Third Session - Thirty-Fifth Legislature

of the

# Legislative Assembly of Manitoba

## STANDING COMMITTEE

## on

## INDUSTRIAL RELATIONS

39-40 Elizabeth II

*Chairperson*
*Mrs. Shirley Render*
*Constituency of St. Vital*

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## MANITOBA LEGISLATIVE ASSEMBLY
## Thirty-Fifth Legislature

Members, Constituencies and Political Affiliation

| NAME | CONSTITUENCY | PARTY |
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| ALCOCK, Reg | Osborne | Liberal |
| ASHTON, Steve | Thompson | NDP |
| BARRETT, Becky | Wellington | NDP |
| CARSTAIRS, Sharon | River Heights | Liberal |
| CERILLI, Marianne | Radisson | NDP |
| CHEEMA, Gulzar | The Maples | Liberal |
| CHOMIAK, Dave | Kildonan | NDP |
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# LEGISLATIVE ASSEMBLY OF MANITOBA

## THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

## Monday, June 22, 1992

**TIME – 2:30 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mrs. Shirley Render (St. Vital)**

**ATTENDANCE - 10 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Ducharme, Gilleshammer, Hon. Mrs. McIntosh, Hon. Mr. Praznik

Mr. Ashton, Ms. Barrett, Mrs. Carstairs, Mr. Martindale, Mrs. Render, Mr. Sveinson

*Substitutions:

Mr. Rose for Mr. Ducharme (1500)

Mr. Lamoureux for Mrs. Carstairs (1536)

**WITNESSES:**

Bill 76–The Pension Benefits Amendment Act

Ron Youngson - Turnbull and Turnbull

Stan Hutton - Private Citizen

Bill 85–The Labour Relations Amendment Act

Susan Hart-Kulbaba - Manitoba Federation of Labour

John Doyle - District 3, United Steelworkers

Irene Giesbrecht - Manitoba Nurses' Union

Sid Green - Leader of the Progressive Party of Manitoba

**Written Presentations Submitted:**

Bill 85–The Labour Relations Amendment Act:

Ross C. Martin - President, Brandon & District Labour Council, Canadian Labour Congress

James J. Cowan - International Vice-President, Graphic Communications International Union

Neil Harden - Director for the Prairie Region of the Professional Institute of the Public Service of Canada

**MATTERS UNDER CONSIDERATION:**

Bill 76–The Pension Benefits Amendment Act

Bill 85–The Labour Relations Amendment Act

* * *

**Clerk of Committees (Ms. Bonnie Greschuk):** Will the Standing Committee on Industrial Relations please come to order. We must proceed to elect a Chairperson. Are there any nominations?

**Hon. Linda McIntosh (Minister of Consumer and Corporate Affairs):** I nominate Shirley Render.

**Madam Clerk:** Mrs. Render has been nominated. Are there any other nominations? Since there are no other nominations, will Mrs. Render please take the Chair?

**Madam Chairperson:** Will the Committee on Industrial Relations please come to order. This afternoon, we will be considering Bill 42, The Amusements Amendment Act; Bill 64, The Child and Family Service Amendment Act; Bill 70, The Social Allowances Amendment and Consequential Amendments Act; Bill 76, The Pension Benefits Amendment Act; Bill 85, The Labour Relations Amendment Act.

It is the custom to hear briefs before consideration of the bills. What is the will of the committee?

**Hon. Darren Praznik (Minister of Labour):** Madam Chairperson, because this committee has such a lengthy workload, I understand we have four oral presentations on Bill 76, that we had agreed last Friday to hear those presenters, and then complete the work on Bill 76 clause by clause, and then move on to The Labour Relations Act.

**Madam Chairperson:** Is that agreed? Agreed.

### Bill 76–The Pension Benefits Amendment Act

**Madam Chairperson:** Okay, moving to Bill 76, you will remember for those who were on committee on Friday, that there were four presenters who were not here. I would just like to call their names right now: T. MacDonald from the Manitoba Action Committee on the Status of Women; Ron Youngson, Turnbull and Turnbull; Mr. Stan Hutton, Private Citizen; and Jerry Blumenschein, Private Citizen.

Okay, Mr. Youngson, would you please come forward. I think all of the committee members have Mr. Youngson's written presentation in front of them.

**Mr. Ron Youngson (Turnbull and Turnbull):** Before proceeding into the presentation itself, I would like to thank the committee for the opportunity to make our views and comments known regarding Bill 76, The Pension Benefits Amendment Act.

Moving on to the specific comments with regard to Bill 76, I would like to first reference Clause 2(1)(b) of Bill 76 whereby the definition of pension plan has been changed to exclude certain retirement compensation arrangements from the definition of pension plan. The definition has been changed such that only a specific type of retirement compensation arrangement has been excluded from the definition of pension plan, which implies that certain other retirement compensation arrangements may be regulated under The Pension Benefits Act, and it is certainly not clear if that was the intent.

The original proposals by the Pension Commission were that all RCAs would be exempt from regulation under The Pension Benefits Act, so it is just a clarification issue more than anything else. If it is the intent that other types of retirement–

**Madam Chairperson:** Excuse me, Mr. Youngson, we are having a wee bit of difficulty hearing you.

**Mr. Youngson:** If the intent is to regulate all types of retirement compensation arrangements, it is not clear as to what the enforcement mechanism would be under The Pension Benefits Act to determine if these other types of retirement compensations do exist and whether or not they are to be regulated.

Moving on to Clauses 5(a), (b) and (c), it is our understanding that the purpose and intent behind this section is to allow Manitoba to enter into agreements with other provinces and indeed the federal government to allow the laws of the province in which the plan is registered to apply to all members of that plan, regardless of where they reside or report to work.

We would certainly applaud this measure. One of the biggest concerns and problems we face in running multijurisdictional pension plans is the differences between the various provincial pension benefits acts, and this would certainly go a long way to alleviating those difficulties. It is interesting to note that the Canadian Association of Pension Supervisory Authorities has endorsed this measure.

Looking at Section 6 of Bill 76, this change effectively requires all new plans being submitted for registration after the effective date of Bill 76 to incorporate wording which deals with the ownership of surplus under pension plans. One of the criteria is that consent to the provision must be obtained from all members of the plan. Further, a mechanism for resolving any arguments or a dispute must also be contained in the plan. It is not clear as to why a mechanism is needed for resolving a dispute if prior agreement has been obtained from all members.

Further, the issue of consent by all members does cause some concerns. The provision does not seem to contemplate future changes in membership in a plan. For example, although you may have 100 members in a pension plan when it is established, three years down the road, if there is a request for surplus refunds, the members of the plan indeed may not be the same members who agreed to the provision in the first place. It is not clear how that would be handled.

