ facilitator, and regulator. Our view of the impact of these changes leads us to argue the case for clarifying and redefining the governments role in the Alberta labour relations system and a restatement of appropriate activities it should pursue in fulfillment of its role functioning both within and outside the Alberta labour relations system. In so concluding, it is our view that certain activites currently subsumed under the respective roles of government can best be assumed by a redefined and reconstituted Alberta Labour Relations Board. In effect, it is our view that the Alberta labour relations system is in need of a rearrangement and restating of role and supporting activities as they relate to the participation of the institutions of government and the labour relations board. We encourage the return of the primary functioning of the system to labour and management with significantly less direct government participation and involvement than currently is observed. A subsidiary objective is to eliminate the habit of both labour and management ~~both~~ seeking solutions to government lobbying rather than seeking solutions within the labour-management relationship. We also wish to encourage responsibility and self-reliance of the part of both labour and management.

Recommendation IX.-Regulator Role. That the government adopt, set out clearly, and publish, its purpose, view, goals, expectations, policies, and principles with

respect to the functioning of the Alberta relations system and incorporate this purpose, view, goals, expectations, policies, and principals in the legislation governing the Alberta labour relations system or in a policy statement.

~~Intervenor Role.~~ It is our opinion that the evolution of labour relations activity in Alberta has lead to ineffectiveness in the traditional activities pursued by government in fulfilling the intervenor role. As note earlier, governments role as intervenor includes intervention in the negotiating process by way of meditiation or ~~d~~iputes ~~i~~nquiry ~~b~~oards, in an attempt to avoid a work stoppage, with conciliation in an attempt to aid the negotiating process as it relates to police and fireman, ~~may~~ appoint members to a Grievance Arbitration Board, ~~may~~ appoint members to an Interest Arbitration Board, ~~may~~ appoint members to a Voluntary Collective Bargaining Board, and ~~may~~ extend the right to prosecute.

Recommendation ~~ii.~~ - Intervenor Role. The government of Alberta through the Department of Labour, should withdraw completely from its current intervenor role. It is our opinion that these activities should be assumed by a reconstituted Alberta Labour Relations Board which, although, appointed by government, is an independantly funtioning quasi-judicial labour-management body.

Recommendation ~~iii.~~ - Facilitator Role. The Government of Alberta through the Deparment of Labour, should expand and upgrade its facilitator role through the expansion of its existing activities and the addition of new activities as articulated below.

Recommendation ~~iv.~~ - Facilitator Role. That the Alberta labour-management relations community establish a ~~community representive~~ Alberta Labour-Management Relations Council with the government of Alberta acting as facilitator to this institution.

Recommendation ~~v.~~ - Employer Role. The labour-management relationship among government as an employer, its trade unions, and its employees should be governed by the same statutory principles as other employers, trade unions, and employees,

falling within the scope of the Alberta labour relations system.

Recommendation ~~vi~~ 6. - Custodian Role. The government of Alberta should reassess its activities in fulfilling its custodial role. The scope of its custodial role should be clarified and it should seek improvement in its custodial role activitvies. We urge the government of Alberta to discontinue the issuance of publicly stated policies statements that attempt to influence negotiated economic outcomes and to remove its authority to discontinue the work stopage activity from the regulatory statute governing the general labour relations system.

PRINCIPLES GOVERNING THE STATUTORY REGULATION OF THE LABOUR-MANAGEMENT RELATIONSHIP

~~Principles Governing the Statutory Regulation of the Labour - Management~~ Relationship

There are currently four major statutes that describe the legal foundations of the Alberta labour relations system. They are the Labour Relations Act, S.A. 1980 Chapter 72, the Public Service Employee Relations Act, S.A. 1977, Chapter 40, the Firefighters and Policeman Labour Relations Act, R.S.A. Chapter 1-43, and the Technical Institutes Act, Statues of Alberta, S.A. 1981, C.T.-3.1. The legal foundations set out in each statute differ, resulting in anomalies, contradictions, inconsistencies, and extend differential treatment to the primary parties.

Recommendations ~~vii~~ 7. - Principles. The statutory legal foundations of the Alberta labour relations system should be embraced within a single Alberta labour relations code. Its provisions should give support to the following principles:

1. A minimum of direct government participation and involvement in the functioning of the labour relations system.
2. Recognition of the public's interest in the functioning of the labour-relations system.
3. A democratically governed labour relations system.
4. A regulatory system that permits flexibility in its administration and adaptability to changed conditions on an ongoing basis.
5. Assignment or delegation of authority or power to institutions in the labour relations system should be monitored.

6. Unrestricted freedom of all employees to form, belong to, and participate in trade-union organizations except when their participation in the labour-management relationship is not appropriate.
7. Unrestricted freedom of all employers to form, belong to, and participate in employers' organizations except when their participation in the labour-management relationship is not appropriate.
8. A system for establishing employer recognition of the trade-union given employee expression of union selection and majority wishes.
9. A system for establishing trade union recognition of the employers association given employers' expression of association selection and majority wishes.
10. Unrestricted support for the collective agreement negotiating system as it is the best method for determining and administering wages, hours, and working conditions.
11. The right to the work stoppage for a unit except where it is not appropriate to the collective agreement negotiating process.
12. Continuous administration of the scope and form of the work stoppage.
13. Use of the Interest Arbitration process in those units where the collective agreement negotiating system with a work stoppage right is not appropriate to the relationship.
14. A system for balancing the rights of an individual with the rights of the group.
15. Operational regulatory functioning of the labour-relations system is vested in a labour relations board with specialization, expertise, independence from government, credibility, and support as indicated by the quality of appointments to the board and its budgetary support.

PROVISIONS GOVERNING THE STATUTORY REGULATION OF THE LABOUR-MANAGEMENT RELATIONSHIP

~~Provisions Governing~~ The Statutory Regulations ~~of the Labour Management Relationship~~

In recognition of our commitment of the above principles we set out below the substance of provisions we believe should be set forth in our proposed Alberta labour relations code. As noted earlier, we believe Alberta relations can best be served by a single statute having application to the whole of the Alberta labour relations system. In order to accomplish this end, the existing four statutes examined in this study will in effect be consolidated into a single statute. In some cases, we will be recommending the repeal of existing provisions in favour of the provisions contemplated in the Alberta labour relations code. In other cases we will be recommending that certain provisions be brought forward for inclusion with in the proposed code. We turn first to our recommendations respecting the establishment of the Alberta labour relations code.

Recommendation ~~viii~~ 8. -Alberta Labour Relations Code. We recommend that :

1. The P.S.E.R.A. should be repealed except for Section 48(ii) which should be incorporated into the Alberta Labour Relations Code.

2. Sections 30 - 36 inclusive of the Technical Insitutes Act should be repealed.

3. The F.P.L.R.A. should be repealed, except for Sections 2(b)(iii) and 2(c) which should be incorporated into the Alberta Labour Relations Code.

4. The provisions of the L.R.A. should be incorporated into the proposed Alberta Labour Relations Code with provisions amended to provide for the following recommended provisions set out below.

5. The code should provide that the labour relations system of Alberta should be served by a single labour relations board known as the Alberta Labour Relations Board.

Recommendation ~~ix~~ 9. - Application and Defination. We recommend that:

1. The Alberta Labour Relations Code should apply to the Crown in the right of Alberta.

2. The code should apply to employees employed on a farm or a ranch.

3. The code should apply to employees employed in domestic work.

4. The code should not exclude as an "employee" a person who is a member of a medical, dental, architectural, engineering, or legal profession qualify to practice under the laws of Alberta and employed in a professional capacity

5. The term "bargaining agent" should include a council of trade unions.

Recommendation ~~x.~~ 10 - Alberta Labour Relations Board. We recommend that:

1. The existing Labour Relations Board be renamed the Alberta Labour Relations Board.

2. Administration and enforcement of the Alberta Labour Relations Code should be assign~~ed~~ assigned to the Alberta Labour Relations Board.

3. The Alberta Labour Relations Board should be comprised of full-time as well as part-time members. There should be sufficient membership to provide for staffing, rotation, training, and feedback.

4. Appointments to the board should be for terms of from three to seven years and a memeber should be removable only for cause and by the legislature.

5. The Alberta Labour Relations Board should have tripart~~hied~~ite composition with membership from labour, management, and the public. All appointees should have experience in the Alberta labour relations system.

6. A ~~forum~~ quorum shall consist of four members of the board.

7. The code should provide that parties to any proceedings before the Alberta Labour Relations Board may serve notice to persons compelling attendance. Failure to attend shall constitute an unfair labour practice.

8. Members of the Alberta Labour Relations Board will be permitted to issue dissenting opinions.

9. Decisions of the Alberta Labour Relations Board should be reviewed by the Court of Appeal.

10. A decision of the board, if not complied with, may be registered with the Court of Queen's Bench for enforcement.

11. The chairman of the Alberta Labour Relations Board should assume the capacities presently assumed by the Minister of Labour within the ~~L.R.A.~~ LRA.

12. The Alberta Labour Relations Board is to functions as the initial and ongoing determiner of bargaining structures, administrator of the work stoppage activity, and intervenor in negotiating disputes.

13. The Alberta Labour Relations Board should have the power to abridge or enlarge any time provisions in the code. The board should also have the power to review terms of a collective agreements and declare void provisions which unreasonably interfere with carrying on a business having due regard with the reasonable protection of trade unions and employers.

14. The Alberta Labour Relations Board should have authority to award damages for breach of the code.

15. The code should require the Alberta Labour Relations Board to establish a system of financial accountability and review for trade unions and employer associations.

16. The role of intervenor in the Alberta labour relations system should be assumed by the Alberta Labour Relations Board.

Recommendation ~~xi~~ 11. - Certification Process. The certification process as presently provided by the L.R.A. should be amended to provide for the following:

1. The code should provide that an application for certification may be made if a collective agreement for a term of two years or less is in force in respect of any of the employees in the unit, at any time in the fourth or fifth month prior to the end of the term of the collective agreement.

2. The code should provide that if a collective agreement for a term of more that two years is in force in respect of any of the employees in the unit of SEE OVER . . .

at any time (i) in the seventh or eighth month of the 2nd or any subsequent year of the term, or (ii) in the fourth or fifth month prior to the end of the term.

3. An Application for Certification should indicate the applicant's preference with respect to the work stoppage.

4. An inquiry conducted by the Board on receipt of an Application for Certification should include an inquiry into the appropriateness of the work stoppage to the relationship being certified including the identifcation of parts of the unit for employers' operation where the work stoppage may not be appropriate.

5. The appropriateness of the work stoppage to the relationship should consider the following criteria:

   a) its effectiveness as an aid to the functioning of the negotiating process

   b) the kind and degree of consequences that the work stoppage would bring to third parties and

   c) any other considerations designed relevant to the Board.

6. When the Board is satisfied that the work stoppage is appropriate to the relationship it should issue a negotiating certificate specifying the work stoppage availability and the scope of its application.

7. When the Board is not satisfied that the work stoppage is appropriate to the relationship it should issue a bargaining certificate specifying that the work stoppage is not appropriate and providing for the interest arbitration process as the terminal step in the agreement bargaining process.

8. An effect of the issuance of a certificate should be to require that parties to it set out existing wages, hours, and working conditions in a collective agreement together with the grievance arbitration system as provided by the code, the bargaining unit scope defined by the certificate, a Rand formula

checkoff provision, and a provision for a term of one year with either party having the right after four months to give immediate notice of intent to renegotiate.

9. The code should grant to the Alberta Labour Relations Board appropriate power to administer the above recommendation.

10. Voluntary recognition of a bargaining agent by an employer is prohibited.

11. The code should not recognize a non-certified bargaining agent.

Recommendation 12 - Multi-Union/Multi-Employer Negotiating Structures. We recommend that:

1. The code should provide for the establishment of negotiating relationships comprising a council of trade unions and employers' associations on application or on the motion of the Alberta Labour Relations Board.

2. The code should provide for multi-trade union bargaining through registered employers' associations in the Alberta construction industry.

3. The present employer registration system in the construction industry should be made available in other industries.

4. The code should provide that an employers' association on application may be registered to exclusively represent its members. The sixty day "escape" provision presently available in the construction industry should apply.

5. The provisions of section 75 of the LRA should be repealed to eliminate the concept of an unregistered employers' association.

6. The code should provide that the duty of fair representation should apply to an employers' association.

Recommendation 13 - Role of the Courts. We recommend that:

1. The code should limit jurisdiction on application for interim injunctions to activities involving immediate danger of injury to persons or damage to property.

2. A party to a court proceeding may with Board consent request a stay of proceedings pending determination of the matter by the Alberta Labour Relations Board.

Recommendation 14 - Strikes and Picketing. We recommend that:

1. The code should provide that no action lies to petty trespass to land to what a member of the public usually has access or interference with contractual relations arising out of strikes, lockouts, or picketing permitted under the code.
2. The code should provide that an act done by two or more persons in combination if done in furtherence of a labour dispute is not actionable unless it would be wrongful without an agreement or combination.
3. Picketing should be permitted at an "ally" of the employer.
4. A striker who takes a job for an indefinite period with another employer during a lawful strike ceases to be an "employee" within the meaning of the code.

Recommendation 15 - Grievance Arbitration. We recommend that:

1. The code should provide that the parties to the grievance arbitration process may serve notice to persons compelling attendance. Failure to attend shall constitute an unfair labour practice.
2. Awards of grievance arbitrators should be reviewed by the Court of Appeal.
3. A grievance arbitrator should be able to grant equitable relief with respect to procedural irregularities in the grievance procedure, and to rectify collective agreements.

Recommendation 16 - Unfair Labour Practices. We recommend that:

1. All breaches of the code and a collective agreement constitute an unfair labour practice. Part VIII - Offences and Penalties of the LRA should be repealed.

2. In an unfair labour practice complaint the Board may review alleged breaches of the collective agreement and may fashion an appropriate remedy including fines and damages.

Recommendation 17 - Interest Arbitration. We recommend that the Interest Arbitration process be codified to provide for the following:

INTER-DEPARTMENTAL CORRESPONDENCE

Professor W.H. Hurlburt
Director, Institute of Law Research
and Reform

DATE 10 December 1982

FROM E.G. (Jed) Fisher
Industrial and Legal Relations

RE: Labour-Management Relations Project

It has been some six or seven months since Mr. A.M.S. Melnyk, Q.C., undertook to complete the one incomplete chapter of The Labour-Management Relations Study Group Report. To the best of my knowledge this task has not yet been completed. (The report is in the computer and Mr. Melnyk has not updated the computer version of that chapter through me yet.) The current status of the Report concerns me very much, for I had hoped that it would have been filed with the Institute, reviewed by It and published in some shape or form by It by now.

Would you please inform me about the status of Mr. Melnyk's obligation to the Project, especially concerning the yet-to-be completed chapter on labour relations law in Alberta? Would you also please inform me of the status of the Report in the Institute's eyes and what can be done in order to ensure that it "sees the light of day" rather than sits in computer files or on the shelves of the Study Group? (Please bear in mind that some minor revisions and polishing are required.)

Thank you very much and I look forward to hearing from you.

Jed Fisher

EGF/lw
cc: C. Brian Williams

Melnyk, McCord & Meiklejohn

BARRISTERS, SOLICITORS, NOTARIES
TRADE MARK AGENTS

)N M. S. MELNYK, Q.C., B.A., LL.B., LL.M.*
) MEMBER N.W.T. & YUKON BARS)

LEE A. McCORD, B.A., LL.B.*

IE R. MEIKLEJOHN, B.A., LL.B.*
) MEMBER SASK. BAR)

M. MELNYK, B.A., B.Ed., M.A., LL.B

BACKHAUS, B.A., M.A., Ph.D., LL.B

11054 - 86 AVENUE
EDMONTON, ALBERTA T6G 0W9
TELEPHONE (403) 432-7464

OUR FILE 5180-1A

YOUR FILE

October 25, 1982

The Institute of Law Research
and Reform
402 Law Centre
The University of Alberta
Edmonton, Alberta

Attention: G.C. Field, Q.C.

Gentlemen:

Re: Labour Management Relations Project

I acknowledge receipt of your letters of July 14 and August 4, 1982 in the above matter.

I will ensure that the project is completed within the original budget and any overruns will be absorbed by myself in completing the project. Accordingly, no further bills will be rendered, in any event, until completion.

As matters appear now, it will not be possible to submit the final report by November 10. I will further report to you by November 15, 1982 as to my progress.

Yours truly,

MELNYK, McCORD & MEIKLEJOHN

Per:

ANTON M.S. MELNYK

AMSM/ce

THE INSTITUTE OF LAW RESEARCH
AND REFORM

402 LAW CENTRE
THE UNIVERSITY OF ALBERTA
EDMONTON, ALBERTA T6G 2H5
TELEPHONE (403) 432-5291

August 4, 1982

Mr. Anton M.S. Melnyk, Q.C.
C/o Melnyk, McCord & Meiklejohn
Barristers and Solicitors
11054 86 Avenue
Edmonton, Alberta
T6G 0W9

Dear Sir:

Re: Labour Management Relations Project

We have now received an additional $10,000.00 from the Alberta Law Foundation leaving $5,000.00 balance. We therefore hope to process your outstanding invoices within one week of the date of this letter.

The Executive Committee of the Board of the Institute has been trying to set the flow of work through the Institute Board for the remainder of this calendar year. They had hoped that Labour Management Relations would be ready for the Board Meeting on the 25th of November this year. In order to get the material ready for the Board by that time I would like, if possible, to have the report by the 10th of November. Is there any hope for this deadline?

Yours truly,

George C. Field

GCF:tm

ALBERTA LAW FOUNDATION

315 Palliser Square West
131 - 9th Avenue S.W.
Calgary, Alberta T2P 1K1
Telephone 264-4701

July 19, 1982
Our File #605

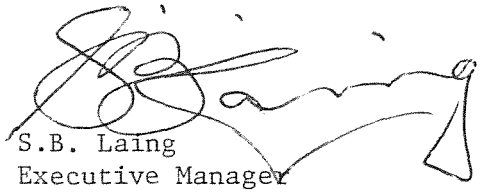
The Institute of Law Research and Reform
402 Law Centre
The University of Alberta
EDMONTON, Alberta
T6G 2H5

Attention: Mr. G.C. Field

Dear Mr. Field:

As requested in your letter of July 14, 1982, we enclose a cheque in the amount of $10,000.00. Your balance is now $5,000.00.

Yours very truly,



S.B. Laing
Executive Manager

SBL/dmp

enc.

THE INSTITUTE OF LAW RESEARCH
AND REFORM

COUNSEL
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July 14, 1982

Mr. Anton M.S. Melnyk, Q.C.
c/o Melnyk, McCord & Meiklejohn
Barrister and Solicitors
11054 86th Avenue
Edmonton, Alberta
T6G 0W9

Dear Sir:

Re: Labour Management Relations Project

I must apologize on behalf of the Institute for not processing your letter of May 26th, 1982, and the invoices attached to them sooner. Unfortunately there was a tremendous rush to get things done before Mr. Hurlburt left on his one year sabbatical on July 1st. I have written to the Alberta Law Foundation requesting that they place us in funds so that we can pay these invoices, and I have no reason to believe that they will not be their usual prompt selves in sending us the money. Once we have received the money however this will leave a balance of only $7,044.60 remaining of the original grant of $175,000 to complete this project. I would appreciate your letting me know if you feel that this will not be an amount sufficient to cover the balance of the work.

Yours truly,

G.C. Field

Aug 3

GCF:dd

① We have now got the money.
② Board meeting 25th November.

Melnyk, McCord & Meiklejohn

BARRISTERS, SOLICITORS, NOTARIES
TRADE MARK AGENTS

)TON M. S. MELNYK, Q.C., B.A., LL.B., LL.M.☆
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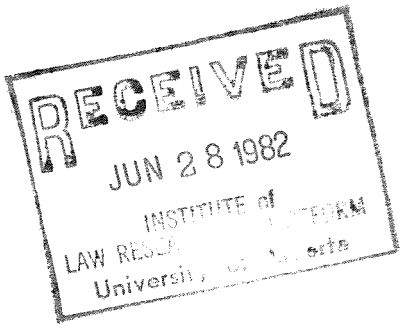
OUR FILE: 5180-1

YOUR FILE:

June 28, 1982



Institute of Law Research
& Reform
402 Law Centre
University of Alberta
Edmonton, Alberta

Attention: W.H. Hurlbert, Q.C.

Gentlemen:

Re: Labour Relations Project

This is further to your letter of April 21, 1982 and our subsequent telephone discussion.