Looking at Subsection 7(2), (3) and (4) of Bill 76, these primarily deal with changes to Section 21 of the existing Pension Benefits Act. We see some inconsistencies as a result of the new drafting, particularly in Subsections 21(1)(a) and (b) and 21(2)(a) and (b).

The existing Pension Benefits Act in 21(1)(a) and 21(2)(a) refer to two circumstances or two changes in status which can occur. One was a termination of membership, and the other was a termination of employment. Subsections 21(1)(a) and 21(2)(a), still, or I should say have been changed to refer only to termination of membership, while Clauses (b) of 21(1) and 21(2) still retain reference to termination of employment and termination of membership. There seems to be a little bit of inconsistency there.

* (1450)

Also, the new wording says, when a member terminates employment, and while it may be a semantic point, the old or the existing Pension Benefits Act referred to termination of membership, not when the member terminates employment, thus it could be construed that the protection provided under 21 of The Pension Benefits Act would only apply where the member initiates the termination of employment, not where it is initiated by the employer.

Looking at Subsection 7(6) of Bill 76, this provides for the establishment of a Life Income Fund. While not stated explicitly in Bill 76, we have been told that

this alternative will be an optional provision for defined benefit pension plans. If that is the case, the concerns which follow perhaps are not as much of a concern as set out in this brief, but I will go through them in any event.

Many defined benefit plans provide that pensions are paid directly out of the pension fund in a predetermined amount. Also, increases in pensions and recognition of increases in the cost of living are also paid directly from the trust fund. In principle, any legislation which would encourage a plan member to transfer the value of a pension entitlement out of a pension plan should not be encouraged. The establishment of a Life Income Fund would likely result in this.

However, given the propensity of pension plan members to take advantage of legislative portability options–there is a typographical error there; it should be portability, not credibility–the concept of a Life Income Fund is an acceptable alternative to the purchase of a life annuity at retirement or at maturity of a locked-in RRSP.

Under Subsection 7(7) of Bill 76, a plan exempts a retired employee in receipt of a pension from the mandatory participation requirements under The Pension Benefits Act in the event that this employee returns to work in employment which would be covered by the plan. This will remove a conflict with the Income Tax Act under which a member cannot accrue benefits under a pension plan while in receipt of a pension plan under that same plan. Thus this change will remove that conflict.

This change will give individuals the option of continuing receipt of their pension while not becoming a member of the plan.

We do not believe that this would preclude the alternative of suspending pension payments upon return to employment covered under the plan. We would suggest that this should be made more clear either in The Pension Benefits Act or under the regulations.

Under Section 11 of Bill 76, some changes have been made with respect to the withdrawal of surplus from pension funds both in an ongoing situation and in a wind-up situation. The amendments allow employers to have access to surplus funds provided certain criteria are met. These criteria are that the commission must be satisfied that the employer is entitled to receive a surplus under the terms of the governing pension plan; all facts relevant to the payment of surplus have been disclosed to all members of the pension plan; and an application is submitted containing information to be prescribed.

Further, if the commission is not satisfied as to the employer's right to a surplus refund, the commission will not consent to the payment unless a court determination as to the entitlement of the employer to the refund has been obtained. In any event, a minimum amount of surplus must be retained in the plan, and only surplus in excess of the specified amounts must be available for refund.

It is not clear as to how these criteria would work in the context of a multiemployer or multiunit pension plan. The position of Turnbull and Turnbull has always been that surplus refund should not be permitted in the context of multiemployer or multiunit pension plans. This is because assets are generally pooled under these types of plans, and there is no attempt made to apportion surplus between participating employers. Most often, surpluses in multiemployer pension plans are used to improve benefits and are never refunded to participating employers.

An additional point with respect to the minimum amount of surplus which should be retained in a pension plan causes a small potential conflict with the Income Tax Act. Under recent changes to the Income Tax Act, a maximum amount of surplus which can be retained in a pension plan is specified. If surplus exceeds that maximum amount, the sponsoring employer can no longer make tax-deductible contributions to that plan.

The rules under the Income Tax Act are such that the minimum amount under The Pension Benefits Act could be in conflict with the maximum amount permitted under the Income Tax Act. We would suggest that this should be looked at a little more closely and the conflict removed.

Under Section 12 of Bill 76, numerous provisions are added with respect to multiunit pension plans. We certainly applaud the commission and indeed the government for taking these steps. It has been a long-awaited process for some specific multiunit and multiemployer pension plan legislation.

In order for a plan to be regulated as a multiunit pension plan, it will be necessary for the trustees to indicate their intent, in writing, that the plan should be regulated as a multiunit pension plan. This is certainly acceptable.

Under new Subsection 26.1(1), termination of membership under a multiemployer plan means the termination of an employee's employment with an

employer and the employee's membership in the union or the occurrence of a continuous period of not less than 24 calendar months during which contributions are not remitted to the multiunit pension plan by or on behalf of the member.

At first reading, we contemplated that this did not provide for a more generous break-in-service rule. However, upon closer scrutiny, we understand that the reference to not less than 24 months does in fact allow for a longer period of time while a member of the plan without incurring a break-in-service. If this is indeed the intent, then again, the rest of the concerns are not as much of an issue as we have made them out to be.

A couple of inconsistencies do arise in the drafting of some of the multiunit pension plan provisions. One is the consistent use of the fact that contributions are made on behalf of members. We must take issue with that statement. Contributions are not made on behalf of members in multiunit or multiemployer pension plans. They are made in respect of the services rendered by those employees, rather than on behalf of the members. The words, "on behalf of the members", could be construed to imply ownership of contributions by a particular employee, which is certainly not always the case. This should be made more clear.

There also seems to be some inconsistencies in the use of certain terms that are defined. For example, under the provisions of Bill 76 with respect to multiunit pension plans, the term "employment" is defined. Then, it seems to us, that where the use of the word "employment" should be used, other terms are used; for example, "employee service" and "service" are used. Where different terms are used which we believe to mean the same thing, the same term should be used consistently throughout, particularly if it is a defined term. We think some attention should be paid to clearing up those inconsistencies.

Moving on to some other of the references with respect to multiunit pension plans, new Subsection 26.1(3) provides that any class of members of a multiunit pension plan may by a majority vote exclude themselves from the multiunit pension plan before the plan is designated as a multiunit pension plan.

It is not clear as to what the rationale behind this provision is; however, it would seem to have the potential for resulting in a very confusing situation where part of a plan is designated as a multiunit plan and part of it may not be. This would certainly add to the regulatory confusion which already exists in many cases.

Under Subsection 26.1(7), the reference is made to the fact that contributions vest in a member. While this is certainly true in defined contribution plans, it is certainly not the case in defined benefit plans under which many multiunit plans fall. Under those types of plans, contributions do not vest in members, benefits do. Also, use is made of the term "vested" and "locked-in" while they are not defined anywhere in the act. If terms such as "vested" and "locked-in" are to be used, they should be defined or made more clear.

* (1500)

Those conclude the comments I made. If there are any questions, I would be pleased to–

**Madam Chairperson:** Thank you, Mr. Youngson. Are there any questions from the members? I guess not. Your presentation was clear. Thank you very much.

## Committee Substitution

**Hon. Gerald Ducharme (Minister of Government Services):** With the will of the committee, with leave, I would like to move that the honourable member for Turtle Mountain (Mr. Rose) replace the honourable member for Riel (Mr. Ducharme) in this Industrial Relations. Can we get leave to do that?

**Madam Chairperson:** Is there leave to do so?

**Mr. Ducharme:** Madam Chairperson, the reason why I am doing it is because they are dealing with The City of Winnipeg Act dealing with the conditional variance uses and the changes to The City of Winnipeg Act.

**Mr. Steve Ashton (Thompson):** Yes, there certainly is leave, and it would be subject, I believe, to confirmation in the House. We would have to move it afterwards to make it legitimate.

**Madam Chairperson:** Agreed? Agreed.

* * *

**Madam Chairperson:** Okay, I would like to call Stan Hutton.

**Mr. Stan Hutton (Private Citizen):** Madam Chairperson, honourable ministers, I am here today to speak in support of the proposed amendments. In my mind, the government must either make all assets and liabilities shareable in an open

negotiation, or they must add to the list of assets that are split automatically and also add to the list of liabilities that are assumed automatically.

Current legislation can compromise fair settlements between spouses. Both parties may want an unequal division of pension assets to allow one party to maintain certain property, such as the family home. Where children are involved, it is even more important for the parents to be able to equalize their property division without selling the familiar environment of the children–the neighbourhood, the friends, the support system.

The parties may also choose to divide the furnishings unequally, especially where the marital home is retained. The forced sale of marital assets is often with considerable financial sacrifice, as is the case with any forced sale, but particularly in today's real estate climate.

Both parties can be economically disadvantaged under current legislation. The automatic division of company pensions can be unjust and is often not required to achieve an equal property division.

In my case, the masters report shows a net equalization payment due to me which is approximately double the value of my wife's share of my company pension. Since my wife has expended all the assets in her possession, including her RRSP which exceeds the value of my company pension, there is little hope that I will be able to attain the funds owing to me within the one-year window permitted by my employer to pay back the withdrawn amount and reinstate my pension and time frame for retirement. To make matters worse, the bulk of my wife's RRSP was accumulated with spousal transfers from myself.

Pension splitting has other dramatic consequences. Pension splitting is more than the loss of dollars. It is a loss of time. The loss of pension dollars carries with it the loss of years toward retirement eligibility and has associated consequences, such as reducing the mobility of the individuals losing their pensions. It may necessitate the employee to remain with the company to a new early retirement date while the spouse relocates. If the spouse who relocates happens to have custody, then it can cause severe hardship to the noncustodial parent left behind. Alternatively, the employee can walk away from the employer's contribution by ceasing employment, which results in longer-term economic hardship and further inequity. It is usually the husband who is the noncustodial parent and faced with the emotional dilemma versus financial dilemma.

A number of bad options can result from current pension legislation: Option a) follow family to new location to maintain status as functional parent; Option b) postpone relocation several years to new early retirement date; Option c) maintain job, rebuild pension, attempt to continue parent-child relationship from afar. This is a huge obstacle involving time, distance and considerable cost and expense to all parties, particularly the children of the marriage.

Current pension legislation must be reformed. Thank you for your efforts in doing so. This concludes my presentation.

**Madam Chairperson:** Thank you, Mr. Hutton. Are there any questions from committee members?

If not, I would like to call Jerry Blumenschein. I will go back once again and call T. MacDonald.

I have also been advised that there are no further written presentations with reference to this bill. Committee agreed on Friday that we would then proceed clause by clause.

During the consideration of a bill, the title and the preamble are postponed until all other clauses have been considered in their proper order by the committee. Let us start with Clause 1.

Clause 1–pass.

Clause 2 on page 1 through to page 2.

**Mr. Ashton:** We actually neglected the opportunity to begin in terms of comments from critics and ministers, et cetera. I just want to indicate that we will be opposing this bill. We believe that there are a number of aspects to this bill which have a significant detrimental impact in terms of pensions within this province, in regard to surpluses, in regard to the shift, that we feel is not in the positive interest of Manitoba, away from group pensions to individually directed pensions.

We have expressed further concerns in regard to the credit-splitting sections, problems with the way the act is structured in that particular area. We will be opposing this bill. I wanted to indicate that in advance.

I know we had made statements in the House indicating very clearly our position. We do not feel that this is the direction we should be moving in, in terms of pensions in Manitoba. It is rather unfortunate we are facing this situation. We have looked at the option of moving amendments, but that

only complicates things even further. It makes it even more difficult in a number of areas we had looked at in terms of amendments that really do not necessarily deal with our basic concerns in terms of the bottom-line principle of this legislation.

As I say, we will be opposing this at the committee stage. We will be opposing it at third reading, and we think that the government is moving pensions into an area that even many investment analysts, let alone employees, are concerned about, particularly moving into individually directed pensions more and more. We are concerned particularly in terms of surpluses, et cetera, that the real question and the bottom line of who should be able to appropriate those surpluses, Madam Chairperson, has not been dealt with. As I said for those reasons which we have outlined, we will be opposing this bill and opposing it at both committee stage and third reading.

**Madam Chairperson:** Does the critic for the second opposition wish to make a statement at this point?

**Mrs. Sharon Carstairs (Leader of the Second Opposition):** Our concern, as I expressed in second reading of the bill, is primarily on credit splitting. I understand there are some amendments coming forward. If those amendments are satisfactory in terms of making it more difficult for women to be negotiated out of their rights to their pensions, then we will be supporting the legislation.

* (1510)

**Madam Chairperson:** Does the minister wish to make a statement?

**Hon. Darren Praznik (Minister of Labour):** Yes, Madam Chairperson, all I wish to do at this time is table, for the record of this committee, the two working documents: the first, The Promotion of Private Pension Plans in Manitoba which was the original discussion paper which outlines the proposals of the commission. I would also like to table the second document which was amendments made to the first document following the round of presentations that were made to the commission. It is entitled The Promotion of Private Pension Plans in Manitoba, Recommendations of the Pension Commission of Manitoba. This was sent out to anyone who had shown an interest in the original document.