I had hoped to be able to deliver a report in final form to you before the end of June.

Unfortunately, due to extreme client pressure in these rather difficult economic times, I have not had the necessary uninterrupted time to complete the report.

I have added additional staff to the firm to solve our internal problems. Realistically, to complete matters the summer will be needed.

I appreciate that you have been more than reasonable with me and ask to bear with me a little more.

Yours truly,

MELNYK, McCORD & MEIKLEJOHN

Per:

ANTON M.S. MELNYK

AMSM/ce
c.c. Dr. Williams
Dr. Jed Fisher

THE INSTITUTE OF LAW RESEARCH AND REFORM

COUNSEL
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402 LAW CENTRE
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EDMONTON, ALBERTA T6G 2H5
TELEPHONE (403) 432-5291

April 21, 1982

Mr. Anton M. S. Melnyk
Barrister and Solicitor
11054 - 86 Avenue
Edmonton, Alberta
T6G 0W9

Dear Anton:

Since Dick Dunlop has concluded that his various functions make it inappropriate for him to take part in the process now going on, I thought that I should at least have a look at some of the report. Of course, the Institute does not have the right or the desire to tell the project what to say. However, the Institute will of course have to decide upon its own position once the report is issued, and I have sometimes found it helpful to take the position of the average stupid reader to whom a prospective report will be addressed, and to indicate reactions. I don't know whether it will be of any use for me to do so at this time, but I think that I will.

I have just glanced through chapters 5 and 6 as they stood on, I think, April 15th or thereabouts. That of course gives rise to the difficulty that I have not become informed by reading the earlier chapters, and I start without too much basic information about the field generally. I think that I do end however with some comments of some substance and others of form.

I take it the establishment of an ALRB with somewhat different composition and with extended functions is at the heart of the recommendations, and I will deal with that as a topic.

Precedent

Has anyone else tried an administrative tribunal which has power to decide who has the right to strike? As part of a general cradle to the grave regulatory scheme? I infer that the answer is no, as the chapter does not refer to any precedent nor does it refer back to another part of the report. I think the question is worth answering.

... 2

Acceptability

At page 84 of chapter 5 the statement is made that, except for the firefighters and policemen, the trade unions subject to the interest arbitration process categorically and vigorously reject it and call for the reinstatement of the work stoppage right. It is also said that most employers view interest arbitration with at least a similar degree of suspicion and concern, though, apparently, less vigorously so. I don't think that the report says very much to justify a hope that either side will accept the interest arbitration which would be imposed by the new regime. There are suggestions that the primary participants will have greater confidence in the new board, but that doesn't suggest that the confidence will rub off on the interest arbitration procedure (unless the Board is the arbitrator). The report does suggest that the interest arbitration process should be coupled with mediation (page 85) and it seems to be suggested that this will improve its acceptability, and education is also recommended. I would think that it would be fundamental to the acceptance of the report that it show that there is a sufficient likelihood that these additional steps would make the process acceptable to justify what would amount to a very strong social investment in establishing the new process and maintaining it for long enough to see whether it will work. I am not here arguing against the new process, but I am saying that as average stupid reader with no particular expertise in the field, you have not convinced me that the participants will find acceptable a change in the law which would impose compulsory interest arbitration on employees not now subject to it. I think that the report recognizes the need for acceptability (P.84).

I find my uncertainties increased by the statement at page 73 that the project does not have a good answer to the question of what system is to be introduced where the work stoppage possibility and collective agreement negotiating process are eliminated. Does it follow that the answer in recommendation 11, item 7 (under which the Board would provide for interest arbitration) is not a good answer? At page 73 it is also said that the project supports "limited application" of the interest arbitration process. In context I would have thought that that sentence meant the process should not be applied to all cases in which the work stoppage possibility is done away with, while the recommendation seems to apply it in all such cases (though I may be misreading the page 73 text).

When work stoppage unavailable

I should say that until pages 73 and 74 I had not seen any justification for having a tribunal decide who can strike. The paragraph that starts at the bottom of page 73 and the top

of page 74 does provide a form of justification. It would seem to me that the reader should be given this justification early on, as many average stupid readers will not reach it or notice it.

On a point of more substance, I note that the decision is to be made at the time of the establishment of each individual labour-management relationship. I take it that the latter phrase includes the time of initial certification. I take it also that it includes the time of negotiating each successive collective agreement, as the parties are to give notice each time whether they want the existing work stoppage arrangements continued. I find it a little unclear however as to just when the Board will be able to consider the work stoppage question, and I think it would be helpful if the report made it clearer. On scanning the recommendations, I only see item 4, recommendation 11, which talks about the time of the application for certification.

I don't see any provision for changing the certificate with regard to availability of work stoppage. Do I take it that everyone, including the ALRB, is bound by the decision until the next occasion upon which it can be opened up?

In particular, I take it that there is no suggestion that the ALRB would be able to rule on an impending or existing strike, and I think it would help to state this.

Whose work stoppage?

I think that it would help to make it clear whether both strikes and lockouts are included. The term "work stoppage" I find somewhat ambiguous. Presumably it includes a process involving people stopping working, but I am not sure whether it involves a process in which some people stop other people from working. I expect that both are intended to be included. Would there be a rule that if one side is denied work stoppage the other is also?

Criteria for decision about availability

With regard to the first criterion for availability, there are statements on pages 72 and 73 which suggest that there should be no right to strike or to lock out unless those possibilities constructively contribute to the negotiating process. There are then statements that there are cases where the degree of linkage is so low that the possibility serves absolutely no useful purpose. Presumably it would follow that the ALRB should deny in those cases the right to strike and to lock out. As casual stupid reader, I wonder what those cases are. Can they be identified or defined? Is there a cross-reference to something else somewhere in the report that would enable them to be identified? The report attaches some importance to them.

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I take it that the discussion on pages 72 and 73 exhausts the first criterion, and that the first criterion would not apply in favour of eliminating or reducing the possibility of work stoppage except in a case in which the negotiating process is such that that possibility would not affect it.

I find myself concerned about the second criterion as I am not entirely sure that the case has been made out for the combination of the decision to be made and the maker of the decision. The paper does make quite vigorously the point that individual consideration is necessary and that the decision about the right to strike cannot be made by a form of classification. My problem is that it seems to me that the balancing of the values behind the right to strike with the values involved in the right to receive the goods or services is one of such difficulty that I have trouble in seeing how a quasi-judicial body can deal with it, and I am not sure that I see how a body not firmly based in the political process can do it. It may be that this comes back to the question of "acceptability" of the system as a whole, but I am not sure that the report tells me why the participants will be willing to accept the decision, or for that matter why the third parties will accept the decision. I will come back to that later.

The point here is how to weigh the right to strike against the need for the product. How can the Board weigh the interest of the poor and elderly in having the transit service against the interest of the bus drivers or maintenance workers in going on strike? The paper says at page 73 that it is a "judgment call", and I am not sure that the justification for allowing it to be made by a board is shown to be sufficient. It may be that I am merely expressing a personal opinion, but I am not sure after reading the report that the only available answer is not some form of a political answer, at least to the extent of guidelines.

Perhaps it is part of the same problem, but I would worry about the fact finding. I take it that the report contemplates that the ALRB would have public hearings on the right to strike and lockout, in view of the several references to public input. Perhaps that is better than a relatively uninformed legislature or cabinet, but it would seem to me that the finding of facts for every bargaining unit would be a tremendous job. Then, if the public input was to be more than a group of people saying how desperate their need is for a bus or for beer, there would have to be some way for representations to be organized and facts to be put forward, which would probably involve cost.

I don't think that I have seen in the report a discussion of what other considerations the Board would take into account under the third criterion. Page 74 complains about a blanket prescription based on fuzzy or not well thought-out criteria.

... 5

Who will remove the fuzziness and do the thinking? The third criterion seems to leave it to the Board, except that under the first two the Board is to think about the nature of the negotiating process and the effect on third parties. The Board would otherwise have an undirected discretion and would seem to be able to develop it in any way it wants, so long as the appellate tribunal will let it do so. Can't the report say what else can be taken into consideration? For example, is the Board free to deny the right to strike on the grounds that the union, in the Board's view, has abused that right in the past? Or that its negotiators are untrained? Or that it relies too much on its lawyers and consultants? I mention these last because they are things that the report has reprobated. Will the major participants find acceptable a proposal which will leave open the possibility that an administrative tribunal will work out on its own discretion what may turn out to be an important and value-laden part of the system?

Legitimacy of the ALRB

I think that it is clear from the report that the acceptability of the proposed system will depend upon the acceptability of the ALRB. Chapter V, and the recommendations in chapter VI, suggest that there should be some changes of importance. I note however that recommendation 10, item 1, is that the existing Board be renamed the ALRB, so that I take it that the existing Board is the foundation of the new ALRB.

As I understand it from the report, the existing Board is composed of three elements. These include members drawn from labour and management. Presumably the descriptive parts of the report will have shown what controls there are to insure that this happens, and I presume that the new Code would make some specific provision in that regard and not merely leave appointments to the Lieutenant Governor in Council.

I understand also that the existing Board has some "neutrals", whom I take to be the chairman and vice-chairman, and whom I take to have had a neutral position. (Is that true of the present chairman?) Is there a descriptive part of the report which shows how the labour, management and neutral people interact (if I may coin a word)? I have an impression that when a three person ad hoc arbitration panel is chosen, one nominated by each side and with a neutral chairman, the nominee arbitrators are expected to put forward the position of the nominator parties, and that at least part of the operation is a search for the heart and mind of the neutral chairman. Is that expected to happen on the ALRB? If not, what is the point in having labour and management people on it? On the other hand, if it is expected to be true of the ALRB that the two sides will contend and, save in clear cases, will end up on the opposite sides, will

... 6

it be expected that the neutrals plus the public representatives will make the choices?

My general impression of the existing L.R.B. is that it is generally doing things that fit within fairly precise policy guidelines, such as deciding which would-be bargaining agent has the confidence of the majority of employees, or seeing that employee votes are properly taken. Will adding on the highly controversial and value-laden question of the right to strike or lockout change the dynamics? Assuming that the Board is presently the repository of the confidence of the principal participants (I hope, and assume, that this question is answered elsewhere in the report), will the new Board, with its much broader control over vital issues be the repository of the same confidence? If the umpire in this new ball game is to have a broad discretion over its result, will the contestants still be willing to trust it? I am not sure that the report answers the question.

I don't think that the report tells me what the difference is between a "neutral" and a "representative of the public." The answer may be that under the present system a "neutral" is simply someone who is not associated with either of two contending adversarial parties: I don't think that that point is made in the chapter, unless by the word "neutral", and I hope that it is made somewhere else. Now we are going to put in the additional "representative of the public." Does that mean that the public is a third adversarial party (with liberty to make representations) and that there is now to be a three-way contest for the hearts and minds of the neutrals, in which there will be a labour interest, a management interest, and a general public interest? In that case the "neutral" is going to have to be most ideally and unusually "neutral", and indeed would seem to be denied the capacity of holding almost any opinion. Or is there to be a "public interest" which is represented by the "neutrals", which is different from the interest of the public which is to be represented by the "representatives of the public"? I don't think that the report tells me these things.

Also, I don't know how the "representative of the public" is to identify his proper constituency. If he is deciding whether an urban transit system is to have the right to strike, is he a representative of the public which pays the taxes and will enjoy the financial relief of a transit strike, or is he a representative of a part of the public which suffers less from taxes than from the lack of a public transportation system? I start with the view that, while there may be strong reasons for including in any powerful body persons who are not involved in the special interests with which the body deals, it is extremely difficult to characterize their function as representing the public, which is almost invariably highly fragmented and

... 7

composed of individuals and groups with strongly conflicting interests. The political process customarily deals with that problem, but it does so according to some complex of forces including the votes of the electorate, an element which will not be available for the guidance of the ALRB or its members. I don't think that the report tells whether the system will impose upon members drawn from the "public" a duty to advance all the myriad and conflicting interests of the myriad segments of the public, or whether the representative is to choose among those interests, and, if he is to choose, how he is to do it.

I note that recommendation 10, item 5, mentions only tripartite composition with membership from labour, management and the public. Chapter V however, at page 26, seems to have in mind the two classes of neutrals and public representatives drawn from the public at large who are to provide "direct representation from the general public", which is the concept that I am having difficulty with at the moment. I am not sure just what the text at page 26 means when it refers to "neutrals or, alternatively, the chairman and vice-chairman who participate in the labour relations system and a number of whom are labour lawyers." If those referred to in the alternative are the ones usually called "neutrals" I have some difficulty in seeing how they are likely to be "neutral" unless, as labour lawyers, they worked both sides of the street, which I understand to be unusual.

This leads me to a further point. Recommendation 10, item 5, having said that membership should come from labour, management and the public, says that "all appointees should have experience in the Alberta Labour Relations system". I don't think the report identifies a pool of individuals who have experience in the system and who are so little identified with any of the participants in the system that they can be said for this purpose to be mere members of the public. If it is possible to find this group, I think that it would be useful for the report to say that this is possible and indicate the class of persons who meet the membership of the public criterion and also the experience criterion.

I don't think that the report tells me how the composition of the Board will produce the necessary acceptability. I think that at one point the report indicates that the participants will have confidence in "their" Board, but it seems to me that if anything the dilution brought about by the representatives of the public will mean that the ALRB is less "their Board" than is the LRB. The protected terms will presumably help the ALRB's independence from government and therefore its acceptability to other participants, but I am not sure that the participants will entirely eradicate from their thoughts that a Board member who is well paid (as the report recommends) and

... 8

has what the participants might regard as a cushy job, will want to please the power which can reappoint him and which might be much offended by a decision that its employees can shut down its lucrative Liquor Control Board system. The report does suggest that the appointments should be of a high class, but I don't think that it proposes any safeguards to ensure that the appointments would be of a higher class than other important government appointments, and I don't think that I have seen anything in the report to indicate that the major participants have unrestricted confidence in government appointments generally.

In sum, I do not think that the report has shown that the major participants will regard as acceptable a Board chosen by a major employer from two constituencies which may be regarded as homogeneous (are they?), a third constituency which has conflicting interests much too numerous to be represented, and a fourth group which is a non-constituency. Again, I am not saying that the ALRB would not be acceptable or valuable, but rather that I don't think the report gives me enough grounds for thinking that it will be.

I have so far discussed what seems to me to be the principal proposal. I will now go on to mention a few specific cases in which, as average stupid reader I find myself not wholly satisfied.

Perhaps I should first inquire as to what audience the project is addressing. If it is an audience which will be assessing the academic validity of the proposals, I do think that at least some of the points I have mentioned need to be addressed so that that audience will perceive there is a sound analytical foundation for the proposals. If the audience is considered to be those with vested interests in the labour-management relations system, it seems to me that the reasoning must be tightened up so that they will either be convinced or unable to destroy the proposals. If the audience is either the public or the legislature, then again I think that these points should be addressed, so that the proposals will not be based upon dogma which is not fully explained. Whatever the objective, I think that the report does need more analytical buttressing in the areas I have mentioned.

I will now mention a few points that occur to me which are less fundamental to the report.

Employee selfishness

When the text goes to the trouble of referring to insatiable appetites and unrealistic expectations, as it does at pages 2 and 3,

confining the references to "some employees" does not seem to me, as average stupid reader, to do away with the inference that these things are at least to some extent characteristic of employee attitudes. When I notice that there are no similar references to management, I draw the inference that the project finds these characteristics on one side and not the other. That may be unfair, but I think it flows from the report itself. If that is in fact the project's view, it would seem to me that it should be substantiated.

I am not sure that this view is consistent with the statement at the top of page 4 that the labour side is focussing somewhat greater attention on issues dealing with occupational health and safety and the quality of working life, though there may be no inconsistency.

Farm and domestic workers

I am not sure that I find the analysis on pages 4 to 6 entirely satisfying. What are the essential characteristics of an occupation which should be unionized, and do farm and domestic workers have those characteristics?

Labour union abuses

At page 14 I note the statement that "the project has found that there is a wide-spread or serious abuse of members' internal rights within trade unions with regard to the meting out of discipline, suspensions and expulsions." Is there evidence for this? How wide-spread is it? I don't see proposals for remedies if the abuses are wide-spread and serious. Circulating copies of the constitution and by-laws as recommended at the bottom of page 14 and the top of page 15 would no doubt be useful, but is it a remedy commensurate with the discovered evil? Joint supervision of pension funds comes in immediately after, but I am not sure about its relation to the subject. I am not sure why, if the project has found wide-spread abuse, research on its nature and scope is needed as indicated on page 15. The institution of an ombudsman might be helpful, but the ombudsman's ordinary powers (which I presume are what the report has in mind since it doesn't propose any other powers) amount only to bringing injustices to the attention of those in control (who in this case would be those who inflict them) and the public. I would find it helpful if the report would show how this would be likely to produce redress. There is a reference to government trusteeship at page 15, but the report does not indicate how and under what circumstances this would be used to curb abuses.

Union expertise

The last complete paragraph on page 16 deals with this, but as average stupid reader I do not see that it is likely to lead

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to action unless concrete steps are taken.

National/international composition

I am not sure whether the paragraph at the bottom of page 16 and the top of page 17 is merely descriptive or whether it is intended to express approval of greater Canadian autonomy. Is there any proposal on the subject?

Over-reliance on lawyers and labour-management relations consultants

This subject appears at page 19 and, I think, later. Presumably the report's exhortations are to labour and management groups. I suppose that the educational recommendations at page 22 indicate steps to be followed. As average stupid reader I am left with the feeling that the subject does not lead very far.

Structure

I do seem to find a good many thoughts that come into the chapter, are referred to, and then go out without leaving any feeling a real conclusion has been reached. I am not sure whether this would be improved by rewriting or by the use of headings.

The ALRB as department

At page 28 the report quotes section 92 of the PSERA which says that for the purposes of the Financial Administration Act the chairman has all the powers of the head or deputy head of a department. The report takes this as the mechanism under which "in other words, the ALRB would become a department as the PSERB currently is." As average stupid reader, I would not equate a statement that for the purposes of an act (which presumably has to do with financial matters, though I haven't really got the faintest idea) the chairman has the powers of a head of a department with a statement that what the chairman is chairman of is a department. Further, if this is a mechanism to ensure the independence of the ALRB with respect to staff and the deployment of staff, it would seem to me necessary to show how a department is independent with respect to staff; any time I have come into contact with a suggestion that government staff be added to or ungraded, it seems that some organism in treasury has a good deal to say. Again, this may be a matter of explanation, but I think that the explanation could be better.

Before going on to a short summation of a very long letter,

it occurs to me to mention one or two points in relation to the principal proposals which I didn't deal with at the proper time. The first is that there are indications that the proposed ALRB should manage and regulate the whole process. I would think that these should be looked at to see whether these might not be taken to mean that the Board is to pervade the whole process so as to take the responsibility away from the participants. There is then a related point that the report suggests that governmental influence has become too pervasive. The reason that I raise the point is that the influence of government in the broader sense is likely to be just as pervasive, and possibly even more so, since a tribunal established under the authority of the legislative branch of government and appointed by the executive branch of government will exercise all but what are referred to as the "custodial" functions of government; and the influence is still there and is still under what may be called "government" even though it is not under the immediate supervision of the elected part of that government or of the departments answerable to that segment. In other words, I wonder whether intervention by a government board is likely to be seen as different in kind from intervention by government politicians and government bureaucrats, or whether the only difference is that the immediate day-to-day operations of the government influence would be removed from the partisan political area.

I return however to the purpose of this letter. I have gone over what seems to me to be the principal proposals at some length in order to indicate that the analysis as set down in Chapter V does not seem to me to give me as an outsider everything that I would need to assess the proposal, or to persuade me that the proposal should be adopted. Satisfying me, of course, is not the purpose of the report, and it is for the project members and not for me to say what the report should contain. Similarly with the subsequent points of detail which I have made from the first part of Chapter V; whether I understand or am persuaded about them is a matter of no particular consequence. The reasons I put them forward are two-fold. One is that I think that my reactions may give you some guidance in forecasting the reactions of at least part of your audience. The second is that the Institute will have to come to some conclusion about its own position with relation to the report, as differentiated from decisions made by the project members, and my reading of this draft of Chapters V and VI suggests to me that the Institute Board may have problems similar to my own.

I would be very happy to discuss the matter with you at any point. If it were thought desirable I could also fairly easily add a dozen or two additional points, or with more

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difficulty give a less superficial reading to the draft. However, in view of time pressures and the rather inordinate length of the letter already I have not done so. What I have said will show generally what I have in mind after glancing through the two chapters.