I just table it for the records of the committee.

**Madam Chairperson:** Thank you, Mr. Minister.

Okay, let us go back. Clause 2 on pages 1 through to 2–pass; Clause 3 on pages 2 to 4–pass; Clause 4, bottom of page 4 to top of page 5–pass.

Clause 5 on page 5.

**Mr. Praznik:** Madam Chairperson, I have an amendment that I am advised by my staff there was a drafting error in the bill. So I would move, seconded by the honourable Minister of Consumer and Corporate Affairs (Mrs. McIntosh),

THAT section 5 of the English version of the Bill be amended by striking out clause (b) and substituting the following:

> (b) by adding ", the payment of pension benefits and other matters respecting pension plans" at the end of clause (a); and

**[French version]**

Il est proposé que la version anglaise de l'article 5 du projet de loi soit amendée par substitution, à l'alinéa (b), de ce qui suit:

> (b) by adding ", the payment of pension benefits and other matters respecting pension plans" at the end of clause (a); and

**Madam Chairperson:** Amendment–pass.

Clause 5, as amended.

**Mr. Praznik:** Madam Chairperson, I believe there are two other amendments to 5 that are tied into Clause 11(2) of the proposed amendment package. Therefore, I would move, seconded by the honourable Minister of Family Services (Mr. Gilleshammer),

THAT the proposed subsection 11(2), as set out in section 5 of the Bill, be amended by striking out "subsection (1)" and substituting "clause (1)(a)".

**[French version]**

Il est proposé que le paragraphe 11(2), énoncé à l'article 5 du projet de loi, soit amendé par substitution, à "au paragraphe (1)", de "à l'alinéa (1)(a)".

**Madam Chairperson:** Okay, with the committee's indulgence, I am going to read the amendment that was read just previously, please.

THAT section 5 of the English version of the Bill be amended by striking out clause (b) and substituting the following:

> (b) by adding ", the payment of pension benefits and other matters respecting pension plans" at the end of clause (a); and

**[French version]**

Il est proposé que la version anglaise de l'article 5 du projet de loi soit amendée par substitution, à l'alinéa (b), de ce qui suit:

(b) by adding ", the payment of pension benefits and other matters respecting pension plans" at the end of clause (a); and

Agreed.

The amendment that the minister just moved. It was moved by the Honourable Mr. Praznik

THAT the proposed subsection 11(2), as set out in section 5 of the Bill, be amended by striking out "subsection (1)" and substituting "clause (1)(a)".

**[French version]**

Il est proposé que le paragraphe 11(2), énoncé à l'article 5 du projet de loi, soit amendé par substitution, à "au paragraphe (1)", de "à l'alinéa (1)(a)".

Agreed? Agreed.

**Mr. Praznik:** Madam Chairperson, there is one further amendment to this section. I would move, seconded by the honourable Minister of Family Services (Mr. Gilleshammer),

THAT the proposed subsection 11(3), as set out in section 5 of the Bill, be struck out and the following be substituted:

**Laws governing agreement with Canada**

**11(3)** An agreement under clause (1)(a) between Manitoba and the authorized representative of the Government of Canada shall indicate whether the provisions respecting the payment of pension benefits and the other matters contained in the agreement are to be governed by the laws of Manitoba or the laws of Canada or a specified combination of both, and the provisions shall be governed by the laws so indicated or the combination so specified.

**[French version]**

Il est proposé que le paragraphe 11(3), énoncé à l'article 5 du projet de loi, soit remplacé par ce qui suit:

**Lois régissant les ententes avec le Canada**

**11(3)** Les ententes visées à l'alinéa (1)a) conclues entre le Manitoba et le représentant autorisé du gouvernement du Canada précisent si les dispositions concernant le versement de prestations de pension et les autres questions dont traitent ces ententes doivent être régies par les lois du Manitoba, les lois du Canada ou une combinaison des deux.

By way of explanation, Madam Chairperson, this is to make it clear in this section that it is possible for some federal plans to be regulated by Manitoba. Given the change in jurisdiction from the Manitoba Telephone System, this would allow or make it possible for the pension plan for MTS employees to be governed by Manitoba law if such agreement was passed.

**Motion agreed to.**

**Mrs. Carstairs:** Madam Chairperson, if we can go on to the endorsement now of 5 total, because the next amendment is on 6.

**Madam Chairperson:** Clause 5 as amended–pass.

Clause 6.

**Mr. Praznik:** Madam Chairperson, I have an amendment, I understand, which is to clarify this particular provision to ensure it applies only to plans submitted for registration after proclamation, and as well, to clarify that the mechanism must be satisfactory to the superintendent.

I would therefore move, seconded by the honourable Minister of Consumer and Corporate Affairs (Mrs. McIntosh)

THAT the proposed subsection 18(2.1), as set out in section 6 of the Bill, be amended

(a) by striking out "registered" and substituting "submitted for registration"; and

(b) in clause (c), by striking out "mechanism" and substituting "mechanism satisfactory to the superintendent".

**[French version]**

Il est proposé que le paragraphe 18(2.1), énoncé à l'article 6 du projet de loi, soit amendé:

(a) par substitution, à "agréés", de "proposés aux fins d'agrément";

(b) à l'alinéa c), par substitution, à "fournissent, dans le document expliquant le régime, un moyen", de "prévoient, dans le document expliquant le régime, un moyen, que le surintendant juge satisfaisant,".

**Motion agreed to.**

**Madam Chairperson:** Clause 6 as amended–pass.

Clause 7.

**Mr. Praznik:** Madam Chairperson, I have an amendment to Clause 7(5).

* (1520)

I would like to move, seconded by the honourable Minister of Family Services (Mr. Gilleshammer)

THAT the proposed clause 21(4)(c), as set out in subsection 7(5) of the Bill, be amended

(a) in subclauses (i) and (ii), by striking out "member retired" and substituting "member died, retired"; and

(b) in the English version of subclause (ii), by striking out "that" and substituting "than".

**[French version]**

Il est proposé que l'alinéa 21(4)c), énoncé au paragraphe 7(5) du projet de loi, soit amendé:

a) aux sous-alinéas (i) et (ii), par adjonction, avant "a pris sa retraite", de "est décédé,";

b) dans la version anglaise du sous-alinéa (ii), par substitution, à "that", de "than".

I understand with respect to the first part of this, Madam Chairperson, it is to include plan members who have passed away, and in the second part, is to correct a spelling error in the draft.

**Motion agreed to.**

**Madam Chairperson:** Clause 7, as amended–pass; Clause 8, page 9–pass; Clause 9– pass.

Clause 10.

**Mr. Praznik:** Madam Chairperson, I have a clarification amendment to Clause 10, and I would move, seconded by the honourable Minister of Consumer and Corporate Affairs (Mrs. McIntosh)

THAT the proposed subsection 25(1), as set out in section 10 of the Bill, be amended by striking out "or on behalf of".

**[French version]**

Il est proposé que le paragraphe 25(1), énoncé à l'article 10 du projet de loi, soit amendé par suppression de "ou qui sont versées en leur nom après cette date".

**Motion agreed to.**

**Madam Chairperson:** Clause 10, as amended–pass; Clause 11, bottom of page 9 through to page 10 at the top of page 11–pass.

Clause 12.

**Mrs. Carstairs:** Where is the additional amendment coming in?

**Mr. Praznik:** I believe if the member for River Heights (Mrs. Carstairs) is discussing the form, my amendment will be moved with respect to subsection 13(3) of the bill.

**Madam Chairperson:** Clause 12 on page 11.

**Mr. Praznik:** Madam Chairperson, I have a further amendment with respect to correcting a drafting oversight with respect to Section 22 already having a method outlined. I believe the amendment is being distributed.

I would then move

THAT the proposed subsection 26.1(8), as set out in section 12 of the Bill, be struck out and the following be substituted:

**Refund of contributions**

**26.1(8)** Contributions made to a multiunit pension plan by a member that are not vested or locked in pursuant to subsection (7) shall be refunded to the member in the manner provided in section 22.

**[French version]**

Il est proposé que le paragraphe 26.1(8), énoncé à l'article 12 du projet de loi, soit remplacé par ce qui suit:

**Remboursement des cotisations**

**26.1(8)** Les cotisations que verse un participant à un régime multipartite et qui ne sont pas acquises ou immobilisées conformément au paragraphe (7) lui son remboursées de la façon prévue à l'article 22.

**Motion presented.**

**Mrs. Carstairs:** Does this eliminate interest payments?

**Mr. Praznik:** No, it does not eliminate. The method or technique to pay is already referred to in the act, so it ties this section to an existing mechanism.

**Motion agreed to.**

**Madam Chairperson:** Okay, let us go back again and try this once more. Section 12 on page 11 through to page 12 through to page 13 to the top of page 14–pass; Clause 13.

**Mr. Praznik:** Yes, Madam Chairperson–

**Madam Chairperson:** If you will just wait, please, I think we are distributing.

**Mr. Praznik:** I believe this is the amendment Mrs. Carstairs has been waiting for, which I might add I am most pleased to introduce.

I would move

THAT the proposed subsection 31(6), as set out in subsection 13(3) of the Bill, be amended by adding "and the agreement shall otherwise be in form and content as the minister may by regulation prescribe" at the end.

**[French version]**

Il est proposé que le paragraphe 31(6), énoncé au paragraphe 13(3) du projet de loi soit amendé par adjonction, après l'alinéa b), de ce qui suit:

Le ministre peut, par règlement, prévoir la forme et le contenu de l'entente écrite.

This will allow us, Madam Chairperson, by way of regulation, to create a necessary waiver documentation that I think presenters have requested and the Leader of the Liberal Party (Mrs. Carstairs) has suggested, and I am pleased to make this amendment.

**Madam Chairperson:** Shall the amendment be passed? Agreed? Agreed. Shall Section 13, as amended–

**Mr. Praznik:** I have a further amendment.

**Madam Chairperson:** You have a further amendment?

**Mr. Praznik:** Yes.

**Madam Chairperson:** We will have to distribute it.

**Mr. Praznik:** Madam Chairperson, I am going to withdraw this amendment currently. I require some further legal advice, so I think it is just going to have to wait or not be made. I will not move it. Please, I would like to withdraw that.

Withdrawing that amendment, Madam Chairperson, I have no further amendments. Both of my latter two were in respect to the same matter.

**Mrs. Carstairs:** What was just withdrawn?

**Mr. Praznik:** Just to discuss this, there was some concern with respect to federal jurisdiction, people in federal and provincial, and the Department of Justice has not provided me with suitable legal opinion as to its effect on The Marital Property Act, or if another amendment would be required there. So I think that will have to wait for another day.

**Madam Chairperson:** Clause 13, as amended, on page 14 through to the top of page 15–pass; Clause 14–pass; Clause 15, from the bottom of page 15 through to 16–pass; Clause 16–pass; Preamble–pass; Title–pass.

Shall the bill, as amended, be reported?

**Mr. Praznik:** Madam Chairperson, if I may just move an amendment

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

**[French version]**

Il est proposé que le conseiller législatif soit autorisé à changer tous les numéros d'articles ainsi que les renvois nécessaires à l'adoption des amendements faits par le présent comité.

**Madam Chairperson:** Agreed? Agreed.

Mr. Ashton, did you want to–you had your hand up earlier.

**Mr. Ashton:** No, Madam Chairperson. We were having a vote on the bill being reported.

**Madam Chairperson:** Shall the bill be reported?

* (1530)

**Mr. Ashton:** A voice vote should be held to determine the will of the committee.

**Madam Chairperson:** All of those in favour of the proposed bill, as amended, that it be passed, say yea.

**Some Honourable Members:** Yea.

**Madam Chairperson:** All of those opposed.

**Some Honourable Members:** Nay.

**Madam Chairperson:** In my opinion, the Yeas have it.

**Mr. Ashton:** On division.

**Mrs. Carstairs:** Let division show that the Liberal Party voted in favour of the legislation.

**Madam Chairperson:** Is it the will of the committee that I report the bill, as amended?

**Some Honourable Members:** Agreed.

**Madam Chairperson:** Agreed.

That finishes consideration of Bill 76.

* * *

**Madam Chairperson:** May I ask the will of the committee as to how you wish to proceed in terms of the remaining bills?

**Mr. Praznik:** Madam Chairperson, I know we have a lot of presenters on three pieces of legislation before this committee, and they are rather extensive pieces of legislation.

If I may make the suggestion that we deal with the presenters on each bill, followed by clause by clause, then move on to the next bill with its presenters and clause by clause.

We should also give some indication of timing for presenters as well, so that people waiting for some of the other bills–I think we have at least an hour or two of labour relations presentations or more, and if we could be accommodating to our presenters who are here on some of the other bills, as well, if that may be acceptable.

**Mr. Ashton:** I would suggest actually we do clause by clause after we have heard all the presentations. They are fairly lengthy bills, and we may need some time as committee members to heed the advice of some of the presenters, and it might provide the opportunity to do some further work on amendments that we may not have considered ourselves but may have been suggested by committee members.