Yours truly,

W. H. Hurlburt

WHH:tm

INTER-DEPARTMENTAL CORRESPONDENCE

TO W.H.H. DATE April 28, 1982

FROM G.C.F.

Re: Labour Relations Project

I have read your letter dated April 21st, but not the report, so my comments will be pretty limited. I would gather from your letter that you are not persuaded on several points.

(a) There seems to be inadequate support based either on the reported data by someone, or on scholarly research, or on comparisons with other jurisdictions for a good number of presumptions made which are the basis for the recommendations.

(b) The recommendations do not logically flow from the presumptions which were made justifiably or not.

(c) You have concerns about the recommendations in that

(i) They will not really serve any worthwhile reform or

(ii) They may be totally unacceptable to any one of the four perceived parties, namely, labour, management, government or the public.

I would also gather from your comments that you do not feel the report has sufficiently pointed out the conflict in the position of the government being both the representative of the public and the single largest employer in the province.

Until I have read the report my comments, therefore, will deal only with the foreseeable problems for the Institute. What do we do if we are truly unhappy with the report for any of the above or other reasons? Off the top of my head I can envision four courses of conduct for the Institute, and of course there may well be more.

1. We let the report stand without any comment or recommendation from us. I do not think this is feasible since it was done under the name of the Institute.

2. We let the report stand but with some form of disavowal, criticism or expansion.

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3. We consider the report and file it.

4. We consider the report and decide that the project needs more work, and try to find the time of the staff to do a different or satisfactory (to the Institute) report.

Is there an extra copy of the report around that I could read over the weekend?

GCF:tm

What review was made of other legislation, in the preparation of this legislation?

MR. YOUNG: Mr. Speaker, at least two if not three departments were involved in reviewing alternatives and legislation which may exist elsewhere, as well as approaches which could be taken to this particular impasse. Beyond that I can't give, in terms of numbers of Bills looked at — although I do know that all legislation pertaining to hospital and medical services in Canada was reviewed.

MR. NOTLEY: One further supplementary question. In response to a question, the minister indicated that it may be possible to have a meeting with either the UNA or the Alberta Hospital Association concerning some of their concerns, now that this legislation has been made public. At this time, would the minister personally undertake one final effort to reach a settlement before the Legislature commences with this legislation tomorrow?

MR. YOUNG: Mr. Speaker, I have made a number of initiatives, indirectly and directly. I mentioned last Thursday morning when, prior to the opening of this Legislature, I had the opportunity to meet with both presidents. At that time, I was assured by both presidents that they did not wish my involvement, other than through the mediation capacity of the staff of the Department of Labour.

I appreciate that view and was reassured when I was given the undertaking, equally by those presidents, that they considered themselves the two persons most responsible to resolve this dispute in the province of Alberta. If that responsibility and undertaking still stand, I am sure they can resolve it. However, if they believe I may assist in some way and are prepared to demonstrate to me, in writing, what proposal they would like me to participate in to assist in the resolution of the dispute, then I would certainly take it under advisement.

I can assure the hon. member that I as much as anyone else would very much appreciate having this very severe problem resolved for our society, because it has caused a great deal of apprehension by many people as to whether or not they can get the level of service which they feel they need and which medical advice suggests would be timely indeed for them to have.

MR. NOTLEY: Mr. Speaker, a supplementary question to the hon. Government House Leader. Should progress take place, hopefully as a result of talks between the two sides, would the government consider reviewing the timetable announced by the hon. Government House Leader in the notice of motion?

MR. SPEAKER: The question is hypothetical, but I suppose under the circumstances the minister may wish to answer.

MR. CRAWFORD: Mr. Speaker, it is hypothetical. Perhaps I could respond to such a matter under the heading of proposed government business.

To be resolved in the way the legislation proposes, any developments directed toward resolving the matter which would be before the House would of course be very important developments, and a decision would have to be made at that time. However, I would point out that even after Royal Assent to the legislation, when that occurs, the parties still have the opportunity to resolve their differences before final arbitration.

MR. LOUGHEED: Mr. Speaker, on behalf of the government, I have one added comment with regard to that important question, and refer hon. members to the second final paragraph in the letter from the College of Physicians and Surgeons:

> It is our considered opinion that this situation must not be allowed to continue through one more weekend, when services are strained to breaking point subjecting the citizens of our Province to unnecessary risk.

We are advised by the Minister of Hospitals and Medical Care that, from information he receives, it will take some considerable period of time — perhaps at least two days — to gear up the hospitals in this province to ensure that the concern or the unnecessary risk referred to by the College of Physicians and Surgeons is not there this weekend. Although we would respond as the Minister of Labour and Government House Leader have responded to that question, I thought that that important point of urgency should be underlined.

DR. BUCK: Mr. Speaker, a supplementary question to the Minister of Labour. I'm sure the United Nurses of Alberta and all members of the profession would like to know the government's intention. Is this government considering taking the right to strike away from the nurses of this province by placing them under essential services legislation?

MR. YOUNG: Mr. Speaker, the Bill which might have been before us and about which the questions flow today deals with this one dispute only. However, I must mention that the privilege which is a part of collective bargaining as we know it, the privilege of denying or stopping service, carries with it certain responsibilities. Obviously in this case, the opportunity given by the ability to have a stoppage of service has not been balanced by an equal measure of responsibility to prevent a stoppage of service, which is an obligation of this House and of both parties involved in this particular situation. In view of that failure, there will of course be some consideration. I cannot predict, and do not undertake to predict, the outcome of that consideration.

ORDERS OF THE DAY

MR. HORSMAN: Mr. Speaker, I move that the two notices of motion stand and retain their places on the Order Paper.

[Motion carried]

MOTIONS OTHER THAN GOVERNMENT MOTIONS

201. Moved by Mr. D. Anderson:

> Be it resolved that the Assembly urge the government to consider establishing a committee or commission consisting of labor, business, and government leaders to investigate alternatives to strikes and lockouts. This body would consider labor courts, co-determination models, final-

> offer arbitration, or any other means by which strikes and lockouts might become an obsolete way of resolving differences.

MR. D. ANDERSON: Mr. Speaker, I'm happy today to propose Motion 201 to the Legislature. I suppose the first question that has to arise from the presentation of this particular motion is,: why is it necessary? I imagine most members would find it easier to answer that question today than perhaps at other times, when labor negotiations have been at a more peaceful level in our province. I think it is important to look at this motion in the context of its future importance to the province. Obviously it is not a solution to any of the difficulties at this point in time. But in my opinion, we now have to assess in total the collective bargaining approach that has taken place in past years in this government and seriously consider options which might exist.

The reason is clear: the current process has not worked. We in Canada now have one of the worst labor records in the world. In fact it is second to none in the western world, except that of Italy. According to the last statistics available, the 1980 statistics, in that one year we lost well over 9 million person-days to strikes and lockouts in this country. In the province of Alberta, we lost well over 500,000 man-days to strikes.

Mr. Speaker, it is my opinion that our country is particularly negative, in terms of the results of its labor/management negotiations. The results are negative because of the system that has evolved over the years. In our society, we have a very intricate, legal way to ensure that the two warring parties, labor and management, have some very strict rules by which to operate at any given time. But in our country, we have not attempted in an in-depth way to find ways of resolving that conflict before they reach that stage of war. In fact, we have legalized a system of conflict, rather than trying to deal with the root cause of that conflict. I now think that this Legislature should take the initiative in moving toward resolution of the difficulties by evolving a new system of communication, rather than a system that indeed encourages difficulties.

Of course, any alternatives must be better than what exists now. I think that any alternatives this Assembly or our general public must consider have to have three principles as a base. First, any change to our labor relations system must be fair and just to all involved. Second, the changes must break down rather than create conflict between labor and management. And third, the changes should not interfere with, but add to, the progress of business concerns and government operations.

The question we must then ask is, what options are there to consider? Frankly, they are as limitless as the imagination of the community. But I think we have to consider what has taken place in other countries as a starting point, a place where we can begin our search for objective alternatives to the system that now exists. For example, labor strife is little known to people in Japan. It happens infrequently that a conflict reaches a point of striking, or where workers feel so dissatisfied that they have to withdraw their services.

They have a completely different system of operation than we have in this country. One might say that companies are paternalistic in their approach. They look after all the needs of individual workers, not just those in the work place: involve them in extra-curricular activities, provide pension plans of great significance, day care, recreational and travel opportunities, and indeed involve themselves, as companies, in the worker's life to a very great extent.

It is my opinion that it is unlikely that that system could evolve here in any short period of time. We now have a situation where labor unions represent employees, and businesses operate apart from those. I would think that the Japanese model, where the Japanese employee is well looked after but does not have a say in the operation of a company, might not be as easily accepted here as other options. However, it is one we should consider and investigate and, I believe, look at seriously.

The other area we can take a look at is with respect to various bargaining techniques and approaches that might be taken to resolve differences as they develop. One that has lately come into vogue in many parts of the United States is something called final-offer arbitration. Rather than going to an arbitrator, who makes up his mind as to what approach should be taken and sets apart a package of salaries, guidelines, and benefits independent of the positions of the labor or business group negotiating, in final-offer arbitration that arbitrator is required to accept one of those two positions. The theory is that this thereby brings together individuals to such a point that their differences may be resolved before they reach that point. If not, the positions are so close, because they don't want the arbitrator to reject either the management or labor position, that they reach the most equitable settlement possible.

There are a number of other bargaining techniques and methods that I think we can look at to augment, change, or perhaps in some cases ratify our current system. But I suspect that we have to look further at more drastic changes before the system we are now in can change significantly enough to be of benefit to labor and management in our country.

Labor courts have been used very successfully in parts of Europe. They are a variation on some parts of our collective bargaining process but indeed are part of their judicial system. Most labor courts in Europe are tripartite; in other words, it has equal numbers of business and management representatives and an individual chairing it who is a member of the government or appointed by the government or the court. They sit and try to resolve various disputes. I have often wondered: if we have to reach the point — and I emphasize if we "have" to reach the point — where there is conflict between the parties to such an extent that strikes are possible, cannot two parties just agree to pick a jury of 12 people like we do in any trial, agree to those jurors, and have them decide on a package under this final-offer arbitration system?

My preference would be that we resolve those difficulties before they reach that stage. In that regard, I think we could consider a couple of options in this country. One, which I won't dwell on in depth but that I'd like to mention today, is the possibility of involving employees to a greater extent in the profit picture of companies, particularly through employee stock ownership. I believe that if you encourage an employee to become part of a company — give him a piece of the action, if you wish — he will be more dedicated to the goals of that company. He will be more motivated. This has indeed been borne out by a number of companies which have successfully done this in Canada and have very innovatively tried to involve their employees.

I think we as government could potentially do more in that regard through tax incentives and other ways through which we could encourage that move. We could also encourage companies to begin appointing employees

to their boards of directors, so those employees understand the problems of the company and how it operates. As well, the company will begin to understand the difficulties faced by the employees in negotiating what they desire and feel is fair and just. I think those are systems we could look at. Mr. Speaker, I now have on the Order Paper two Bills which speak to that particular option, so I won't dwell any further in that regard.

Perhaps the most publicized and, in many regards, obviously successful labor management system in the world has been that in Germany, called co-determination by many. It's a most interesting system, in that as early as 1848 the German people began to evolve a position where employees were very involved in the operation of the companies. Interestingly enough, though, the system did not evolve to a great extent until after the war, when occupation forces decided they did not want to put business totally in the control of management in Germany, because the business group in general had supported the rise of the Nazis in Germany. They insisted that workers be involved in councils.

At this point in Germany, companies really have two-tier board systems: a supervisory board, which generally looks after the company's concerns, and an implementation board. In the coal and steel industry in Germany, it's required that labor and management have equal numbers of board members on that supervisory board, with the one other person, the chairman, being chosen jointly by the two of them. In other areas, it's required that there be a labor representative for every two shareholders on the board.

Interestingly enough, that system has seemed to work quite well, at least in terms of strikes. The last statistics available from Germany show that only 23 man-days were lost per 1,000 workers, compared with other European countries like Italy and indeed Ireland, where well over 1,000 man-days a year are lost per 1,000 workers. Canada, as well, fits into that category.

The questions raised are with respect to the productivity of companies, and whether or not the in-depth involvement of employees holds back decision-making and progress. The German government appointed the Biedenkopf commission to look into that not too long ago. Interestingly enough, it found that co-determination seldom prevented the implementation of management proposals and that unanimous votes were the rule, rather than the exception, on supervisory boards. Further, any moves toward positions that might usually be thought to harm workers, like mergers and acquisitions, to a very great extent were in fact agreed to by the employee directors, rather than opposed.

One would still have to consider a number of concerns with respect to that system if we seriously looked at the option of bringing that kind of system into Alberta. One, of course, is that the unions negotiate on a national basis in Germany, and they've evolved a system where they don't feel that that strike mechanism is an essential part of their process. Like every other problem we have in our nation, the attitude of workers and businessmen is the important aspect of trying to implement this or any other system we try in Alberta.

My personal background with respect to labor and management has been mixed, and I think that might be the case with many of us. My family is basically labor-oriented. In fact, my mother is an Alberta Union of Provincial Employees shop steward, my father has been a member of the plumbers' and pipefitters' union all his life, my wife even is a member of the Canadian Union of Public Employees, and at one time I was a member of the International Brotherhood of Electrical Workers. On the other hand, I've been a small business man and have seen the difficulties that evolve from that basis, and have worked in a large corporation in a management position, realizing the difficulties from that end.

But from looking at it from business and labor perspectives and now having had the opportunity over the last three years to look at it from a government perspective, it's my contention that people are not different regardless of what category you place them in. A businessman, a laborer, a government employee, or politician all have the same goals. They all want security, a vibrant economy, some way of feeling of worth and value. They want reasonable compensation for the time they spend, and they want to be able to know they're going to have a job and be able to work in the near future.

Mr. Speaker, I think we in Canada today have a situation where those kinds of goals and objectives are not necessarily seen by people as being automatic, because we don't know when a strike is going to occur. If you're an employee, you don't know if that's going to mean lost wages day after day. If you're a businessman, you don't know if that's going to allow your company to operate. In fact, if you're government, you don't know what position that's going to put you in with respect to planning for the future of the population you represent.

Mr. Speaker, I know that people in Calgary Currie very much want an end to these ridiculous strikes and lockouts. They want an end to the conflict situation that exists in the country today. We now have to consider options. I hope this Legislature will consider passage of this motion as a first step to solving this problem that has now plagued Canada for a couple of centuries.

MR. COOK: Mr. Speaker, I'd like to participate in the debate on this motion. I think it's a timely motion, and I'd like to congratulate the hon. Member for Calgary Currie for bringing it before us. When you consider the fact that in Alberta we are engaged in a number of difficult strike situations, it's apparent that the issue is very relevant today.

It's important to note that Alberta is becoming increasingly industrialized, and the problem is likely to grow with that industrialization. There have to be alternatives to the confrontation approach we have in our country today. Under the BNA Act, the Alberta Legislature has some responsibility for labor relations. Strikes and lockouts are becoming more numerous and, increasingly, a problem.

The other day I was reading Peter Drucker, books called *Management* and *Industrial Man*. Peter Drucker notes that alienation is increasingly becoming a problem in our way of life as our society becomes more complex. As larger organizations act in our daily lives, it becomes more and more difficult to have any impact on what those organizations say or do for us or to us.

That is the case in industrial settings as well. In a large company, where management is often removed from the day-to-day activities of the person working on the shop floor, in the office, or in the plant, people feel alienated. They feel they have no capacity to have any influence on management decisions taken by the company or organization. That feeling of helplessness is translated into issues like hours of work, holiday time, working conditions on the plant floor, safety provisions of the plant, and methods of work producing a product. Of course they relate to things like salary and job security and the actual

organization of the company. Employess in a large firm feel they don't really have much influence on those questions, and either shrug their shoulders and accept what comes or become increasingly militant and demand a greater say.

There are alternatives. I was fortunate enough to accompany the Minister responsible for Workers' Health, Safety and Compensation on a select committee visit to western Europe. One of the most striking impressions left with me was to walk into the Bayer chemical plant, with 35,000 workers, and be told by the senior manager — maybe the minister could tell me what his title was — that co-determination was one of the best things that ever happened to that company. Co-determination is the phenomenon the hon. Member for Calgary Currie discussed, where workers are actually represented on the board of directors and have a say in the day-to-day management of the company.

Initially, management in that company vigorously fought the proposal. They thought it was akin to socialism. But a funny thing happened. The workers elected members to the board from the shop floor. Those workers became highly involved in the day-to-day management of the company and began to appreciate the worldwide problems the company had in the preparation and marketing of its products. They began to take an approach that forced them to the middle. Instead of taking extreme positions and a confrontation attitude in trying to extract the best deal from management, there was an approach that basically forced both management and labor to come to the middle and try to work out an equitable sharing of the profits of the plant, and also work out day-to-day routine problems like safety conditions, productivity, or job security. Both sides began to understand one another and work together.

I think that's the goal of the motion the hon. Member for Calgary Currie has brought before the House today. We are experiencing difficulty in a confrontation approach to labor relations. The experience in this province in the last few months, with a very difficult nurses' strike and a very difficult bus or rapid transit strike in Edmonton, points to the need to find some approach other than confrontation to solve our problems in the public service. That's also true in the private sector.

As the hon. member pointed out, in Germany, after the Second World War, the Allies imposed a co-determination model, where they involved workers in management. It was originally the development of an idea that existed in Germany much earlier, but was crystallized after the Second World War as a need to try to get more democracy into that country.

It had a strange effect. The German economy was very productive, and strikes were at an all-time low. If you think back to 1974-75 in Canada, Mr. Speaker, we had some very difficult situations. We're still having them today. But in those days, with the imposition of wage and price controls — the period just before that and during it — we had some very difficult industrial relations disputes in this country. Canada's track record worldwide is appalling.

It seems reasonable to look at some of those West German and west European experiments which tend to force management and labor to the middle instead of taking extreme positions and trying to beat each other and wrestle over who's going to get the biggest slice of the pie. As Bryce Mackasey said a few years ago, it's important that both sides have a share in the baking of the pie rather than just trying to carve it up or prevent the pie from being baked.

The hon. Member for Calgary Currie has brought before the Assembly a motion which basically asks us to consider: are there some alternatives to what we're doing today, and are those alternatives worth looking at? I think it's a very reasonable question to ask, and something the Assembly should seriously consider. I support the adoption of the motion. At this point in Alberta's economic history, before we become rapidly industrialized, I think it's worth while to stop, look, and think before we go charging down the same road that the rest of North America has, and not very successfully either.

The hon. member has put before us a number of alternatives by way of suggestion. Labor courts: having some impartial group examine labor issues and make a decision binding both management and labor. That's worth looking at. Co-determination: involving the workers in the day-to-day management of the company, both on the shop floor and in the most senior management bodies of a company. That's worth looking at. It's worked well in Germany. Final-offer arbitration: last night I spoke to a constituent about this motion and was told that in a company he'd worked for, management and labor would both provide offers. An arbitrator had no choice but to accept one or the other offer, whichever was most reasonable. It meant that you're forcing both sides to the middle instead of pushing them to extremes. If management makes a ridiculous offer and labor's is very reasonable but slanted to their point of view, management runs the risk of having that offer accepted. So they can't afford to be unreasonable. Of course the same is true on the other side.

Mr. Speaker, before Alberta really becomes the industrial province we hope it will be — because we are running out of some of our scarce natural resources — before we really go down that road, let's set an environment or an attitude among Albertans which is a little more conducive to trying to work our problems out amicably, rather than beating each other over the head until the one who's still standing and can stagger out of the ring, wins. It's not a very mature process to go through. We've all gone through schoolyard fights. It's something we grow out of, hopefully. Maybe in labor relations, this country, and this province in particular, can grow out of those schoolyard fights into something a little more mature, where we try reasonably to work our problems out together to the mutual benefit of both.

I'd like to close by saying that the events of this week seem well timed for this motion. In fact I sometimes wonder if the hon. member hasn't conspired to have all these problems created just to make this motion more timely. It certainly couldn't have happened at a better time, in the sense that it focusses our attention on the problem. We have to appreciate that there has to be a better way of solving our disputes.

I congratulate the member for the motion. If he has conspired to have these events arranged, he's certainly very effective at that. I hope the Minister of Labour has a chance to consider this. If the motion is approved, I hope he would work and set up a body to consider these questions. If it's not approved, I still hope that he takes this motion very seriously, and considers the motivation of the hon. member and the general support of the Assembly for it. With that, Mr. Speaker, I'd like to close my remarks.

MR. MACK: Mr. Speaker, I welcome the opportunity this afternoon to participate in the debate on Motion 201.

I certainly concur in and echo the sentiments already expressed of the timeliness of the motion, particularly in view of the atmosphere in the labor relations area in our province this past number of days.

Collective bargaining in labor relations is extremely complex at best, and I think it's quite often misunderstood because of its complexity. People don't address the issues as they really are, or at least attempt to appreciate them in order to be able to understand why we have disruptions in the work place. For example, we have gone through a year of intense negotiations in the area of energy. We had some pretty short strokes in those negotiations. Had they broken down, they would have had a tremendous impact both now, but more importantly, in months and years to come. The best efforts were put forward to ensure they did not break down. Finally an energy agreement was concluded and signed, and there is peace in that area, at least temporarily.

We had another major bargaining session which would have had a tremendous impact — and in fact did — had those negotiations broken down. Many elements, precedents, and conventions assisted the various parties — the provinces and the federal government — to enhance that particular set of negotiations. Finally an agreement was successfully reached, without confrontation, on the constitution resolution. I fear to even think of what may have occurred had those negotiations broken down without having strong majority support from participating provinces within Confederation when those negotiations took place.

Perhaps you may ask: Mack, how do you equate that with Motion 201? It's collective bargaining; it's negotiations. Although it may be on a different plane, none the less the participants in that set of negotiations have as fervent a desire to ensure that those principles which the people they represent would like to see enshrined or retained in a collective agreement are in fact in place. That's the issue. However, as a rule those parties don't have the kinds of mechanisms and precedents that they can fall on, which would provide them the kind of strength at the collective bargaining table.

The purpose of Motion 201 is basically to attempt to identify an alternative to the current system which, it would appear, generates confrontation rather than cooperation or consultation. But I hasten to say that although it's perceived to generate a lot of confrontation, if we took all the agreements currently in place and negotiated on a year-to-year basis, our percentage of work interruption is not nearly as profound as would appear when we have a province-wide work disruption such as in our health care or in our teaching. For example, when we have a disruption in the professionals in that particular area, or even more localized — when we have an interruption in the bus service in an urban centre such as Edmonton, where such a large population depends on it and that's their only means of getting to and from work and of being able to go to their doctor, or to see their relatives or friends, or whatever. Such a large percentage of our people are totally dependent on that.

However, I think it's important to place in perspective what we are actually facing in terms of labor unrest as opposed to the number of contracts, and the number of employees and employers involved in those contracts, which are resolved satisfactorily, amicably, without service withdrawals or strikes. But we never hear of these, because they are done at the collective bargaining table. The only time we hear of a service disruption is when one occurs. Then many people, not least the media, have a lot of fun with it.

Negotiations never go too well when they're being negotiated through the press, because then more bricks are flying from one party to the other and very few substantive issues are resolved other than ducking the bricks. That's basically been my experience insofar as negotiations being done through the media. I have always felt that the less media involvement in negotiations, the more productive those negotiations would be. This is not a reflection on the media. They're doing an excellent job. It's a reflection basically on the parties involved in the negotiations. Very often it's difficult to project through the media the cogent issues that have to be resolved. Therefore the wrong information goes out, mostly misinformation, and the public is confused. In fact as a rule, the membership and the management people, other than the people who sit at the bargaining table, are equally confused.

I support the concept of the principles of alternatives. Anything that would provide stability and remove the kinds of disruptions we are experiencing today is better than what we have. But I would suggest that it takes a lot more than just to devise a scheme or plan of how we might be able to derail a process we currently have. Much of it is attitudinal; we have to change attitudes. We have to be able to lead people into unknown waters. By nature, human beings have concerns and would not adopt an unknown, simply because they really don't know the side effects and what it may ultimately bring them. So I think a tremendous amount of work has to be done attitudinally if an alternative to strikes or service withdrawal is to occur.

I think it's been well brought out that in Germany, for example, it wasn't by their own design that they entered a participatory management type of co-optive labor relations. It was legislated. They grew up with it when they started to rebuild the country, and it's working well. Whether we can introduce a similar kind of situation in our province is not going to be quite as simple, in that we have to sell the concept.

Unless we have the participating groups doing the study — and I support the study. I support the passing of this motion. I think it's positive, providing we have the kind of participation in the study and that its terms of reference are broad enough that the group attempting to find an alternative would have available to them the kind of resources to be able to see first hand some of the systems in place in Germany, Japan, and other very, very highly mechanized industrialized countries where employees are participating in the management of large companies.

I think that's positive, because it would not only have most disruptions — and I think we have learned recently that the strikes we're experiencing today are not of a wage issue; they are issues of working conditions. It's not always monetary. Perhaps some of those conditions translate into a monetary cost, but if we had employees participating — and I've always advocated this. Over a number of years, I have been involved in the consultation process at the municipal level. I've found that many of the irritants, many of the burrs under the saddle, if you will, were never allowed to remain there very long. Through the consultation process, chaired by the chief commissioner and myself, we were able to address those issues. It's the small issues that tend to demoralize employees and create unrest in the work place. That unrest translates into low productivity, massive absenteeism, and into many of the other areas which basically do not

produce the kinds of services, particularly if they're in a service oriented area, expected by the taxpayer and those who pay the wages and salaries to those employees.

There's another dimension that I certainly think would be worthy, and maybe that could be introduced much more quickly than an alternative to strikes. I believe I've made reference to this before in this Legislative Assembly. When a strike occurs, I think the salaries of all players or parties who belong to the negotiations, including management, should cease on the day of lockout or strike. If we had that kind of balance, Mr. Speaker, I think we would find that right from the first day, negotiations would take an entirely different complexion than when there is basically no penalty to the other side. The employee pays a tremendous price, and I have some empathy for those who are out on the street, not necessarily entirely for their leadership.

I can speak with some authority, because for a number of years I was in leadership in the area of labor. We're not always perfect; we make mistakes. Perhaps at times we make bad judgments. Our report card has to be based on our total performance rather than on one or two decisions. There is tremendous hardship and cost to the average employee who goes out on the street or is locked out of the work place and suddenly there is no salary.

A study of this nature, to try to find an alternative to what we currently use as a crutch — and quite often, as a nation and a province industrializes, it seems that crutch is put to use a lot more than it might. I suggest there are many parameters to being able to sell or get the employee groups and management to adopt, because to adopt what seems like the final offer or position doesn't always work either. Binding arbitration doesn't even work, and I've experienced that. We do not have the kind of training within our system in the area of arbitrators. We do not have the kind of arbitrators who would have the expertise and courage to make the types of decisions that would have to be made and able to roll with those decisions and punches. Basically, it is: where would I get the most heat from? If it's going to be from the management side, then we've got to favor that side. If it's going to be from the employee side, then perhaps we have to favor that side.

So along with this kind of motion, Mr. Speaker and the hon. Member for Calgary Currie, who proposed the motion, it would be important that we very carefully identify and define the parameters we would look for in order to be able to come up with the best type of proposal to serve our province, and ultimately our nation, most effectively, as opposed to the current collective bargaining process. In defence of the current collective bargaining process, by and large, 90 per cent of the time, I think it works well. But the system does have weaknesses, in that it allows the parties to the collective bargaining process to take advantage. There's basically nothing to motivate them to rise above a petty or personal disagreement they may have with the people who sit across the table. They would allow the collective bargaining process to deteriorate to a degree that ends up in a service withdrawal.

For example, I think of our transit situation today, where a time limit was put on. It was an untimely time limit. They boxed themselves in and were not able to deal with the number of issues in adequate time. Therefore a service withdrawal was generated. But I'm not totally disillusioned with the system. Because unless you have a well-balanced system in the collective bargaining process, one would have an advantage over the other. There are many ways of settling disputes, and I've mentioned this before. There's the legal way, and there's the illegal way. Around the world today I think we're finding different issues, some of national significance, others just in the work place. Issues are being fought by the population, because they are convinced they are not getting their fair due as citizens of a country or province.

So I wouldn't discount the current system as antiquated or ineffective. There are many good parts to it. I think we can build on it. However, I'm interested in alternatives, because a thing I loathe is a period of strike. It just seems to go against my grain. Yet much to my chagrin, I was involved in it. The issues were such that there was no alternative. Positions were taken, and there was no alternative but to use the ultimate, which no one wanted to use.

I say this because I think it's important for us to understand that there are always two sides. It doesn't always centre on the period that the service is withdrawn and many people are hurt, particularly those who are on strike. They believe in a cause, so they make that investment in that cause. Suggestions are being made that they will never recoup the percentages they have lost; they'll never regain them. But it's not viewed in that context. It's not viewed in the context of, am I going to gain or not? It's viewed in the context of a principle, where people genuinely feel they are being denied basic rights that others in society are receiving. When those basic rights within their system — and they cannot make a change, or they do not see the kinds of changes that would enhance and be in keeping with societal changes, mechanization, and so on, and they themselves do not see their particular situation changing, be it at the professional level or in the day-to-day mundane area, they begin to rebel.

So I think that all the areas being considered would have to be addressed. We couldn't do it in isolation. If we just look for a panacea type of situation, where we would be able to turn on a switch and we'd have a settlement, I think we're dreamers. I like to dream once in a while, but not in this way. I just don't think this would provide us the kind of labor stabilization in the province and the kind of high-morale situation in the industrial areas of our province that would be adequate.

In fact, if we went about it without clearly identifying the terms of reference, what it is we are going to attempt to do, rather than saying we want to replace this with a strike, I think it would be borne in the wrong context. People would fight the issue on that basis alone and would not want to participate in the search for an alternative. We can't just say that because it works in Germany it's going to work here, because it would be virtually impossible for us to transfer here all the situations in Germany. We have to tailor it for Alberta. In order to do that, I think we have to be able to address all these issues.

I support the motion and its timeliness. I commend the Member for Calgary Currie. I suppose if he were to respond to it, he would say it's more by accident than design that it happened to come up today; none the less, very timely. I recommend that we support the motion, but that we also define the terms of reference of what we are going to be searching for, so that we can relate it to Alberta, to Albertans, and utilize much of the expertise in our province from the various sectors: professional, academic, labor, government. If we approach it from that point of view and on that basis, if that is the foundation on which we attempt to build and find an alternative, I'm sure we would find the answers to some of the areas that have been eluding us for many, many years, to the labor

unrest in our province, because it translates into a tremendous amount of demoralization. As I've indicated before, it affects productivity. It generates absenteeism and a host of other areas. Individuals, as individuals, do not find in the work place the fulfilment, the reward of wanting to go because they feel they are making a contribution. They feel they're just one additional person there and not really that important.

So to that extent, as well as the strikes, I would want to see the entire area covered, as opposed to zeroing in only on how we eliminate strikes. I don't believe that that in itself would find any answer. It would give us nothing more than an exercise in futility. I personally don't like exercises in futility. I like to see something tangible produced as a result of putting some energy and effort into it. In that respect, Mr. Speaker, I support it.

DR. REID: Mr. Speaker, it gives me considerable pleasure to rise and take part in the debate this afternoon on the motion put forward by the hon. Member for Calgary Currie. He and I have had a lot of time together. It was more to do with the constitution than with labor matters and industrial relations, but we did discuss it on occasion, travelling around Canada last year. I don't like to criticize the motion, which I think is excellent. It's a matter that gives concern to all of us, on both sides of the House, and has recently been causing more concern because of the increasing number of disputes in the public sector across Canada that have gone to the level of strike.

The one criticism I have of the motion was mentioned towards the end of the remarks made by the preceding speaker; that is, the motion would tend to give the impression that the hon. member is involved and concerned only about the matter of strikes and lockouts. Of course, as was well established by the hon. Member for Edmonton Belmont, there is much more to it than just the strike and lockout. Indeed, the strike or lockout is the ultimate weapon — if we can use that word; I don't like to, because it even aggravates the sense of confrontation that exists in some recent labor negotiations — in the collective bargaining process and system we currently have.

I think one has to put the strike situation in Canada, and particularly in Alberta, into some form of perspective. It may be true that we have a record second only to that of Italy. But if one looks at the picture in Canada as a whole, some 10 million lost days of work per year are not a very large number related to the total number of working days, man-days per year. Nowadays I suppose we should say person-days. I seem to remember getting into trouble on that expression once before, with the hon. Member for St. Albert. In Alberta the number has been approximately half a million working days lost per year. When one looks at Alberta's work force being currently in the vicinity of a million people, that means that the average person in Alberta loses half a working day per year to industrial disputes. On that basis, Alberta's record is somewhat better than the average for Canada. Of course I am referring only to averages, and we know how deceptive statistics can be. With approximately a tenth of the population of Canada, we have approximately a twentieth of the work stoppage loss days.

If one looks at the figures, most of those lost days are related to what might be called major strikes, which go on for more than two or three weeks. Even in the worst of industries, on an industry-wide basis there is usually not more than one lost working week, some five working days per year. So on that basis, one has to assume that the present collective bargaining process and system has worked reasonably well; obviously not to everybody's satisfaction, or there would be no strikes or lockouts. The other thing is that a very significant percentage of collective bargaining discussions are concluded successfully, without resort to strike or lockout.

Mr. Speaker, I think the problem is really with the major strike, where the work force in that industry or that particular location is out of work for a period of time that causes significant economic distress to the worker, his family, and on occasion to the employer. But another group of strikes is also causing concern, and that is those strikes where not only the parties to the dispute are inconvenienced or made uncomfortable by the dispute, but also third parties. In particular, this affects strikes in the public sector, where the ordinary person is put to some considerable discomfort and distress by a labor dispute over which he has little or no control, being neither employer nor employee.

Mr. Speaker, it's my privilege to represent in this Assembly a constituency that has a large number of unionized workers; it may well be the most heavily unionized constituency in the province. That has happened because it's rather unusual for a so-called rural constituency to have very few farmers but a considerable number of major economic industrial units. In fact, all four of the major communities in the constituency have a significant union representation in their make-up.

I've lived in that constituency for 25 years and, over that quarter century, a considerable number of industrial disputes have gone to strike or lockout. I only need to think of the railroad unions in Edson and Jasper, the pulp mill at Hinton — Northwestern Pulp and Power, nowadays St. Regis Canada — and, more recently, the United Mine Workers union at Cardinal River Coals. Indeed during the last election, a strike in progress at Cardinal River Coals was not settled until after the election was completed. In 1981, a strike at Cardinal River went on for some six months, probably the major strike in the province last year. So when I speak about strikes and their effects upon people and communities, I do so with some experience.

I'd like to look particularly at the 1981 strike at Cardinal River Coals. This strike was not only over wages but, as has been mentioned by other speakers, to a very large extent was over working conditions, safety, and occupational health matters. The effects of that strike were felt to a considerable extent by members of the families of those who were on strike.

It was not necessarily economic effects, because a number of those workers are highly skilled people — heavy equipment operators, heavy-duty mechanics, diesel mechanics, industrial electricians — who are in short supply all over western Canada, even at this time in our economic history. Most of those people could go and get a job on a temporary basis anywhere from Newfoundland to the Yukon Territory, and many of them indeed did. But because of the distances they had to travel in order to find employment during that strike, the families were broken up, in many cases for a month at a time, and these were not families who were used to that kind of home environment. It had considerable effects on the social well-being of those families and, because of that, on the social structure of the town.

For that reason, most union units do not go on strike lightly. As I said before, it is the ultimate weapon in the collective bargaining process. Any worker who votes to go on strike is always aware of the fact that that vote may

indeed lead to a strike. For that reason, they usually do it not on the spur of the moment but because of a longer term problem. As I said, those problems that lead to the strike vote are often related much more to working conditions than to economic conditions, especially in Canada and Alberta.

Working conditions lead us to compare different societies and the attitudes in other societies. I would like briefly to compare three countries and their systems: Germany, Great Britain or the United Kingdom, and Canada. They're three very different societies. Germany was a country which, in 1945, was in economic ruin. They had a new constitution, which to some extent was imposed upon them by the victors in the war, and they had to build their industry from scratch within their new constitution. Their new constitution had been devised to attempt to avoid the centralization that had resulted in two world wars.

The state system in Germany is much stronger now than it ever was historically from the time of Bismarck. Within those states and within that structure of the federal state governments, a system of co-operation between management and employees was also imposed. I say "imposed" because having been in Germany with the hon. Minister responsible for Workers' Health, Safety and Compensation some two years ago, we were not only interested in the compensation Act but we looked at other aspects of the German economy and society. We found that this co-operation is on a much broader basis than only in relation to industrial relations and the collective bargaining system.

Employee groups, whether they are unionized or non-unionized, have to take part in the management of the company. They are involved to the level of prior discussions on all new occupational health and safety regulations before they are promulgated in the state and federal legislatures. So by the time a new regulation comes into force, it has been discussed from the level of the worker at the mine face or the automobile factory right up to the politicians in the state legislatures. That's a very, very different system from what we have in Canada.

In Germany there is also a very even distribution of economic benefits of their very successful industrial system. In fact we were told, somewhat laughingly, by a senior executive at the same Bayer factory at Leverkusen that was mentioned by the Member for Edmonton Glengarry, that they had a visit from a Russian delegation that had seen the car park. One of the Russian delegation, a senior administrative person, looking at the car park full of Mercedes and Audis, said to the people at Bayer: this company must have a very large board of directors. What he didn't realize was that most of those cars were owned by people working in that chemical complex and operating the machinery. They were not owned by the board of directors. So in actual fact, in Germany the result has been a very even distribution of the economic benefits of their system.

Let us now look at Great Britain. Since World War II, Great Britain has a strike record that is not the envy of any other industrialized society. But historically, Britain has continued to have a very stratified society, where there has been the proverbial them and us. Who is the "them" and who is the "us" depends on which side of society you are. But one just needs to look at the famous British phrase "the working classes". The philosophy of British society is right there in that phrase. The working classes are those who work, and one has to presume therefore that nobody else works. When one refers to the working classes, one is not referring to management — either senior, middle, or even junior-level management — but essentially to that segment of the work force in Britain that is usually unionized.

It's a society that has become increasingly confrontative. That is shown even in their political system, where recently the classic division between the conservative and the labor parties has been found to be unacceptable to such a percentage of British society that there has been the most rapid rise of a new political party that has ever occurred in the long history of democracy in Great Britain. In other words, even in Britain, with its system that has a long history, there is discontent with the present system as it works or does not work. Also in Britain, there is a tremendous spread between a small number of people in the society who hold a very large percentage of the wealth and a much larger percentage of the society with a much smaller percentage of the wealth.

I have compared those two societies in order to now look at the Canadian society as it exists. Alberta is a reasonably typical example. The economic spread in Canada is much more similar to the German economic spread. But the labor negotiation system and the collective bargaining system is much more similar to Great Britain's. In other words, we have one system amalgamated with the other.

It is always tempting to try to imitate success, and the German system would appear to be successful in both the spread of the benefits of the system across a broad base in society and in the peace of their labor system. If one is going to import the German process for collective bargaining, of necessity one is going to have to import other aspects of the German labor system. Indeed we looked at it on the tour of the Select Committee on Workers' Compensation. We looked at their devising of regulations under occupational health and safety. I could see many benefits from it. Again, one could not import that system without importing other parts of the system, such as the collective bargaining process.

I am not going suggest that we try to import all of the German system, because we have a different society. I don't think everybody in Canada or Alberta would suggest that we also import the German system of *gastarbeiter,* or guest workers, when there is full employment, so that when employment levels fall, one can literally throw them out of the country and send them back whence them came. That is a part of the German system and indeed has been an essential part of their economic growth since World War II.

As I said at the beginning, Mr. Speaker, I represent a constituency with a large number of unionized workers, working mostly in large economic units. Looking at those people, one has to realize that labor — if I may use that term — has fought for a long time in Canada to obtain the collective bargaining system we have. I think many people in the labor movement, in both the union organization and the membership, would look with some suspicion at any proposal to make major changes in our collective bargaining system unless there were safeguards for hard-won rights obtained over many decades. One has to look at the other side of the picture; that is, the management part of our system would also look with considerable suspicion at any proposal that diluted management prerogatives and responsibility without there being a similar *quid pro quo* in stability in the work force and the commitment of the work force to a reasonable level of productivity.