I do not anticipate either that we finish all the presentations this afternoon, and I would anticipate we may finish tonight. I think that is optimistic, in which case we would have a fair amount of work anyway to do clause by clause.

I think we are essentially looking at tomorrow for clause by clause, and it is just a question of how we proceed today. Even though we will be sitting again at seven, I know from our caucus's point of view, we have no problems sitting as late as eleven or twelve o'clock tonight. We may want to consider additional committee meetings.

**Mr. Praznik:** I just want to indicate I think if we had some flexibility on that, I do not have a problem with that. There may be some consideration of amendments. We may need some time. The only thing that I would ask, if we could have some flexibility as we work through the process because they are rather involved bills, and the difficulty of course is if you do not keep in tune, one loses momentum on a discussion with certain presenters and it is more difficult to deal with clause by clause.

I know the member for Thompson (Mr. Ashton) has some amendments with respect to the labour relations bill that there may be some time to have some discussions on, and if we could have some flexibility in that process, I have no problem with that.

**Mrs. Carstairs:** I have to say, I would like to see us deal with Bill 85 in its entirety before we move onto the two bills which are in the Child and Family Services sector. It seems to make sense to me that we not mix up these two areas, because we have a lot of presenters on the two Child and Family Services acts: The Social Allowances Amendment and Consequential Amendments Act, which is No. 70; and The Child and Family Services Amendment Act, which is Bill 64. We could deal with 85 first and then deal with those two. I do not care how we do the presentations on those two since they are both very much in the same field.

**Mr. Praznik:** Madam Chairperson, if it is acceptable to the member for Thompson (Mr. Ashton), we could proceed on that basis. I would be prepared to agree to some flexibility. I know the member for Thompson has some amendments that he has been discussing, and we may need to have an interval. I would not want to see us do clause by clause today, necessarily, or this afternoon, because there is some time for discussions. If we can have that flexibility as we move through the day and our presenters, I would be most agreeable to that, to accommodate these particular needs.

**Mr. Ashton:** I wonder if we can get some indication of who are currently present in terms of the bills, because I think we may be able to assist members of the public by determining from that which bill will probably be up this afternoon. For example, if we are into Bill 85 this afternoon, we may wish to advise anybody who is here on 70 that they will not have to sit here tonight and then will most likely be up later on tonight. So can we get some indication perhaps on how many people are present on each bill?

**Mr. Praznik:** Yes, I think that is a good idea. I say to the member for Thompson, I know I, as minister, would like to have a break between presenters and moving the amendments of The Labour Relations Act. If we can just have some flexibility, I think Mrs. Carstairs' point is that we are dealing in one area of law and then moving to another area. As long as we have agreed on some flexibility to accommodate some time between presenters and clause by clause, we are prepared to be very flexible I think in that regard. [interjection]

Yes, I believe we will start off with 85 and then ensure we have some time in between our presenters. We have a fairly lengthy list of presenters, and the member for Thompson's point about having some interval between them, I concur with–may not leave it all to the end.

## Committee Substitution

**Mrs. Carstairs:** I would like to move a committee change.

I would move, with leave, that the honourable member for Inkster (Mr. Lamoureux) replace the honourable member for River Heights (Mrs. Carstairs), on the Standing Committee on Industrial Relations.

**Mr. Praznik:** Subject to approval in the House?

**Mrs. Carstairs:** Yes, of course.

**Madam Chairperson:** Agreed?

**Mr. Praznik:** Agreed.

**Madam Chairperson:** Agreed.

* * *

**Madam Chairperson:** I just would like to clarify now, is it the wish of the committee then that those presenters for Bills 70, 76 and 85 be allowed–oh, I am sorry, 76 we just finished going through–Bills 70 and 64, that they can leave and come back again tonight at seven o'clock so that they do not have to sit through this afternoon's proceedings? Agreed?

**Mr. Ashton:** It would be very nice if we deal strictly with Bill 85.

## Bill 85–The Labour Relations Amendment Act

**Madam Chairperson:** Dealing with Bill 85 right now. Is that agreed? Agreed.

Okay, I have a list of presenters here. I think maybe the best thing for me to do right now is just simply to read the names. If you are sitting there, would you just raise your hand so that we can have an indication of who is here this afternoon. Susan Hart-Kulbaba, John Doyle, Harry Mesman, Irene Giesbrecht, Sid Green, Roland Doucet. I understand that Cecille Cassista has replaced Dale Paterson. Peter Olfert, Howard Raper, Rob deGroot, Rob Hilliard, Bill Sumerlus and Paul Moist, Donna Poitras or Dennis Ceiko, Sandy Hopkins, Duncan Brown–the Clerk of the Committee has just advised me that Duncan Brown had phoned and wished to be taken off the list for presentations, but he has sent in a written presentation which committee members have. Terry Clifford, Richard Orlandini, Bernard Christophe.

I would like to call Susan Hart-Kulbaba, Manitoba Federation of Labour. Your presentation has been distributed, so if you would like to proceed.

**Ms. Susan Hart-Kulbaba (Manitoba Federation of Labour):** Mr. Minister and members of the committee, the Manitoba Federation of Labour is mandated by more than 90,000 working Manitobans to speak on their behalf on matters such as the amendment of The Manitoba Labour Relations Act. As you are aware, The Labour Relations Act give structure to the labour relations climate in our province. It establishes the most basic rules that govern the behaviour of unions and companies during the formation of bargaining units, during contract negotiations, and provides a framework for the resolution of disputes between the two sides.

The amendments proposed in Bill 85 represent an attack on all workers, but particularly those who are not organized yet and those who will enter the workforce in the years ahead. Rather than carrying out this assault, the government of Manitoba would be well advised to concentrate its efforts on getting the tens of thousands of working people in Manitoba who are without a job back into the workplace.

* (1540)

Today, Manitobans are demanding leadership from their elected officials to bring labour and business together and find a solution for our economic problems. In response to these demands, the government talks a good line, but presents a plan like Bill 85. Rather than concentrating on the real challenges, labour is forced into devoting a substantial portion, if not all of its resources, into defending ourselves. Because of its nature, no government should amend its provisions without a great deal of careful thought about the consequences of amendment and then only in a manner consistent with the preamble of the legislation.

"WHEREAS it is in the public interest of the Province of Manitoba to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representative of the employees;"

By encouraging the practice and procedure of collective bargaining–two phrases that, taken together, embody what should be the standard against which proposed amendments to The Manitoba Labour Relations Act are measured.