Mr. Speaker, in spite of those reservations, I feel that

the motion put forward by the hon. Member for Calgary Currie has considerable benefits. What it does is make us look at the status quo in Alberta. It has even made me consider the system in other countries. As I said, I think the status quo has worked better in many ways than it has the reputation of doing. But I think the aspect of the motion put forward by the hon. member, suggesting that some committee or commission be set up to have a more formalized investigation of alternatives than is possible during a debate in this Legislative Assembly, has considerable merit. I would certainly commend the member for bringing it in front of us. It is a motion I feel I can support, in spite of the reservations I have expressed on behalf of both labor and management. But I think both labor and management, along with government, would probably be very willing to have a look at systems elsewhere and some alternative in order to avoid the economic and social effects of the strike and lockout.

I would end with the comment once more that I feel that the resolution may be somewhat narrow in referring only to strikes and lockouts. I would like to see it broadened somewhat to involve other aspects of industrial relations.

Thank you.

MR. OMAN: Mr. Speaker, I hadn't intended to get into this debate . . .

MR. MUSGREAVE: Then sit down.

MR. OMAN: Later on. Whose side are you on?

MR. MUSGREAVE: The right side.

MR. OMAN: Is that right wing?

Mr. Speaker, I want to comment very briefly not on the statistics, which I think have been very well brought forward, or the various methods that might be used, but rather on the mood of society with regard to the implementation of this kind of motion. I think the Member for Calgary Currie brings in a motion which suits the mood of the country right now. Politics has been described as the art of the possible. My feeling of the pulse of the nation and the general populace is that it is tired of the kind of continual warfare on the streets, if you will, that we are experiencing in our country, cities, province, or whatever the case may be.

I think the time is right for this kind of investigation, and out of it hopefully would come recommendations that would be helpful and constructive. I think there are some things that can be done. I have heard where the final-offer arbitration has been working. I realize that labor would respond with furor if the right to strike was to be taken away altogether. Yet perhaps the percentage of the vote in a union could be up to 80 or 90 per cent — or rather that a union could not strike unless it had an 80 or 90 per cent majority. These are possibilities.

I think the fact that strikes have been misused — and one can easily see why it takes place. When the head of the Catholic Church indicates concern, saying that the strike must certainly be seen as a right but as an ultimate weapon and not to be misused, that indicates it is being misused not only in Canada but worldwide. One can also see that because of the way things are set up, where you have labor leaders who, in order to preserve their position or advance themselves as far as their personal positions are concerned, sometimes have to try to strike unreasonable positions. The same would be the case with management. So you get personality conflicts, which really don't have the good of either the worker or society at heart, as the motivating forces behind some of these things. It is little wonder, therefore, that you don't get reasonable agreement.

Last August, I believe, I sent a questionnaire around my constituency. Some 10,000 were distributed, and I got a 10 per cent return, which is not bad, all things considered. One of the questions on that survey was: do you think the government should introduce legislation to prohibit the right to strike in essential services? It limited it to that area. Of the replies, 716 said yes, 116 said no, and I think some 25 or so said they were of no opinion. That indicates that there is is a high degree of frustration with the present system. Again getting back to the mood. I think the mood in society is right. I don't know as we can come up with any new ideas. Perhaps we can. But in drawing from the various parts of the world which have been mentioned today, I think there has to be a better way to settle some of these disputes than we are doing today. Again, I come back to the area of essential services, whether it be police, fire, public service, medical, teachers. Obviously there is a mood in Alberta today that says, I don't think we should allow these things to happen, particularly where our children or the sick are being used as pawns. We would rather see another way being used. Surely it's the time. I commend the Member for Calgary Currie for bringing the motion; I support it.

Thank you, sir.

MRS. CRIPPS: Mr. Speaker, I'm also pleased to have the opportunity to speak to this motion. I believe it's important that we look to an alternative to strikes. I don't believe any single weapon or tool in our society is so devastating and self-destructive to its members. If the gains in wages and benefits are weighed against the losses to the individual workers and the employer, I don't believe there is an ultimate gain in a strike. Certainly no one wins.

I'd just like to outline a few of the costs, Mr. Speaker. One strike I recall relates to a snow removal crew at Toronto airport. That crew voted for a strike because of working conditions at the Toronto airport, but 12 members of that union were also in Vancouver. They manned a drawbridge over which all the western grain flows to the port of Vancouver. For six weeks, the grain all across western Canada was tied up because of a strike which bore absolutely no relationship to the agricultural industry but which cost the country, and western Canada in particular, millions and millions of dollars in lost sales, and certainly was detrimental to our reliability and capability as a supplier in the export market.

I remember a strike in the forest industry. You'll note that there aren't many strikes in the forest industry today, because times are a little tough in the forest industry. It's likely that if a strike occurred, the mill would have to shut down, and no one would have a job. If the end result of a strike is no jobs at all for the workers, I'm not sure in whose best interest a union is recommending a strike vote.

The union management often requests a strike vote mandate in order to use it as leverage in their negotiations. Even though there may have been a real desire to negotiate a settlement on the part of both the union and management, once a strike mandate is given, confrontation becomes a part of that negotiation, with both sides working under a serious handicap. I've known cases where workers have said, we only wanted to use it as a

negotiating tool. But it's not a good tool, because it causes strife.

Mr. Speaker, many of the strikes today are in the civil service sector. It must be remembered that there are unique circumstances, such as almost total job security, which must be considered. In this year's negotiations, it is apparent that there is a vast difference in negotiations and certainly in the demands between the private and public sectors. For example, we have salary requests as high as 40 per cent over 18 months, yet in my area and in areas throughout the province, we have people actually settling for less wages.

I'd like to give you a couple of examples. The other day I was talking to a friend who said that a garage had called its workers in and said: once a year we usually have steak sandwiches when we discuss wages; this year we're having soup and sandwiches, and when you leave, you'll go out with less wages not more; if you choose not to take that, if you don't feel you can work for less, that's fine: you have the option of leaving. Nobody left; everyone took less wages.

A neighbor who lives two miles from me is a trucker. The other night over coffee, he was telling me that their trucking business is reduced considerably, due to the present situation in the province. He said that last week he called his truckers in and said, we've got a problem, and we're going to have to settle it together. He said, we can weather the storm together, or we can lay off some workers; we have a choice. He said, I have three drivers too many; now it's a decision that's up to you; it'll cost you each $200 in order to keep those three drivers on, and we'll hope that the trucking picks up. Or, he said, I can lay off three drivers. They decided they'd work together. Each one would take $200 less, and the whole staff would remain employed.

For the past 18 months in the service industry, crews have been working anywhere from two to five days, a minimum 40 per cent reduction from pre-national energy program. These are salary negotiations too; not necessarily salary negotiations but certainly labor negotiations. It has been necessary. The employers are doing everything in their power to keep the employees working; maybe not full-time and maybe not as much as they expected or hoped, but in an attempt to help each other.

In the public sector, job security is a given, except for just cause, while in today's recession, private-sector job security is questionable to say the least. In a lot of requests I've seen, a percentage request seems to be made. It would sometimes appear reasonable to negotiate on a percentage basis, but this is unreasonable when you take into account the differences in salaries to start with. Ten per cent across the board: if you start at $50,000, that's a $5,000 increase; whereas if you start at a $15,000 salary, you're only looking at a $1,500 increase. Yet the increased cost of living in both cases is exactly the same dollar-wise; maybe not percentage-wise based on salary. The basic necessities cost each worker exactly the same, regardless of which brackets the employees are in. In most union negotiations, it appears that there isn't the desire — maybe there's the desire but not the will to increase those wages to catch up with the top end of the scale.

There needs to be some protection for the worker to ensure that he does indeed have guaranteed secrecy and security when voting on decisions regarding collective bargaining. Individual members need to be protected from coercion or undue pressure. It would also seem to be unfair for an employee to be able to take advantage of strike pressure on an employer, yet be able to go out and get another job. It would seem that as soon as other employment is taken, the employee would no longer be deemed to be part of the bargaining unit. It is inconceivable that the public and the employer can be held to ransom, yet the strikers can immediately become part of a work force.

Once a strike has been called, conflict and confrontation make collective bargaining almost impossible. The cost to productivity, personal esteem, and innocent third parties is incalculable. If we go back to the statistics mentioned at the beginning of this debate, almost 9,000 person-days were lost in 1980. At $50 a day — and most people work for more than that — that works out to $450 million in lost productivity and in lost wages actually. If you take the snowball effect of those wages, you're looking at over $2 billion in losses to the economy of this country; over 500,000 person-days lost in Alberta.

The right to strike is a privilege. With a privilege comes a responsibility. Mr. Speaker, there has to be a better way than a strike to settle wage and labor disputes. I believe the onus is on each and every one of us — public sector, private sector, and individual employees — to search diligently for that method.

Thank you.

MR. COOK: Let's hear from the left wing.

MR. MUSGREAVE: Mr. Speaker, in rising to participate in the debate, I'd like to point out that I think my hon. colleague from Calgary Currie continues to put forward motions which I can support. I'm beginning to think he's becoming more right wing as the days go by.

AN HON. MEMBER: He's moving to the left.

MR. MUSGREAVE: I support this motion for two reasons. First of all, we lose a lot of time through strikes. Our productivity as a nation isn't that good. A day lost in striking is a day lost forever. Also bitter relations develop during a strike. If the strike is long, relationships become very strained, and it takes years to heal these wounds. If there's anything we can do to prevent that condition arising, we should do it.

I would like to take a different approach than most of my colleagues. I feel we should concern ourselves with that area of responsibility over which we have control of the purse strings; that is, those people who work for provincial or municipal government agencies. After we've resolved that problem, perhaps we can move into the industrial sector. I'm thinking particularly of teachers, nurses, and the protective services. My hon. colleague from Calgary North Hill mentioned that the firemen and policemen shouldn't have the right to strike. I'll have to try and educate him a little: they don't have the right to strike now. Their wages are settled by binding arbitration, and it seems to be working reasonably well.

I too conducted a survey in the latter part of 1981. Of 14,000 brochures mailed out in my constituency, I received back approximately 600. I found it interesting: 75 per cent of those who returned the reply considered that teachers should be an essential service and not have the right to strike. Some teachers who replied objected to the method in which I phrased the question. I said: those people engaged in essential services, and didn't identify teachers. But I obviously meant teachers.

Unfortunately, if this commission, agency, or whatever is set up, it is going to be fraught with great difficulties. The right to strike is a hard-won right of the labor

movement. If you think of some of the difficulties faced in the American labor movements at the turn of the century or in the '80s — the Pinkerton police forces which were hired, particularly by the copper companies, to go out and break up strikes; they killed labor leaders. All they were working for was to get away from 12- and 14-hour days in mines. They were struggling for five-day work weeks. They were looking for better working conditions for their fellow employees. It's very difficult to suggest to labor people that they give up this right which was won over such great adversities.

If we don't get this motion passed today, I hope we get it passed if it comes up for debate again this spring. I hope that the task force would be established, that it would be representative of all parties, and that it would be chaired by a person considered by both labor and management as an independent member. I would suggest that the labor groups should select their own members on this commission, so we can convey to them that we are serious about their involvement in developing new strategies.

We should all be concerned about government spending. We all say we are. Unfortunately you don't have the discipline of profit and loss in government agencies. Governments are getting deeper and deeper in debt. Before disaster hits our economy — such as happened in New York City, where it almost took the federal government to bail them out — we've got to develop some ways of settling strikes without just issuing bigger and bigger cheques.

Two years ago this government was faced with a strike of our nurses. At that time, I believe it was the hon. Member for Calgary McCall who urged the government to consider setting up a commission such as the hon. Member for Calgary Currie is suggesting now. I appreciate that the government has been very concerned and involved with the constitutional and energy debates, but we now have the opportunity to address this issue once more.

We don't have to go abroad. We've got good people right here in the province of Alberta or in Canada. With the right attitude, we could develop our own method of coming out with new legislation that would help our labor forces and management groups, for the benefit of all. I urge the government to form the commission, to take this one small step forward, to take the lead in improving our relations with the several thousands directly or indirectly on government payrolls. If we are successful in this, we can move forward into the industrial sector of our province with some amended legislation, again working with the labor unions and management groups in the particular industries concerned.

Today some of my colleagues have mentioned the bad things of strikes and how people work together. I will give you a quick personal example. For 25 years, I worked for a company where you got two years' free sick leave after 10 years' service. We had a 35-hour work week. We had free university education for our children who achieved marks over 75 per cent. We had accident benefits, group insurance, and dental plans that were heavily subsidized by the company. We had matching thrift plans of up to 6 per cent of our gross salary. Our pension was paid for by the company. With 30 years service, we could retire on full pension at age 55 with no penalty. We had flex-time.

AN HON. MEMBER: What made you go into politics?

MR. MUSGREAVE: That's a good question.

This company had several thousand employees working all across Canada, and it does not have a union, except in one small refinery on the west coast.

It's obvious that these kinds of achievements can be made in our nation, but the attitude of management has to be different than it perhaps has been in the past. If we are going to make this commission successful, we have to convey to union people in our province that we mean business, that we mean to try to develop a new system where labor will be seen as a partner and where management will be seen as an agent responsible for the whole system. The two together can develop stewardship for better welfare of the workers, better use of our tax dollars, and better service to our citizens.

I think it's important that the issue that faces us today is considered in light of this motion. Obviously our nurses don't want to strike. Our hospitals want to operate, and our patients, who are not at the bargaining table, are suffering and should not have to. People need care.

I agree with the hon. Member for Edmonton Belmont, who made an excellent suggestion when he said that we have to develop a change of attitude; I think he's so right. As I mentioned earlier, profit-making companies in our province are already doing many things mentioned that are being carried out in Germany. Our police and firemen in this province have binding arbitration, which is working. I agree it may be expensive, but it's working. Nobody has ever been able to calculate the cost of strikes such as we're going through with the nurses right now.

I urge the members of the Legislature to support the motion to form this commission with labor as a first component. I hope we would not let this opportunity die.

MRS. OSTERMAN: Mr. Speaker, it's a pleasure for me to get into the debate this afternoon. I'm certainly prompted to by listening to the number of my colleagues who have spoken so very positively about this motion, and I congratulate the hon. Member for Calgary Currie for bringing it forward.

Believe it or not, it's certainly been an area of intense interest in the agricultural community, because of the kind of effect labor disputes have had on that community. I also mention to him, somewhat in jest, that possibly the hon. Member for Calgary McKnight has mellowed somewhat. Last year he traversed this province with a lot of farmers on the surface rights committee, and it may have had very beneficial effects. So we shouldn't wonder too much at his change of attitude.

Mr. Speaker, today there have been some excellent comments by various members, and I'd briefly highlight some of those. It was interesting to listen to the Member for Edmonton Belmont. Certainly that learned member has years and years of experience in the labor field. It's very important that we as members in the Assembly listen carefully when a member with that kind of experience speaks to us, because I don't think we've had members like the Member for Edmonton Belmont, who have brought that kind of experience to this Assembly.

When he talks about a change in attitude, one wonders where that attitude began. You can sit and look at this Assembly and the way we operate at times, and it seems as if our system, including our parliamentary system, is sometimes predicated on confrontation. It's not always a working together, if you will. In looking at models from other countries, I'm not sure whether we can overlay a system from another jurisdiction onto our system. But certainly the impact of labor — the strikes, the uncertain-

ties created — is so great on our society now when so many things are in a state of flux.

It is so timely to address this problem. It seems it's true that necessity is the mother of invention. If we believe that to be true with the economic situation we have now — I know there have been a number of examples. The Member for Drayton Valley cited the kind of co-operative effort in her constituency when the stress and strains of our economic woes are upon us. The member also alluded to the kinds of percentage changes and the growing gap that causes some distress to people who are part of that percentage increase. It goes right across the board. The highest and the lowest are treated alike, and the impact of that percentage increase is not equal. It's equal in that the percentage is the same, but in the end result there is an unequal effect on people.

Two members talked about surveys they did and their results. I'm very surprised, pleased I guess, at the kind of return they have. Looking at it, though, it makes me ask: who were the people who answered those questions? Were they members of labor unions? If you were to ask that question in another area of this province that is more heavily into union membership, as with the hon. Member for Edson, you might well get a completely different answer. That may be one situation we're faced with. Because of our very diverse province, if we don't take care to involve all those people, we may have a disproportionate view brought forward and, though we may be well meaning, put forward proposals that really don't have the effect of correcting a situation that's adverse as far as our union people are concerned.

I think it's right for me to say that when I was campaigning three years ago, one particular complaint that was registered as much as anything, besides capital punishment and metrication, was the labor situation. We'd gone through a number of disputes involving people handling grain, for instance. Farmers feel absolutely helpless. What they do in that situation, because the dispute is far away from them and completely out of their hands — earlier on, there was a time when I wondered if some locals of a farm organization in my constituency would actually organize and go to the west coast and decide on a confrontation to move their own grain. They were that incensed at a situation they had absolutely no control over. Yet I'm sure if they were to study closely the kinds of things in dispute, it could be said that there was equal responsibility on both sides, in terms of either the responsibility, or lack of it, for a settlement in the dispute.

I hope the members of the Assembly will, first of all, take careful notice of this motion. We're very fortunate that it's up at this time. We'll be in a position to have it come back for debate. I realize there are probably a number of members who are really interested and weren't prepared to participate in the debate today. I'm sure they will. If today's participation is any indication, it's very positive. The Member for Calgary Currie should be heartened and possibly look forward to a passing of this motion the next time it comes up.

Given the caveats the hon. Member for Edson put on, in terms of some of the verbiage and the implications, I for one would give it my very strongest support. Again, I congratulate the hon. member and look forward to more debate.

MR. PAHL: Mr. Speaker, the hon. Member for Calgary Currie has put forward a most timely motion. I think it's perhaps even timely that we should ask ourselves what the role of government should be in industrial disputes. With respect to the health care delivery system, I think we've seen a tragic situation where, even when government takes a move to try to fulfil its role, one member of this Assembly can add another 24 hours of hazard to the people of Alberta. There is indeed a tragedy there, and it may well be addressed in this issue, or at further times.

I think it would be a mistake to suggest that labor management problems or labor/employee problems could be solved easily. There is a fundamental conflict in this. There is an employee/employer relationship. And to some extent, the interests of one party are generally at the expense of the other. We shouldn't kid ourselves that there is not a fundamental conflict relationship within part of it, and I support the discussions which say it doesn't need to be entirely that.

I've studied a little about strikes and their impact. As a graduate student, I reviewed one year of labor disputes in Canada. My calculations indicated that there are few if any winners in the case of a work stoppage that results from an industrial dispute. Certainly from the point of view of the employees, my calculations indicated that any time a strike was extended more than a day and a half, the average worker never regained the wages lost, even if he worked to infinity. That sounds strange as to why people would go out on strike, but I think it comes back to that conflict situation and complex emotions in situations and personalities. So I don't suggest our task would be easy.

It's tragic that the strike is still used, because of the costs. I'd refer to the strike or work stoppage carried to its extreme as an 18th-century weapon in a 20th-century world. It was certainly appropriate to use that strike mechanism when there were truly serious abuses to human rights with respect to conditions in the work force. We certainly have come a long way from that.

The hon. Member for Calgary McKnight mentioned his company. I had the privilege to work for that company, which we called the Every Saturday Sunday Off company. Certainly the conditions within that company indicated it was possible to be very productive, treat employees well, and not have a confrontation with respect to the way people were organized.

Mr. Speaker, when we talk about finding a way out of these very troublesome labor disputes, I think it's also important that we recognize the cost to the employer, the company, or the employing organization. Certainly that becomes even more important in the international arena, where it does little good for us to have a very productive farm community that can provide a good harvest, and perhaps even hopefully or wishfully, a well-organized and efficient grain handling system that puts the product into the right grades. We have a nice transportation system that gets it to tidewater, and then the stevedores go on strike. So the cost is not only the cost of the dispute between the stevedores and the dock, their employer, but it moves all the way back through the system for tremendous cost.

When and if we consider this motion — and I would say that because the task is difficult is no reason not to address it — I feel that certainly there should be some thought to moving that solution to a broader forum than simply one province. As members well know, we are interdependent across our country. A strike at the airport in Vancouver can literally paralyse the whole air transportation system. There has to be some recognition that problems of industrial disputes move across provincial borders across Canada, and certainly the impact on our reputation in the international community is very much

affected by our ability to be a productive nation all year round, or at least to be able to supply customers in the time and in the manner that they would wish.

I would like to remark, and I had earlier, that this is not a new area of study or research. A great body of labor economics, of industrial relations in our universities has tried to address the problem of how to deal with the power struggle that exists in the work place, in a way that will minimize the losses of those conflicts.