It is obvious to people in the labour movement that Bill 85 does not reflect the spirit of that passage. It is disappointing that we are forced to deal with this

kind of legislation at a time when we should be devoting all of our attention to bringing Manitoba back to economic health.

Why does Bill 85 not meet the standard set out in the preamble of The Manitoba Labour Relations Act? Because the amendments contained in it amount to an attack on the rights of the working people that is excessive, even by Progressive Conservative standards. They seriously weaken the ability of working men and women to exercise their right to associate with one another in the context of a collective bargaining unit. They unfetter employers and promote the use of intimidation and threats to prevent the formation of bargaining units.

Taken together, these amendments are an effort by the Progressive Conservatives to recreate the regressive and antiworker environment of the so-called right to work states that have spread like a cancer through so many of the United States. The Filmon government is trying to import the law of the jungle conditions that exist in those states, where the rights of workers have been ground into the dirt to squeeze a bit more profit out of the economy.

What is the impact of that brand of legislation? One only has to review some key economic indicators in jurisdictions where it exists and those in environments where more progressive legislation exists, legislation that reflects the values of fairness, equity and human rights.

Wages are naturally lower in the right-to-work states, meaning less economic activity is generated by workers' disposable income. Less revenue is accrued to the public treasury through personal income tax. Generally speaking, the shortfall is not made up by taxes levied on either business or high-income earners. This means there is less spent on the social safety net for the poor, the elderly and the disadvantaged. There is a corresponding lack of public resources for spending on health, education and other vital public responsibilities.

Is this the Filmon government's idea of progress, or does the government expect there will be no economic and social cost associated with its destruction of our labour legislation? Why would any reasonable person not look beyond the immediate impact of attacking workers' rights and not realize that there is also an economic chain reaction that will be set in motion?

We would like to review some of the amendments that are proposed in Bill 85. The order in which we address them should not be considered a ranking in order of importance of our concerns. The whole bill is repugnant. Similarly, failure to mention some aspect of the bill should not be regarded as acceptance of the amendment by working people. It is only a result of the need for brevity in this presentation.

Section 6 of Bill 85 proposes that the window of mandatory votes in the context of an organizing drive be changed from the current parameters of between 45 percent and 55 percent, to between 40 percent and 65 percent. We have grudgingly accepted the current provisions as part of a community compromise. We believe that a signature on an organizing card shows a person's true intent, and that votes are an unnecessary expense to all concerned. What other organization in our community requires its new members to participate in a secret ballot vote? They must simply sign a membership card and pay their membership fees.

Why are we concerned about a mandatory vote? For the simple reason that it kicks the door wide open for the employer intimidation tactics and threats in order to frighten people into changing their mind about forming a union. It is no more complicated than that.

This amendment has even more ominous implications when other proposed amendments in Bill 85 dealing with the employers' ability to interfere in the organizing process are taken into account. Other amendments are this bill's supporters' ace in the hole in light of the fact they did not convince the government to order mandatory votes in all new applications. Provisions in Bill 85 will provide employers with new excuses to seek a Labour Board ordered vote. During the resulting delay between application and certification, the employer will have more time to influence and pressure their employees and undermine the organizing drive.

Every one of the unions which are affiliated to the Manitoba Federation of Labour could spend hours telling this committee about instances of employer intimidation and scare tactics that existing legislation could not prevent. If Bill 85 is passed in its present form, there will be many more examples.

In addition to the obvious fairness issues involved in this discussion, the increase in mandatory votes this bill will result in will add a significant amount of work and cost to the already overstressed Department of Labour. The department has been

under-resourced by the government to the point it cannot live up to its existing mandate. More vote supervision duties will exacerbate that problem and result in more unacceptable delays in the certification process.

Section 2 of Bill 85 repeals 2.2 of the existing act and removes the protection afforded supervisory staff. If this amendment is passed, some workers who are now eligible for inclusion in a proposed bargaining unit may be denied their right to associate with their co-workers by virtue of the fact that they have supervisory duties. They may be classed as management when, in fact, they have none of the duties or responsibilities normally associated with management.

Denying them the right to be part of a bargaining unit serves no useful purpose to anyone, except if their exclusion impacts on the majority required for a successful organizing drive or it might even get us into another vote situation. It will also provide employers with yet another opportunity to challenge the certification application. During that challenge, frivolous as it may be, the employer will have more time to pressure all employees into not supporting the union. In today's economy, line supervisors are among the most vulnerable employees to lay off or termination. Denying supervisors the right to organize smacks of an effort by employers to fire them without the protection afforded them by a collective agreement.

The effect of amendments contained in Section 3 of Bill 85 is to create an environment that greatly increases the latitude employers have in communicating to their employees about an organizing drive and any real or imagined impacts on the workplace. The amendments amount to a green light for employers to interfere in their employees' right to associate with each other in a collective bargaining unit. Protection against intimidation, threats and coercion are flimsy enough under existing Manitoba Labour Relations Act provisions. These amendments weaken those provisions and are bound to result in an increase of antidemocratic practices.

Because of the existing wording, we had virtually eliminated cases before the Labour Board. Many employers live up to their responsibility to respect their employees' right to associate with one another in the context of a union. However, let us be clear; many employers do not. Bill 85 will encourage some employers to disregard their employees' right to form a union and use an acceptable pressure to prevent it. This is both morally wrong and is sure to result in more costly work for the Manitoba Labour Board as unions move to protect their new members.

Sections 4 and 5 of Bill 85 are nothing more than twisting of the English language to create an impression of similarity between employer actions and union actions during an organizing campaign that is simply not borne out by reality.

The current title of Section 17 of the Manitoba Labour Relations Act, "Threats, intimidation and coercion" are an accurate reflection of the employer practices referred to in this section. Changing the title of that section is an injection of euphemism into the act that artificially ameliorates the seriousness of employer attacks on workers.

* (1550)

Similarly, amending the title of Section 19 from "Acts of Unions" to "Unfair labour practices by unions" creates the impression that the incidence of the practices described in this section are as prevalent as those mentioned in Section 17. This is not the case and is an effort to draw similarity in both prevalence and seriousness between the two clauses that does not now or ever exist.

Amendments contained in Section 7 of Bill 85 are both insulting to union organizers and the unorganized workers they speak to. Does anyone seriously believe that potential union members will not ask what dues they will be expected to pay? Any union organizer will be able to tell this committee how early in the process this question arises and why it is in the best interests of the campaign to answer it as completely as possible. This amendment was never raised before the Labour Management Review Committee. Neither labour nor management requested this change.

Is the government of Manitoba so eager to impress its corporate supporters that it is reduced to creating issues and then addressing them? Is it so clued out as to how organization occurs that they believe workers in this province are stupid? We believe this government thinks that workers should be discouraged from joining unions, and they think that a discussion about the cost of belonging will do that. Well, they are wrong.