Of course, the losses to the worker are fairly direct; it's wages lost. To the employer, it's loss of productivity, loss of reputation in terms of being able to deliver your product. To say that sometimes strikes are not in everybody's interest — sometimes I'd question that. For the people who are highly paid and want a short strike, all of a sudden it's a welcome opportunity to take that three-week holiday, fix up the rumpus room, or whatever. When they're in an oversupply or a high-inventory position, sometimes employers' incentives to avoid the work stoppage has been reduced somewhat. It isn't always logical to say that a work stoppage is not in everyone's interest.

I think we have to be a little careful in setting the parameters to the study. There have been a variety of methods, and the member who introduced Motion 201 referred to some of them. There are others, such as the Rand formula, the idea of the one-day strike to have that release of tensions and problems. Then the employers dedicate a certain amount of money that would otherwise have been profit and a certain amount of funds that would have gone into normal wages into a neutral fund, and perhaps you avoid that disastrous work stoppage.

I would like to sum up my comments by saying that although I support the motion, I think there's room to expand it in the sense of, as I first indicated, asking the question: how do we as legislators avoid the tragedy I mentioned today? And I pray to God, Mr. Speaker, that it's not a tragedy, that there won't be a disastrous result of a further extension of one day to the nurses' strike. I think we have to look at that as part of bringing the motion forward.

The other point is that it's not a new situation. We have to recognize that a great body of knowledge is dedicated to labor peace and, I guess, labor unrest. Finally, the point made particularly by the Member for Edmonton Belmont: there has to be a new attitude. I think that new attitude has to recognize that when we're involved in that margin of profit, there is a true competition by labor and management at the margin for that profit. The worker may quite legitimately feel: I would like my share of that profit increased, because my efforts helped to produce that. The employer might quite as legitimately say: I contributed to that profit with good planning, with my capital, and I should share in that profit. I think we have to recognize that essential element of competition between labor and management, if you will. But the change in attitude has to be that we recognize that although there's competition at the margin, there has to be co-operation in the overall for the betterment of the whole organization, in fact for the betterment of our provincial and national economy.

With those remarks I'd like to compliment the mover and hope it will be brought forward with some of those changes and other very worth while suggestions made by other colleagues incorporated.

Thank you.

MRS. FYFE: Mr. Speaker, I would add just a few comments to this debate this afternoon. I would also like to congratulate the Member for Calgary Currie who has had the courage to bring forth an issue that troubles so many Albertans and so many persons within Canada. Perhaps the commission would not resolve all issues related to labor, but I think the member is taking an extremely important step today, bringing forward this issue so that we may discuss it and try to look at some new directions.

I'm sure that all members of the Legislature agree with the important rights that workers have gained over the last century since the Industrial Revolution: the rights of workers to organize, to collective bargaining, to be protected, to work in a safe work place, and many other benefits workers have acquired by the fact that they have been able to organize and work together. But sometimes I feel that we are to the point where centrifugal force has taken over, and we seem to be spinning further and further away from the basic rights and objectives for which these rights were put in place.

I think some of our labor problems within this country started with settlements after the beginning of the St. Lawrence Seaway project, when extremely large wage settlements were imposed, that workers in western Canada certainly never even envisioned meeting. For a long time, workers in western Canada were a long way behind the mood, that centrifugal force that began in eastern Canada. We have examples within the North American auto industry, where there has been reference by a number of different members to patterns set in other countries. But in the economics of the auto industry, I think we can show where the Japanese market has certainly moved in and taken over a large percentage of car sales within North America. A good portion of the reasons can be attributed to the wages paid in Japan compared to the wages received by the North American worker. In Japan there is a situation whereby if the market cannot bear the cost, the wages are decreased. The worker receives approximately two per cent higher than the actual basic cost, but only what the market will bear. In North America, because of the large number of workers and the influence they have had, they have priced themselves out of the market in many ways. As a consequence, we see this tremendous shift to imported vehicles.

Who is really penalized when something like this happens? This afternoon the Member for Edson and the Member for Edmonton Glengarry mentioned that in touring several countries during the workers' compensation select committee, some of the benefits we saw were outside the direct subject area we were studying. In London, while watching the news one evening, I recall there was a documentary comment on a strike in Scotland that had just ended after eight months. It didn't end successfully for the employer, and it didn't end successfully for the worker. It ended in the company going into receivership. So who was the beneficiary in the process? Neither. The investors lost; the workers lost. There was more unemployment for the taxpayers within the country. We talk about attitudinal change. That type of attitude certainly had no benefit for anyone within the country.

Often, certain groups of organized workers can apply greater pressure to the public than other groups. For example, if the postal workers go on strike, they can penalize a great number of people across the entire country. They can penalize some small businesses to a much greater extent. Some of us would say, well, we never even

noticed there wasn't a postal service, because we came to rely on other means of communication. But for certain people, it's a great penalty.

When the grain handlers go on strike, it doesn't directly affect some of us sitting in this Assembly. But it very directly affects some of our constituents in a very negative way, in an economic way that is unfair to a small percentage of our population. What happens in the situation we're in now, with a very emotional situation for certain people who require health services?

Not all of us are affected in the same way. I agree with the Member for Edmonton Mill Woods, who said there are some benefits to work stoppages. I would agree that for a period of time there is a benefit in allowing two parties to cool down, to come together with their points of view. It allows time for workers who are aggrieved to put forward their position. We recognize that workers face some extremely legitimate situations, some work conditions that must be improved, and it is a process by which this can happen. But where is the moderation? What happens over a period of time when that cooling down is no longer effective, and the public as a whole is affected so adversely that it becomes unfair?

I think the attitude change within our society has not been one to say that we have to find solutions, as much as a total frustration on the part of many Canadians who are saying, we cannot continue the same pattern, this same route. For those who have very directly experienced the results, whether it is a worker who has lost wages over a period of time, an employer or investors who have lost investments or their profits, or the general public that is harmed as the result of a loss of service over a period of time, there has to be moderation.

I believe it's high time that we reviewed our labor legislation across the country. I think we have to look at federal labor legislation, and various provinces should co-operate to look at the legislation because, as I said, in times past we have seen how settlements in one area have led settlements across the country. We all know what happens with trying to establish parity with one province, playing one province against the other, and so on. As I say, using the example of the seaway project, we know how it started a whole centrifugal force, a whole roller coaster across the rest of the country. I don't know how we're going to get off unless we as Canadians take the bull by the horns and review our legislation with an intent to improve the situation; not to penalize the workers, not to penalize the employer, but to improve the entire situation that would make a positive benefit for the economy of our country, provide increased jobs because people will be working, and provide an improved country as a whole.

I conclude, Mr. Speaker, by again congratulating the member for bringing forward this very important subject. I certainly give my support to the sentiment of the motion and to the motion when it comes to a vote.

Thank you.

MR. YOUNG: Mr. Speaker, this is a most important motion. In order to give the members who may not have noticed it on the order paper sufficient time to prepare this afternoon, particularly members of the opposition, who have not yet participated in the debate, I beg leave to adjourn the debate.

MR. SPEAKER: Is the Assembly agreed?

HON. MEMBERS: Agreed.

MR. SPEAKER: It is so ordered.

MR. HORSMAN: Mr. Speaker, I would like to seek unanimous leave of the Assembly to revert to Notices of Motions.

MR. SPEAKER: Is there unanimous leave for the hon. Deputy Government House Leader to revert to Notices of Motions?

HON. MEMBERS: Agreed.

MR. SPEAKER: It is so ordered.

NOTICES OF MOTIONS
(reversion)

MR. YOUNG: Mr. Speaker, I wish to give oral notice that tomorrow it will be my intention to move first reading of Bill No. 11, the Health Services Continuation Act.

MR. HORSMAN: Mr. Speaker, it's not proposed that the Assembly sit this evening.

[At 5:17 p.m., on motion, the House adjourned to Wednesday at 2:30 p.m.]

assistance under the cattle and sheep assistance program, and the number of dollars involved to date?

MR. SCHMIDT: Mr. Speaker, as of this morning, 26,000 applications have been logged into the computer system. Until the payout has been made and, because it's an ongoing program, until all the applications have been received, at this time it would be impossible to place a number on the moneys paid out to date.

MR. SPEAKER: The hon. Member for Cardston, then I believe the hon. Minister of Energy and Natural Resources would like to deal further with a topic previously raised.

Decentralization of Social Services

MR. THOMPSON: Mr. Speaker, my question is to the [interjections] — and Leslie thanks you too — Minister of Social Services and Community Health. What assurance can the minister give that foster parents living in the Magrath-Raymond area will receive the same level of support or service from the department when the district office is moved from Lethbridge to Taber?

MR. BOGLE: Mr. Speaker, an underlying principle in the government's decision to decentralize services and the decision-making within the Department of Social Services and Community Health was that we would be improving the level and quality of services to Albertans. Five new district offices have been approved over the past year. Wherever possible, we are following the boundaries of health units for those new offices.

We have asked the regional directors in the six regions of the province to monitor very carefully the services being provided from the five new offices as well as the 43 existing offices of the department, with the view that if any services are provided at a lower quality, or if some undue hardships are placed on people in an area, we would find a way to refine the service so that in fact that would not happen. It certainly is our intent to continue providing services closer to where people live within the various parts of the province.

Oil Sands Production

MR. LEITCH: Mr. Speaker, I would like to respond further to two matters raised during the question period last Friday. One was by the hon. Member for Olds-Didsbury. He asked some questions with respect to the use of the word "impinge". During the question period, I thought the reference was to the use of that word in the energy agreement of September 1, 1981. On checking *Hansard,* I find that wasn't the case. The reference was to the use of that word in the national energy program. In response to the hon. member's questions, I can only say that I will certainly consider his representations.

The hon. Member for Spirit River-Fairview raised a question regarding a report in respect of Alsands costs. In response, I indicated that I would give some further consideration to the timing of the release of that report, or at least a summary of it. I've now been able to do that. It was a report by Hycarb Engineering Ltd., and I think it would be inappropriate to publish it while discussions are currently under way with respect to Alsands. When those discussions are finalized, I would certainly give serious consideration to publishing at least a summary of that report, although it might not be appropriate to publish the full report, for the reasons I outlined during that question period.

ORDERS OF THE DAY

MOTIONS FOR RETURNS

MR. CRAWFORD: Mr. Speaker. I move that motions for returns nos. 120 and 121 stand.

[Motion carried]

MOTIONS OTHER THAN GOVERNMENT MOTIONS

201. Moved by Mr. D. Anderson:

> Be it resolved that the Assembly urge the government to consider establishing a committee or commission consisting of labor, business, and government leaders to investigate alternatives to strikes and lockouts. This body would consider labor courts, co-determination models, final offer arbitration, or any other means by which strikes and lockouts might become an obsolete way of resolving differences.

[Adjourned debate March 9: Mr. Young]

MR. YOUNG: Mr. Speaker, I'm pleased to participate in the motion before us today, which was placed on the Order Paper by the hon. Member for Calgary Currie. It's a very important motion because it deals with the work stoppages in our society which have a way of causing a great deal of grief to both labor and management who participate in them, as well as third parties. On many occasions, third parties have no capacity to influence in a very direct way the outcome of the negotiations or, for that matter, to influence their conclusion.

I'd like to begin, though, by taking slight issue with the hon. member and some of his opening comments. The first reason I would do that is the suggestion that the current process, collective bargaining, has not worked. I think that's a matter of subjective evaluation, and the hon. member has made his evaluation. I would like to put some element of the other facet of that evaluation, however. The fact is that collective bargaining has been effective in Alberta in approximately 95 per cent of all collective agreements negotiated, without resort to work stoppage in any manner. To the extent that that is the situation, I believe the collective bargaining system has worked.

The problem which the hon. member correctly identifies, in my view, is what can we as a society do about those situations where it fails, or where persons involved in collective bargaining fail in their responsibilities? I think we have to look at the issue not only as the system itself, but the participants in the system who could fail.

Perhaps while I'm on this point, I should just recall to hon. members' attention that approximately 29 per cent of employees in Alberta, outside of agriculture, are organized in trade unions. We are talking about the organized sector only. In respect of the other portion of society, relationships with other employees, business owners, and managers are established with much greater regard for the basic supply and demand, if you will, for the services each one offers. Of course, they are in-

fluenced in the outcome of that consideration by what does happen in the collective bargaining field and the results, the salaries and working conditions that are negotiated there.

One other point I could make before moving on from this topic is that the mediation staff of the Department of Labour is now involved in quite a large number of negotiations. That can reach into several hundreds in a given year in which those persons are participating, trying to provide assistance and indicating how the parties may come to a better understanding of the difficulty before them.

One other observation should be made about this topic. It is one of the most studied topics in our society, because it affects us all very directly, both by the withdrawal of services on which we are dependent and, secondly, because it is a matter which creates quite bold headlines in newspapers, among other media, and attracts the attention of scholars who are interested in trying to understand why people behave the way they do in society. The topic bears more consideration, however, and for that reason I commend the hon. member and would like now to make some further comments.

Mr. Speaker, first I'd like to address what a work stoppage is. In my opinion, a work stoppage is the exercise of raw power, one party upon the other. It's straight muscle. It occurs when all reason has failed, when the parties have come to the conclusion that they cannot reason together; that one is so wrong that the other is prepared to withstand the exercise of whatever might can be applied. It's the exercise of brawn in favor of brain, if I may put it in that context.

That has some very serious implications. First of all, often many people on both sides of the bargaining table are affected, who do not fully understand the issues or the considerations, and who get themselves caught, if you will, and must support the leadership of their respective parties, often for no other reason than they do not know how to influence or escape their involvement. But more important is the question of what happens to the rest of society. A work stoppage is a tearing down, a denigration, a cutoff of services, rather than building up and working together.

That has to leave us with some very serious consideration. We've just seen an illustration. Yesterday in this Assembly, we went through terminating a work stoppage which had very serious impact for many people. Over a long period of time, I received telephone calls from relatives and individuals who felt they had a health problem which was being either severely aggravated or perhaps aggravated in a manner which subsequent medical care could not adequately repair. But we also have serious problems if we have any stoppage involving police or firefighters; in our society we consider them a fundamental necessity. Because we're further removed from it, however, the impact of some other stoppages isn't quite as obvious. Among those I would list the impact of grain shipments, and the fact that they can stop. What then? What happens? In large metropolitan centres we often don't see and sense the damage, the loss of income being caused to farmers.

The same thing can happen with a meat packing plant. What happens if there's a work stoppage? Not just the employees, the owners of the plant, and the consumers, but the producers who are dealing with a perishable product really suffer more than any others. The losses that can occur to farmers who have livestock which is ready to go to market can often be extreme. In some cases, if we're talking about milk processing, for instance, those losses are 100 per cent of production. That can happen.

The problem before us is indeed serious. I think it would be useful to consider it in the context of collective bargaining systems in Alberta. Let me try to enumerate the various systems we have for collective bargaining in Alberta and how, as a society within the province of Alberta, we have not come to grips with the kinds of difficulties on which the hon. Member for Calgary Currie has focussed his attention. I would start with the Firefighters and Policemen Labour Relations Act. That statute permits firefighters and policemen to join associations. An interesting observation to make about the legislation is that it does not permit them to be called unions. It treats them, if I may, as a quasi-military force. They are what is called uniformed services, in the parlance of labor relations.

In Alberta, they are not permitted to have a work stoppage. If their associations and the employers are unable to come to a consensus, and thereby a collective agreement, they have to put the difference to binding arbitration. I was looking over the statistics recently, and I am very pleased to be able to observe that while they have had to submit to binding arbitration, relatively few go to binding arbitration. There is more successful bargaining than one might expect if one were a cynic, and said, well, if there is no provision for a work stoppage, the onus to come to an agreement disappears. That would not seem to be effectively borne out by the experience in Alberta in the policemen and firefighter services.

Mr. Speaker, I must say I was very interested to receive a request this year from the police chiefs across Canada, that no consideration be given to permission for work stoppages in the police service. I think we can trace the motive for that request to the ministers of labor across Canada to some of the very terrible experiences which occurred in some eastern cities where police forces were allowed to create a work stoppage. There was a considerable amount of chaos when that happened, and a great deal of grief came to a number of cities. I suspect it was for that reason we received the request.

Another area in Alberta where there is no possibility of a legal work stoppage is with respect to the Public Service Employee Relations Act. This statute covers all the employees of government. In this situation, the rationale, which is government policy, is that many — perhaps most — government services have no alternative source. Of course, the philosophy of our political party is that indeed government should not be providing services where the private sector can do so. Accordingly it is argued that if there is no other source, then any interruption in some of these services would be an extreme deprivation. For that reason, in part, government employees should not have the capability of a work stoppage.

Additionally, Mr. Speaker, we find government, in relation to its employees, in a sort of double role. First of all, it is the employer; secondly, it is also the umpire, the third party, if you will. The role government can play with respect to the private sector is certainly cloudy, if not colored, in terms of the role it plays in relation to its own employees. For those two reasons, it is considered that there should not be a possibility of a legal work stoppage for government employees. Therefore, all employees are bound to binding arbitration if collective bargaining is not successful.

The Labour Relations Act, which covers the private

sector and most other labor relations, does permit work stoppages. In saying that, I should also say that the Labour Relations Act also contains a section dealing with voluntary binding arbitration. So while a work stoppage is permitted under certain circumstances — and that, of course, requires that a secret ballot on whether or not the employees wish to strike, be conducted in keeping with guidelines established by the Labour Relations Board to ensure that, in fact, there is due notice and that it is a secret ballot — there has been very little use of the voluntary binding arbitration provision. It is encouraged by the mediation staff of the Department of Labour, but not used that frequently.

One other system of bargaining that I will talk about briefly, occurs in the area of advanced education. We passed legislation in 1981 in relation to advanced education. I think the relevant elements for consideration today, in describing the system, would be that it is very much like the Labour Relations Act, because it provides that if the parties choose not to go strike or lockout, they must select some other system to determine how they will conclude a collective agreement. We have seen an interesting variety of experimentation. Perhaps the most successful of these has been the final-offer arbitration used at the University of Alberta, where the two parties commit themselves to put the most reasonable position they think should be acceptable before a third party, and the third party accepts one or other position in total.

I would like to reflect for a few moments upon what causes work stoppages and how we end them, because I think that is very material to the motion before us. On this point, I am going to reflect upon my own experiences as minister over roughly the past three years. The first reason I find that contributes to work stoppages and difficult negotiations, is that often people who simply do not know how to bargain collectively, wind up with the responsibility at the bargaining table. In some instances, that may be because they don't understand the legal process that's mapped out, and we try to make that very straightforward. That is a relatively unusual problem.

More often the difficulty is that people get to the bargaining table and don't know how to break down a request from either party, or what becomes a sort of slogan request, into something that is realistic and free of emotion so they can look at it in an objective way. In short, they are unable to reason through the issues before them. Sometimes they don't know how to debate. There is a real art in being able to debate a position. My colleague is listening very carefully to me, and I see that he is smiling. He has been at the bargaining table many times.

There is a real art in being able to debate at the collective bargaining table. It requires advancing reasons to support a position, but doing it in a way that doesn't produce an ultimatum that never closes the door. It makes the strongest argument possible, but never cuts off the path to a way out. Not everybody has that talent.

The result of that — I move to my second point, which is that some of our problems in collective bargaining relate to personalities. Individuals go to the bargaining table who lack the knowledge of what they should be doing before they start. They're incapable of retaining a cool head under very trying circumstances and, sometimes, circumstances which can create emotional blocks. There are such things as insults traded at the table. This shouldn't happen, but it does. Unless the individual has a thick skin, an emotional block builds and, gradually — especially in a long, difficult negotiation, if progress is very slow — the emotional block gets a little higher and a little higher. Pretty soon communication stops, even though the talking goes on. Before long, the talking leads to the first problem I mentioned; that is, it gets into the area of ultimatums, and communication is cut off. If there is an emotional block, then there are some very major challenges to continuing that set of negotiations in a positive way.

A third problem is just plain difference of facts. Sometimes the parties quite innocently believe they're working from the same set of facts, but they're not and they don't exchange the facts. The consequence is that they blunder into a position, each with the best of intention but without a comprehension of where the other individual is coming from, what the other individual is basing argument upon.

That's very much akin to my next concern, which is what I call unrealistic expectations. Unrealistic expectations are quite possible from the point of view of both parties, especially in an economic climate such as we have today. It would be very easy for me to stand here and cite people losing jobs, industries virtually flat on their backs in a severe downturn. But I could also find other industries doing very well and with a good profit picture. Given those kinds of situations, given that some people in society own their own homes and others can't even think about owning a home — and if they do and have a mortgage being renegotiated on it, they are looking at very serious problems — no wonder we have confusion, which can lead to unrealistic expectations.

I think that's a factor of inflation and one of the greatest problems which contributes to unease in our society. On this point, I should also reflect that sometimes in collective bargaining, the parties, for whatever reason, are in a favored industry. It's very profitable, and they say, well, we can divvy up the benefits from this industry because we've been very productive. They make the assumption that they can get all that productivity. Perhaps they can, for a year or so. But over the long pull, our economy in Canada has not been faring well in terms of its productivity and increasing output. It has now reached the point where we may as well be honest about it and say that anybody in our society who is getting more than the true rate of inflation in today's economy is removing from some other portion of society, some of the income to which they became accustomed in the preceding year. Because when we have zero productivity, we know that all we're doing is shifting income between groups if some are getting very major increases over and above inflation.

The other element of unrealistic expectations on which I would comment is the concern I have about what collective bargaining can truly achieve. In my view, collective bargaining can achieve a set of rules which can govern certain aspects of the work place. If the parties are well intentioned, those rules can create certain basic understandings and remove certain problems. But they cannot, of and by themselves, produce job satisfaction. They cannot produce a pleasant place to work, because they cannot produce a good attitude. For a good attitude in the work place, we require a positive approach toward the employment situation, something more than just a collective agreement. Too many people believe that the collective agreement is capable of achieving far more than it can, in fact, provide.

I don't want to get into that, but I would surely be interested in hearing some members reflect upon the psychological needs of human beings. As a matter of fact

— to the hon. Member for Clover Bar — I'd be interested in hearing any member of the opposition reflect upon this motion.

DR. BUCK: You're doing such an outstanding job, Les.

MR. YOUNG: I suppose if we continue to do an outstanding job without the advice of the hon. members in the opposition, the hon. members will always be in the opposition, and we'll never know how well we have done.

DR. BUCK: Humility is not your strong suit, Les.

MR. YOUNG: Speaking to this motion, hon. member, apparently isn't your strong suit. In fact, it seems that you missed the clock.

Mr. Speaker, moving on to one other point I should like to make before my time expires. The motion before us reflects upon what happens when the parties reach the point of breakdown of negotiations. That's the sort of last-ditch problem. In the last two years, the focus of the Department of Labour has been on how we can avoid getting to that particular problem. Can we go back, before the parties ever go to the bargaining table, and work with them to try to ensure that they understand what collective bargaining truly is, what the facts of the economy are, the needs of their industry, and the needs of the employees?

Can we get that broader understanding which will ensure that we don't have strangers coming to the bargaining table, which will remove many of the problems I've talked about and, in the event of an impasse in collective bargaining, actually lay the basis for a situation where people other than those at the bargaining table can meet and say, all right, this bargaining went off the tracks because, and we'd better get it back on again. In short, they can overcall the bargaining table and prevent or preclude a work stoppage.

Mr. Speaker, very briefly, I would just mention that we are involving all our staff in training programs in this area, in what is called preventive mediation, and that has been completed. We're also involving them in relationships by objectives and a variety of other initiatives to work with identified industries or employers and unions whom we as a department know have had problems in preceding rounds of bargaining. We want to get there before they get near the bargaining table, work with them, and try to get them past the sources of problem. To me, that is a much more effective manner of solving our problem than some other situations we can develop, some other solutions we can come to, which are mentioned here.

However, that doesn't take away from the nature of the motion. I suggest that as the debate continues and as we hear more about the views of members on this motion, perhaps consideration could be given to looking at it in a broader context than it is here which, as I see it, is to look at alternatives to a work stoppage. Rather, I think we could also look at alternative means of trying to assure that the people participating in our economy in a given situation, have a better understanding of the objectives they share: their need for one another, as employees and as management, and their understanding of what their particular economic situation is capable of achieving.

Mr. Speaker, I am very pleased to have had the opportunity to participate in this debate today. It is a tremendously broad topic which assuredly needs our attention because of all the grief it can bring to third parties — I will categorize them as innocent third parties — who get caught and at the present time are unable to protect themselves from the damage a work stoppage can create.

MR. GOGO: Mr. Speaker, I wish to speak to Motion 201, sponsored by the hon. Member for Calgary Currie. Along with other members, I think it's not only timely, but probably to a large degree coincidental with the events taking place in the past 23 days with regard to one segment of our society and, on the other hand, with a work stoppage regarding the transportation system that probably moves 50 per cent of the citizens of the capital city of this province.

Looking over the resolution initially, the first thought that occurs to me is that although I don't pretend to be a student of the history of labor, either in western society or Canada, I think the assumption is almost automatically made that both sides in a labor dispute are stupid and don't know any better. I think that any hon. member who views it from that point, and applies words such as "right" or "wrong" to a work stoppage or labor strife, would be naive.

Indeed the Member for Spirit River-Fairview who pretends — at least he says publicly — to be the champion of the working man, is not in the House. I've looked forward with some anticipation — not enthusiasm, but anticipation — to hearing from the Member for Spirit River-Fairview, who time and time again espouses on behalf of organized labor in this province. Certainly not an event goes by on the organized labor scene where he doesn't appear to be in attendance. So from that point of view, I'm disappointed. I would hate to think that the debate on Motion 201 will end up lopsided.

Mr. Speaker, at the outset, I'm not prepared to endorse the motion for several reasons. Strikes and lockouts at the very best are not very nice terms but, as the Member for Calgary Currie obviously is aware, that's reality. That's how citizens today refer to it. Also, I'm very impressed with the arguments used by the Member for Calgary Currie. The only hitch is that I don't think they're necessarily applicable north of the 49th parallel. I don't know that they're applicable in North America.

He very accurately points out that in 1980, the latest year for which stats. are available, half a million man-years were lost due to either strikes or lockouts. In Canada, I think British Columbia holds the record for work stoppages. Alberta's really not very far behind. I don't think there is any question that the price tag of work stoppages is very heavy.

It might not be a bad idea to look at an example. There was a settlement not very long ago at Stelco, the Steel Company of Canada. It might help to put into perspective just who is the winner in a work stoppage. In this case, a group at Stelco went on strike for 122 days. The demand of the organized labor side was either high or low, it depends on your point of view. But after 122 days, they settled for an increase of 10 cents an hour.

I think what that represents is important. If you took the average, it cost each worker $7,900 in lost wages as a result of 122 days of work stoppage. Now is that a great or a small amount? It might be better to express it in terms of how long it would take, with the settlement, to regain what was lost. The settlement was in 1982. It would take 1,980 weeks to recover what was lost during that work stoppage. That's about 38 years. Some people may say that on a matter of principle that's fine, because for solidarity and sticking with my brother and sister, 38

years is not a bad price to pay. Maybe they're right. I don't want to make that judgment. But to put it another way: if I bought a lottery ticket that cost $8,000 cash on the barrel head today, won the lottery, and the prize was $4 a week until the year 2019, people would think I was not only naive but indeed pretty stupid. Yet it's exactly the same thing. As a result of a work stoppage for 122 days at Stelco, the loss was $7,900, which would take 38 years to regain with the settlement. Now who won on that? Well, I don't know who won.

I know who lost, and that's the people who have to buy the product that comes out of Stelco. One way or the other in this great nation of ours, you can be sure — just as sure as this Legislature is going to be here for another 75 years — that Stelco will not be allowed to go down the tube. I think the taxpayer and the consumer paid the price. One other person paid the price, and that is Mr. Cec Taylor, the union leader, who got his full wages during all the time of that work stoppage, and may or may not have received an increase.

Mr. Speaker, I think we first have to understand the very heavy price tag involved with work stoppages, strikes, or lockouts. It's not always that simple to say the employer or the employee was the winner or the loser. Safeway now sells about 65 per cent of all the groceries in Alberta. Surely the uppermost question in their mind when they're negotiating is: can I extract from the consumer,who comes through my door, enough from a head of lettuce to pay the demands of the worker? If we keep up the way we're going, we're going to have one massive store or store chain in this province.

[Mr. Appleby in the Chair]

I submit to you that there seem to be all kinds of rights for the employer and the employee but, frankly, I don't see very many rights out there in terms of the consumer, his rights or advocacy. We have in this province, virtually by statute, a law that says you're not allowed to sell milk under this price. We have another law that says you're not allowed to sell booze over this price. No matter how much milk you want to produce, forget it; the law will prohibit you from selling below a price. That's why you go to High Prairie and pay a buck for a glass of milk and 90 cents for a bottle of beer. Who's the winner there? Not the consumer. There's a term that goes around regarding udders on cows . . . Well, I won't say it because, invariably, the Member for Three Hills, as my whip, would send me a note to straighten me out, and probably assign me to the ag. caucus committee.

I think the Member for Calgary Currie made some excellent suggestions in terms of resolving the problem. Unfortunately he used the term "war". I can't believe the term war ever applies in the case of a dispute. As the Member for Calgary McKnight mentioned, maybe it did in the 1880s with regard to pinkerton — you know, the muscle, that sort of thing, when the union movement was growing in America.

The Member for Calgary Currie made some suggestions, and maybe they're good; i.e. Japan, perhaps one of the most productive nations in the world. When they go on strike or withdraw their services, they don't stop. They simply wear a red armband, something like North Americans wear when they go to a funeral, except it's a black one, and that's an indication. But they don't stop work.

Why don't they stop work? I think one has to recognize a couple of things. One is the pride they have in the nation, the very fact that they hold group sessions in their plants; in many cases they have a national song in regard to their corporation. But I think that's a different culture, not just because the majority practise Shintoism. I don't think it's necessarily religion, but I do think it's part of that.

We shouldn't be naive either. As the minister of economic affairs has pointed out more than once, Vancouver is 350 miles closer to Tokyo than to Halifax. So in many ways, I suppose, looking to the future and our economic intentions, what goes on in Japan is probably very important. As the Member for Calgary Currie has pointed out, maybe we should understand the differences in the system in Japan.

There's another thing we should remember, though. If you live in Calgary or Edmonton where, at one time, you got sunshine in your apartment — I think that's disappearing now, even when the sun shines. Japan is different in that way, because you cannot build a Sears or a Hudson's Bay or an Eaton's where you want. The tradition of Japan is that when you retire, you open up a little corner grocery store. Where you can put up a department store is not based on the density of people but on the principles of people who are retiring and want to open corner grocery stores. It's not like Edmonton or Calgary, where the first question we ask is: what's the assessment going to be, and how many bucks can we get? So in fairness, I think you have to understand the system with the culture of Japan instead of just looking at labor strikes.

Europe was mentioned. The Member for Edmonton Glengarry and the Member for Calgary Currie talked about co-determination: if you get people on the boards of directors. As a matter of fact, the Member for Edmonton Glengarry endorsed the comments by the Member for Calgary Currie on profit sharing as being a good system. The Member for Edmonton Glengarry shakes his head. He didn't mention that. Maybe it's because he's never experienced profit.

An assumption is sometimes made that because you're a politician, you know all the answers. But I can assure you that I have enough faith in the businessmen of this province that if they thought sharing profits with their employees would increase their profits, they would have profit sharing. As I said in my opening comments, the assumption is made that both sides in a labor dispute are stupid. Quite often that assumption is made by politicians; not necessarily those who have payrolls to meet, but quite often by those who have never had the experience of meeting a payroll.

I've grown to respect the Member for Edmonton Belmont over these past three years, not only because he's very knowledgeable, but indeed his vocation would certainly have been in counselling people on one side of the equation. In addition, he has also had great experience and continues to be a board chairman of a hospital with about 100 employees. It also gives him an idea of the other side. Maybe members should talk to the Member for Edmonton Belmont. He's never had a strike where he comes from. So that might tell you something about labor/management. He might be well qualified in areas other than the labor side; he may also know something about management.

Mr. Speaker, I was very interested in the comments by the Member for Edson, because if one looks at the Edson, Hinton, Jasper, Grande Cache area, one finds a very highly intensified labor area. For example, Cardinal mines, as most members are familiar with, had been out on strike for some time. It would be interesting to see a

comparison with regard to Cardinal and the one I just quoted at Stelco, because 122 days is a very similar time. The difference would be that we talk about Stelco at $11.75 an hour; you'd probably talk about $14 or $15 an hour. So it would be magnified. The Member for Edson made some very interesting comments about the lack of understanding on both sides when you get into that labor strife.

Both the Member for Calgary McKnight and the Member for Calgary North Hill sent out questionnaires. That shows that the Members' Services Committee of this Legislature is working, because we provide that communication allowance. They both sent out over 10,000 questionnaires. It's interesting to look at the public perception, because they mail them to all people, not just political supporters.

In the case of the Member for Calgary North Hill, it came back decidedly in favor of the fact that there should not be any strikes. It would be interesting to look at the authors of those responses to find out their vocations, because I don't think it's a simple matter to say there should or should not be. Common sense tells us that with labor strikes nobody wins in the short term. But over the long term, certainly over the past hundred years, I suggest to you that we've come from a time when children were working in the factories, in the sweatshops, to today, when you don't see it. That didn't come about as a result of compassion. Remember, in those days politicians didn't get paid. So you know what class they came from. Very clearly, they were vested interest people, not the dedicated, non-vested interest people we have in this Assembly today. So there's been quite a difference.

Mr. Speaker, there is a publication I have found very interesting. All members receive it. It's called The Guide, and it's published by the Christian Labour Association of Canada. They are represented in all provinces. Three weeks ago, Local 105 had 300 members out to a banquet in the constituency I represent, Lethbridge West. They're right across the nation. What are they doing? I think they recognize reality. In the document, at least half a dozen settlements are mentioned. Workers take a 10 per cent reduction to keep their jobs in a sawmill in B.C. What's the alternative to that? The alternative is to shut the sawmill. That's one side of the union movement. What's the other side? Dennis McDermott, president of the CLC, is on the other side. He said, under no circumstances will we even consider lowering our demands, never mind a decrease to keep our jobs. So even within the union movement, obviously there is difficulty.

Let me close on this note, Mr. Speaker, because I know other members are very keen to speak on this. As was mentioned, particularly by the Member for Edmonton Mill Woods, along with the members for Drayton Valley and Three Hills, so much of it is a question of attitude. If you lack an attitudinal understanding, how can you possibly be put in a position to make a decision? Indeed, should you make the decision? I think that if we are true to our role as legislators in the Assembly and want to enact laws — and I assume that if we pass this, we put enough pressure on the Minister of Labour and the government to pursue a study that we may not be ready for, certainly without the contribution of those affected, i.e. business and labor — we should think very clearly about the comments of those three members: is it really a question of attitude?

So what is the answer? I don't profess to know. I simply say that before we act in any degree of haste that will produce any law that affects one side or the other, we as legislators had better reconsider that we're here as representatives of consumers in this province, not one side and not the other.

MR. BRADLEY: Mr. Speaker, I appreciate the opportunity to participate in the debate on Motion 201, and I would like to congratulate the member for introducing it. It seems to be particularly timely, as other members have mentioned, given the recent labor negotiations which have taken place in the province. I thought it might be useful to read into the record once more the motion which had been proposed by the hon. Member for Calgary Currie.

> Be it resolved that, the Assembly urge the Government to consider establishing a committee or commission consisting of labor, business and government leaders to investigate alternatives to strikes and lockouts. This body would consider labor courts, co-determination models, final offer arbitration, or any other means by which strikes and lockouts might become an obsolete way of resolving differences.

I believe this is a very timely motion for the Legislature to be discussing and debating, and I again congratulate the member for introducing it.

Given the importance and timeliness of this resolution, I'm a little surpised that we haven't yet heard from the hon. members of the opposition. Yesterday they gave us copious advice with regard to a particular dispute. But this motion has been before us last Tuesday and again today, and we have yet to have the opportunity to receive the benefit of the wisdom of the members opposite. I know that a number of them, particularly, could provide us with a great deal of advice with regard to this very important issue. I believe the question of how we resolve disputes in this province is of importance to Albertans and is a kitchen-table and coffee-shop topic around Alberta.

DR. BUCK: Tell us about the pollution in Pincher Creek.

MR. BRADLEY: I know the hon. Member for Clover Bar is going to participate in this debate at some time, I would hope, but perhaps in a few minutes.

DR. BUCK: You're right, on the pollution in Pincher Creek.

MR. BRADLEY: The hon. member has had ample opportunity to discuss that question too, if he wished. He can bring forward a motion on it if he wishes, but we're waiting for all of you. We'd like to hear from you on this issue, since you've been trying to interrupt my comments.

Anyhow, I'd like to get back to the question before us. I represent a constituency which I think has probably had some of the most interesting labor history in the province of Alberta. We've had some very significant strikes in the constituency of Pincher Creek-Crowsnest, particularly in the coal fields in the Crowsnest Pass. One could really say that some of the labor movement in the mineworkers' organization, the United Mine Workers, had its start in the coal fields in the Crowsnest Pass. There was a very long strike in 1932, which affected most of the coal mines in the Crowsnest Pass. It lasted some nine months, and resulted in a great deal of bitterness in the community at that time. Some excellent articles have been written about that strike: the *Alberta Historical Review* — there have been comments; and it's been alluded to in the book by Warren Caragata, *Alberta Labor: A Heritage Untold.*

In terms of my own understanding of what took place, and having lived in the community, that strike did result in a great deal of bitterness. Over time, I have attempted to find out what some of the issues were and what in fact took place. The bitterness has been so great that few people in that community today will even discuss that period in any depth or detail. They just want to forget what was a very bitter dispute. I think they feel that what took place at that period of time is probably better forgotten than attempting to rekindle some of the memories of that very difficult period.

Not only from the viewpoint of that strike and development of the coal miners' unions, we've had some other examples of labor strife in the past which perhaps other parts of the country haven't had. We, in fact, had the first student strike. I believe it was the first time students walked out of a school system in this province, maybe even Canada. As I was saying, the Pass has had a very interesting labor history.

I'd now like to get to the substance of the motion the hon. Member for Calgary Currie has brought before us. Basically it is a wish to form a commission or committee to study alternatives to work stoppages; how we can come up with approaches which can resolve disputes between two parties without having a work stoppage? I think it's commendable that the hon. member has brought this forward.

Work stoppages have an effect on our national economy and our local economy, depending on the sector which is struck. We have the question also to be raised if a committee is to be formed to deal with public-sector bargaining versus bargaining in the private sector. When we look at public- and private-sector bargaining, we also have to consider whether there is perhaps an overlap in terms of the public interest.

If we have a national air line strike, that certainly affects our economy and the lives of our citizens. We have a sector within the air passenger system. The air traffic controllers go on strike and can tie up an entire system; similarly with the railroads, not only from a passenger point of view, but in terms of getting our goods to market. We've had some examples of national railway strikes in this country; not in recent history. They haven't lasted that long before the Parliament of the country has had to act in the national interest. A stoppage in our railroad system can cause severe damage to our economy, and I think we've witnessed that. Similarly our farmers, although not directly involved, have had to experience the effects of any work stoppage in our grain handling system, or at our harbors, et cetera. They are an indirect party to these disputes and in some cases they have to bear the burden of the effects of the work stoppage more than those directly affected, because we can in fact lose contracts internationally.

I think some of our trading partners in other parts of the world are seriously questioning the way Canada is handling its disputes. In terms of coal or grain, we've had ships having to be piled up in our harbors on the east and west coasts, waiting for products, and I think our international trading partners are frustrated with the way we resolve these disputes. Some of the disputes seriously affect our national economy.

The other question we have is that in any of these sectors, public or private, there is a certain interdependence of society with regard to the complex nature of our economies and of society today. As I said, a strike in one sector can affect a number of parts of society and economy. People are seriously questioning the current mechanisms we have in place to resolve our labor management disputes. They are also concerned about the effect of strikes and the loss of productivity in our gross national product. It has been said that in the most current year, we have experienced almost 9 million man-days' or person-days' loss of labor in our country. In Alberta alone, 500,000 man-days have been lost due to work stoppages and strikes. This is very significant if we are going to go forward and have a strong economy. If we look and compare our position to date with regard to days lost versus those internationally, we probably have one of the worst records, or comparably worst records, in the entire world.

The other effect with regard to loss of productivity, is that the products our labors produce are rising and, again, we are causing ourselves significant problems in terms of export of our commodities. A number of our commodities are no longer comparatively priced in the world market place, due to the nature of the settlements that have taken place. In fact a number of people are saying they believe we are pricing ourselves out of the world market place with regard to the settlements which have taken place in our private sector.

What are some of the approaches that can be taken to settle disputes without having a work stoppage? A number of members have commented on the various methods which might be used. Our hon. Minister of Labour has also brought forward in his remarks today a number of viewpoints and food for thought for us to consider. We can look at the various methods that are there. I've been thinking that perhaps we should be narrowing the areas in which we would allow or permit work stoppages to occur. Perhaps there should be some basic areas or issues in which we permit the right to strike to occur. Perhaps that relates directly to wages and benefit issues, monetary issues. Perhaps we should just limit the right to strike to those areas.

When I look in the area of working conditions and a number of other, say, non-wage issues — take the working conditions issue. I go back to the Pass strike in 1932, and earlier strikes. Today we have in place a Workers' Health, Safety and Compensation ministry, and we have legislated in a number of areas the working conditions and what can take place in the work place. To resolve some of these working condition issues, we need in the work places a team approach between management and labor, rather than resorting to work stoppages. If we had a more positive approach amongst the managers involved in industry and had proper committees working, with involvement of the workers on these committees, I think we could get away from having work stoppages on those issues. That's one of the suggestions I have with regard to that matter.

The hon. Member for Lethbridge West mentioned that there are few winners in any industrial work stoppage. I think he is correct. In the coal fields in my constituency, I've seen some recent strikes that have gone on for some time. When they were settled, the settlement in no way covered the amount of wages lost by the individual workers over the period of time they had been out on the picket line.

We also have other losses which are associated with the work stoppage. For that period the employee loses his income, which can be significant in terms of payments he has — house payments, et cetera. The employer is faced with a loss of production.

prepared to look at any suggestions any of the members may have.

MR. SPEAKER: We've gone past the time for the question period. However, the hon. Member for Spirit River-Fairview did indicate that he wished to ask a second question. If the Assembly agrees, perhaps we might take another short question and short answer.

HON. MEMBERS: Agreed.

Oil Sands Production
(continued)

MR. NOTLEY: Mr. Speaker, my question is a supplementary question to the Minister of Energy and Natural Resources. The minister indicated that he wished to have my figures on what the infrastructure would be. I'd like the government to review the ERCB figures, which are $432 million. That's about 10 per cent of the cost of the project. Has the government any updated figures, or has anyone in government done a review of what those figures would be now? Since the plant has gone from $4.5 billion to $13 billion, where do things relatively stand on the infrastructure costs predicted by the ERCB?

MR. LEITCH: Mr. Speaker, I'll review that matter and report to the Assembly later.

ORDERS OF THE DAY

MR. HORSMAN: Mr. Speaker, I move that motions for returns 120 and 121 stand and retain their place on the Order Paper.

[Motion carried]

MOTIONS OTHER THAN GOVERNMENT MOTIONS

201. Moved by Mr. D. Anderson:

Be it resolved that the Assembly urge the government to consider establishing a committee or commission consisting of labor, business, and government leaders to investigate alternatives to strikes and lockouts. This body would consider labor courts, co-determination models, final offer arbitration, or any other means by which strikes and lockouts might become an obsolete way of resolving differences.

[Debate adjourned March 11: Mr. Bradley speaking]

MR. HIEBERT: Mr. Speaker, in light of the absence of my colleague the Member for Pincher Creek-Crowsnest, and in light of the fact that we had debate on this particular motion two afternoons last week, I would like to adjourn debate.

MR. SPEAKER: Does the Assembly agree?

HON. MEMBERS: Agreed.

MR. SPEAKER: It is so ordered.

202. Moved by Mrs. Embury:

Be it resolved that the Assembly urge the government, through the Department of Transportation, to initiate a multimedia campaign to increase public awareness regarding traffic safety.

MRS. EMBURY: Mr. Speaker, I am very pleased to introduce Motion 202 this afternoon. I'd like to limit my introductory remarks today to why I have introduced this motion at this particular time in the Assembly, a brief historical perspective, some comments on a recent driver attitude study, and then look at some of the pros and cons regarding the motion.

First of all, the reason I felt this was a timely motion to be debated in our Assembly is that I am aware that a similar type of motion, or one regarding one aspect of traffic safety, mainly driver education, has been debated in the past, but in the few years since that time there have been a lot of changes in our Alberta society, not only in the urban centres but also in the rural areas. I felt it was timely to look again at some of the problems and concerns we have in regard to traffic safety.

Another reason for choosing this motion was basically a personal concern for many years, regarding the driving habits of all of us. That refers literally to all Albertans, not only young people, who quite often are accused of bad driving habits, but right along the age spectrum. Today we see a lot more elderly people also driving and maintaining their cars. I think this is an important subject regardless of where we live, in a large fast-growing urban centre or as part of a rural community. I believe another extremely important factor to all Albertans is our changing weather conditions, and another is the rapid changes in the design of cars.

It was interesting to note one of the policemen in Calgary mentioning to me that a factor that concerned him very much was the advent of more and more small vehicles on the road. He also stated that this may not be as much a problem when most Albertans are driving the same size vehicles. But the concern today is when we have a small number of small vehicles being driven by families, yet still have a large number of much larger sized cars. This creates more severe injuries when accidents occur.

I mentioned briefly the rapidly increasing population in Calgary and all the problems that results in. I think most people are aware that Calgary has always been known as a city with a very high ratio of cars per driver. That is certainly evident in many areas of Calgary. When outside houses, you now see up to six vehicles per family, that indicates the affluence of Albertans today.

Another reason for my interest in this motion is that when I introduced my first motion in this Assembly, on the occupational health and safety foundation, I did some research into one of the problems related to occupational safety, which is driver training and what programs are offered by companies for their employees. Another reason this is important to me is that, with my background in nursing, it is a very, very sad reminder of the terrible pain and anguish suffered by so many victims of motor car accidents. Oftentimes suggestions have been floating around about the value of people who cause accidents. If they could just tour some of our hospital wards and see the injuries that result from the accidents.

Finally the statistics in Alberta at least are indeed alarming, indicating that Alberta has one of the worst collision records in Canada. Interestingly enough, a recent survey revealed that Albertans tend to blame factors other than themselves for traffic collisions.

eeling the bite.

If the hon. Member for Spirit River-Fairview thinks hat a group, probably academics — it would be making nost of the noise and talking to most of the media, and hat's where they would report things from — is going to urn around, twist around, and develop an economic base rom that, then he's got rocks in his head. [interjection] I elieve that . . .

MR. SPEAKER: I'm not aware of that expression being n the list of approved parliamentary expressions. interjections]

MR. LYSONS: Mr. Speaker, I carefully looked through *Beauchesne* some time ago, and I suppose that soon it vill be on the list of expressions. I thought I would get omething original in.

In the last 10 or 11 years, things have happened in Alberta that have happened nowhere else in the world, as ar as I know, other than in wartime and perhaps with the xception of the great economic resurgance in Israel a few ears ago, which didn't last; in order to keep the peace here, they had to keep the army out. If anyone were to hink that we can develop a system outside the market lace — the supply and demand. Mother Nature, act of God sort of thing — and be able to do that through a ommittee or council, they're wrong. We must develop ur economy on hard work and the ability to win some nd lose some.

MR. SPEAKER: We've exceeded the alloted time. I can ut the question with unanimous consent, otherwise it vould have to wait until the next time this topic comes p for debate. Does the Assembly agree that the question hould now be put?

HON. MEMBERS: Agreed.

Motion on the amendment lost]

MR. PURDY: Mr. Speaker, I move we adjourn the ebate.

MR. SPEAKER: It's not necessary. The debate's already djourned, because we've gone past the time.

MR. PURDY: Is that why the hon. Member for Vermilion-Viking sat down?

MR. SPEAKER: Probably that, but he was speaking bout the amendment.

MR. PURDY: Then who adjourned the debate on why e made the motion?

MR. SPEAKER: The *Standing Orders.*

MOTIONS OTHER THAN GOVERNMENT MOTIONS

01. Moved by Mr. D. Anderson:

Be it resolved that the Assembly urge the government to consider establishing a committee or commission consisting of labor, business, and government leaders to investigate alternatives to strikes and lockouts. This body would consider labor courts, co-determination models, final offer arbitration, or any other means by which strikes and lockouts might become an obsolete way of resolving differences.

[Adjourned debate March 16: Mr. Hiebert]

MR. HIEBERT: Mr. Speaker, in rising to debate Motion 201, I must indicate that it was a very timely motion introduced in the Assembly by the Member for Calgary Currie. I've noted that many members have participated in the debate.

Mr. Speaker, I would like to introduce an amendment to the motion by adding "preventive mediation" after the words "This body would consider", and by striking out the phrase "by which strikes and lockouts might become an obsolete way of resolving differences" and substituting "that might be preferable to strikes and lockouts". If I could now speak to the amendment, Mr. Speaker — I have copies of it available for distribution to the members.

I noted that the debate with regard to collective bargaining certainly brought out a number of points and certain trends in the province of Alberta. There appears to be an atmosphere of mistrust in our collective bargaining; a nearly confrontationist type of bargaining has been taking place. I think we're getting many entrenched attitudes on the union side and possibly on the management side. As Alberta becomes a more industrialized province, we're going to continue to experience more difficulties in labor relations in the future.

In negotiations over the past few years, another trend seems to be evident, Mr. Speaker. Working conditions seem to be the prime factor. Sometimes it's a smoke screen, possibly levering for greater economic benefits through wage increases. However, in the last few strikes, we've noted that working conditions are a prime consideration. It is my view that many times it denotes something is going on in the work force in the working atmosphere of various institutions and industries. There's a tug of war with regard to what is management's responsibility and what is the worker's area of jurisdiction. I have always felt that in the work place there's a spirit behind how people work together. Many of the contracts being negotiated are trying to dot all the i's and cross all the t's with regard to their responsibilities. I think it just [underlines] the mistrust that seems to be occurring.

We have to look for different ways to try to resolve these differences. With regard to negotiations on a province-wide basis, we have many variances with regard to institutions and different organizations. We have disparities between rural and urban situations, and quite often negotiated contracts tend to be on a province-wide basis and reduce everything to a common denominator. Consequently both parties are not very happy with the situation.

For example, we can recall the Calgary school board strike a couple of years ago. Their problems were quite different from what we might find in many of our county school situations, yet this particular strike addressed itself to many working conditions. These working conditions are now being applied to all situations or jurisdictions in the province, so you can see the impact. Although it is initiated at the local level, it has ramifications for the entire province.

Rather than deal with solutions today, Mr. Speaker, I think the motion before us suggests we set up a commission, consisting of labor, business, and government leaders, to look at solutions and other alternatives. Hopefully this commission can examine positive alternatives. If we

look at strikes or lockouts, they imply that failure has occurred. Many times the general public is held hostage in this situation. Mr. Speaker, I think the motion as amended suggests that we look at positive alternatives that are fair and just to all: to employees, management, and the public. Hopefully these alternatives will alleviate some of the breakdowns that have been occurring. Maybe we can look for different methods that can be applied early. That is why in the amendment we suggest putting in the words "preventive mediation", so we're not to the lockout, deadlocked situation, but rather some effort is made in the early stages of collective bargaining. Hopefully such methods will avoid the growing interruptions and loss of productivity ever increasing in our province.

The purpose of the amendment is to consider preventive mediation in the collective bargaining process; not to make any conclusion that strikes or lockouts are obsolete, but that preferable means ought to be sought before we ever reach that stage. Therefore, Mr. Speaker, I urge all members to support the amended motion.

For the record, I would like to read the amended motion for the benefit of the Assembly:

> Be it resolved that the Assembly urge the Government to consider establishing a committee or commission consisting of labor, business, and government leaders to investigate alternatives to strikes and lockouts. This body would consider preventive mediation, labor courts, co-determination models, final offer arbitration, or any other means that might be preferable to strikes and lockouts.

Thank you, Mr. Speaker. I hope the members get behind this particular resolution.

MR. YOUNG: Mr. Speaker, if I may address the amendment briefly, I welcome the opportunity to do that. In speaking to the main motion on a previous occasion, I alluded to but did not expand upon some comments I'd now like to make.

The motion before us, particularly with the present amendment, suggests there are, if you will, two elements to the process by which the parties get to a work stoppage. The first portion is what comes before the parties become involved at the collective bargaining table. The second portion, when there is an impasse, is how to resolve that particular impasse. As I understand it, when the amendment addresses preventive mediation, it speaks to what can be done to assist the parties to a better understanding of their position and responsibilities before they go to the bargaining table.

Mr. Speaker, I want to briefly comment that this is indeed the area of focus the Department of Labour and its staff have been addressing with considerable vigor in the last year and a half. From experience with the parties in collective bargaining — and we have extensive records — we have found that where certain types of problems exist and where they may flare up again, is reasonably predictable. Over the past year and a half, we have worked with companies in the areas of coal mining, the tar sands, manufacturing, the public sector — by that I mean the municipalities — firefighting services, and the health care sector, and have been very effective in resolving difficulties which had been identified, and removing those problems which exist between the two parties well before the parties are prepared to go to the bargaining table.

By so doing, we have removed a difficulty which would have gone to the bargaining table. We've also created an ability for the parties to relate to one another in a more objective way. By that action, we've managed to build the confidence level between the parties and create an understanding of individuals, so the persons on one side of the bargaining table know the persons on the other side. I believe that is a very major and important role for the Department of Labour, and it is one of the means by which we can remove the possibility of impasses which lead to work stoppages.

I shouldn't dwell on the kinds of initiatives taken prior to the commencement of negotiations, but there is a variety, and they are called by a variety of names. Relations by objectives could be one of those; preventive mediation is a sort of broader expression. But I simply want to advise hon. members that that has been a focus of the Department of Labour. We have developed our staff very much in this particular area, and it has been a fruitful avenue for positive improvement in labor relations.

It has one risk to it, and perhaps I should identify that. The risk is that not all the parties on all occasions feel inclined to invite the Department of Labour to their particular difficulties. Sometimes it seems we have to have the impasse brought forcibly to the attention of the parties before they will look outside for assistance.

The second point I want to make with respect to this resolution and the proposed amendment is that I believe it is critically important, in trying to achieve the objective, that the parties themselves are participating in the exercise. It seems there is no value, or not as much value, in having a commission or committee going around the province if the problems being dealt with aren't deemed to be relevant by the parties who must voluntarily accept the conclusions.

Coming back to preventive mediation, getting the parties involved has been useful. With this resolution, I believe it's necessary to get the parties involved, participating, and understanding how they may work together. To that extent, I see that we might do more in the area of industry-wide councils and committee structures, whereby the breadth of the responsibility on management and on the union representatives is fully explored.

The third comment I'd like to make is that this resolution, as amended, looks clearly at alternatives. It doesn't suggest that we're going to outlaw strikes and lockouts, but rather create a heightened awareness of the possibilities, the alternatives, to a strike or a lockout. The present labor Act contains a possibility for voluntary binding arbitration. Our mediators recommend that to the parties. But usually by the time it's recommended, the parties are in such a lather with one another that they don't really consider it very seriously. Sometimes, later on they regret that omission to consider. Nevertheless that's a position they take at that time. So again, I think this resolution has value in terms of highlighting the alternatives.

My concluding comment is this. I do not believe it should ever be necessary to have a strike or a lockout. That is a failure of the system, in combination with a failure on the part of the parties. It is a decision on the part of one or the other party that they can replace reason with economic force. It is a sad day for most parties when they get themselves into this kind of position, because it is always a loser for the parties and, because of the interdependent nature of our society, it is also a loser for society. So it is my view that we should do more to create a broader understanding throughout society of the alternatives to strikes and lockouts.

I think the resolution is particularly valuable, because

it seems that every generation must learn how to practise citizenship. I regard the exercise of determining what is fair, right, reasonable, and one's share in the economic aspect of our society as part of the citizenship function. I hope this will assist the present generation to learn alternatives to the strike/lockout mechanism and persuade them that they should voluntarily accept these alternatives rather than resorting to economic force which, in my experience, is always a losing proposition for those who participate in it and those who are affected by it.

MR. SPEAKER: Are you ready for the question on the amendment?

HON. MEMBERS: Question.

[Motion on the amendment carried]

MR. ANDERSON: Mr. Speaker, if I may, I'd like to make a few remarks in closing debate on this resolution.

MR. SPEAKER: Does the Assembly agree that the hon. member may close the debate?

HON. MEMBERS: Agreed.

MR. ANDERSON: I'd first like to thank the many members of the Assembly who have participated in discussion on this particular resolution over several days of debate. I believe the debate has been excellent. It has afforded to anyone who will read *Hansard,* or anyone who has listened to the debate in full, a wide cross section of concepts and ideas, possibilities, and an outline of difficulties that have existed.

I also thank the hon. Member for Edmonton Gold Bar, who proposed the amendment. I believe the amendment adds to this motion. Indeed the preventive mediation aspect is one that should be looked at in full as well. The changes to the last part of the motion allow us to clarify, in no uncertain terms, that this motion in no way wishes to take away rights from any individual or union that now has them, but tries to develop alternatives.

In closing debate, I would also like to make clear that it is true that the vast majority of negotiations in this province are completed in an amiable way between the parties involved. I congratulate those employers and employees who bargained responsibly in the past and continue to do so for the betterment of themselves and our society. This resolution is aimed at that 5 per cent that have caused problems and difficulties for employers, employees, and the general public of the province of Alberta. It's aimed at looking at alternatives and ending the conflict that has developed in that percentage of strikes and lockouts; indeed, perhaps in a different way, in terms of lost motivation when conflict hasn't resulted in those strikes and lockouts.

[Mr. Purdy in the Chair]

I would just like to reiterate remarks made in introducing this resolution. At that point, I indicated that I believed any alternative had to have three dimensions to it before it could be considered a positive alternative. I think those are worth briefly mentioning again: first, that any change to our labor relations system must be fair to all involved; second, the changes must break down rather than create conflict between labor and management; and third, the changes should not interfere with but add to the progress of business and government programs. Having said that, if this motion is passed today I believe it will be historic in the Canadian system of government, in that I am not aware of any other legislature in this nation which has taken the initiative to pass a resolution that calls upon labor and management to come together to look at alternatives to that conflict way of resolving difficulties. Indeed, if we move with this resolution today, we move toward establishing *détente* between those parties who have had conflict before, and perhaps toward a time in the future when the citizens of this province can enjoy the full fruits of their labor and all the benefits of employment and business opportunities without the threat of work stoppage, lockout, and strike.

Mr. Speaker, I express the hope that rhetoric which is sometimes used by one side or the other in labor disputes, those elements of conflict and inflammatory statements which are made, will begin to end with the passage of this resolution, and that we will move toward a better and more enlightened way of dealing with negotiations for salary and benefits for working conditions in Alberta.

Having said that, I again thank the members, and urge all members to vote in favor of this resolution.

[Motion carried]

202. Moved by Mrs. Embury:

Be it resolved that the Assembly urge the government, through the Department of Transportation, to initiate a multimedia campaign to increase public awareness regarding traffic safety.

[Adjourned debate March 16: Mr. Pahl]

MR. KOWALSKI: Mr. Speaker, I feel very interested about taking part in the debate on Motion 202 this afternoon. At the outset, I would like to thank a number of members of the House who have already participated in the debate on this motion, namely the members for Stony Plain, Edmonton Glengarry, Camrose, and St. Albert.

I think one of the fascinating things about traffic safety in the province of Alberta is that it means different things to different people. This afternoon, Mr. Speaker, I'd like to read into the record a number of statistics with respect to traffic safety in the province in recent years, give a brief overview of the transportation infrastructure in the province, and then leave the Assembly with 17 specific recommendations in the area of traffic safety. At the outset, I think one has to recognize that the province of Alberta has one of the worst collision records in Canada. A survey within the last two years indicates that Albertans tend to blame factors other than themselves for traffic collisions.

I think it's important that we spend a couple of minutes looking at the statistics in the time frame 1970 to 1980, a decade of activity in this province. During that decade, a total of 5,866 people were killed and 170,735 injured as a result of traffic collisions in Alberta. As the decade moved on, there was a gradual increase in the number of traffic deaths and injuries. Motor vehicle deaths rose from 461 in 1971 to a peak of 708 in 1979, and injuries doubled from approximately 12,000 in 1971 to some 24,000 in 1980. Since 1970 the number of traffic related injuries has increased at a rate of about 10 per cent each year, while the number of fatalities has increased at a rate of 4.5 per cent each year.

If you specifically take a look at the most recent year