The only other motivation for this amendment is to provide antiunion lawyers with another tool to use in order to defeat the union's application for

certification as the bargaining agent for a group of employees. It requires very little effort to round up several pro-management employees who can be convinced to lie to the Labour Board and say that they were not told about the union due structure in the hopes of having the application dismissed. Surely, we should be able to expect to have cards that are in question removed from the count, rather than creating the possibility for a challenge to the entire application for certification.

The concern we have about Section 9 of the bill revolves around what a conciliation officer would be required to report on. Does this section require the conciliation officer to only report that an agreement does or does not seem likely? What if the conciliation officer is wrong? Will the conciliation officer be required to assign blame? If so, how will this impact the dispute? How will it impact other matters that are brought shortly thereafter to the same officer? Will it result in the application being dismissed if the officer is not happy with the union? Will the conciliation officer have to define what "a reasonable position" would be? What would be the disincentive to prevent the employer from unnecessarily dragging out meetings on a first contract? The current wording is ambiguous. We have a very real concern about the politicization of the role of the conciliation officer and the officer's ability to be seen as neutral and useful in assisting parties to reach an agreement in the future.

In 1991, Manitoba had the second worst time loss due to strikes and lockouts record in Canada, and that is only counting those disputes that fall under provincial jurisdiction. Progressive Conservative policy in Ottawa had its own massive impact as well. It is hard to imagine why the PCs think that further poisoning the labour relations climate here will be positive.

Bill 85 is a continuation of the deliberate erosion of workers' rights that have been an earmark of the PC government since they were elected, with much less than 65 percent of the vote I might add, in 1988. On one hand, government promotes a partnership between government, business and labour when it comes to improving education and skills training. When it comes to total quality management as a workplace organizational model and when it comes to focusing Manitoban investment dollars in Manitoba, you ask for our co-operation and commitment.

At the same time as you are seeking that co-operation, you are repealing final offer selection, you are making Workers Compensation into something that benefits employers and certainly not injured workers, you are stripping away public employees' bargaining rights and settlements through Bill 70, you are amending The Pension Benefits Act in a way that hurts working people–just absolutely destroys me today–pensioners and women, and now you have Bill 85 on the table and you are looking proudly at it. Well, maybe the labour movement would be able to focus more on joint planning and joint ventures with government and business if we were not in the position of having to devote all of our human and financial resources to fighting back against government attacks on us.

The amendments contained in Bill 85 are based on nothing more than Conservative ideology and the need to keep your business election financiers happy. There is no hue and cry from any quarter for this kind of labour law amendment. Workers are not demanding these changes, pensioners are not, students are not. Who is?

Well, in an April 1992 report to its members, the CFIB outlined the results of a recent survey. More than 800 small-business owners in Manitoba took part in the CFIB's national survey on different issues. Fewer than 13 percent of the 810 Manitoba members surveyed thought that the provincial labour laws were an issue at the moment, lowest of the seven issues contained in the survey. Hardly a hue and cry.

So who does that leave us with? Who, in Manitoba, is demanding these regressive changes to our labour legislation? We can only conclude that it is the right wing of the government caucus and the Chamber of Commerce contributors to your election fund.

It is not as if the Filmon government does not have anything else to do right now. The time that was spent dreaming this nonsense up would have been much better spent coming up with a sensible economic strategy to drag Manitoba out of the recession. It would have been much better spent on planning a job creation strategy to reduce the continuing double-digit real unemployment rate in Manitoba. It would have been much better spent governing in a manner that benefits the people of Manitoba and not the Conservatives' very narrow interest group.

There can be no doubt that Bill 85 is a serious attack on all workers in Manitoba. It targets workers who have yet to join in a union and those who have yet to enter the work force. These workers are in an especially difficult position, since they are, for the most part, unaware that this attack is taking place and have few, if any, resources to oppose the bill.

Human rights legislation prevents employers and government from involving themselves in the personal choices of individuals regarding, for example, religion or sexual orientation. It is apparent that their right to associate with each other within the structure of a union is about to become severely limited.

Thank you very much, and I would be very happy to respond to any questions, Madam Chairperson.

**Madam Chairperson:** Thank you.

**Mr. Steve Ashton (Thompson):** Madam Chairperson, I found the brief to be particularly interesting in terms of the impact on the need for co-operation in other areas, because obviously in terms of the economy we are in a mess right now. I know many of us, in our caucus, have pointed to the contradiction of bills such as this and the talk and the need for co-operation on the other hand.

But I want to focus in on one aspect of the brief, because I think part of the problem that we are dealing with in this committee and perhaps dealt with in regard to other bills is the fact that if they have been members of a union, have had much contact in terms of this kind of situation, certification situation, probably very few have ever actually had the opportunity to be represented a union, although there may have been some.

I really want to focus in on that for members of the committee who perhaps do not understand the dynamics that take place, what impact this bill will have if it is passed. You stated in your brief that you feel that a good part of this legislation is aimed, or seems to be emanating from the sense on the Conservative side that workers are stupid, they do not know what they are signing, they do not know what they are doing, that when they say, yes, to a union, they do not really mean, yes, they mean maybe or they were somehow tricked or coerced or forced into that situation. If that is not the case that it at least appears to have been something that people have taken rather lightly, that they had not asked what the union dues, et cetera, are.

I first want to ask you, draw on the experience of the Manitoba Federal of Labour, in terms of what happens in a certification drive, is that true? When people sign a union card, is it something that they do rather easily? Is it something they do without considering the cost of union dues? Is it an easy decision?

**Ms. Hart-Kulbaba:** Actually, it is not a very easy decision. In fact, most workers are very, very concerned about the decision because they fear for their jobs when they are signing a union card. Most of the time, union organizing drives now happen with home calls to their homes because individuals are very concerned that other people whom they work with might try to impact their decision, might not be favourable to the same position that they are favourable to, and will in fact jeopardize their job if they know that that person is interested in signing a union card. So, oftentimes, it is calls to people's homes that are made, or arrangements to meet them somewhere after work.

* (1600)

We get lots of calls in to our office asking for particular names of organizers in different unions to have meetings with them outside so that they can feel comfortable with the process.

In fact, it is a very scary process to be signing a union card. If, in fact, you do not get a majority of employees to join with you, and the employer finds out that you are one who signed, oftentimes you are terminated, and without a union there to prevent that termination it can be pretty scary. So people who do take on the job of organizing, or in fact are the front runners or what we would call key organizers within the plant, speak up publicly about joining or encourage other workers, other co-workers to join, are taking a very big risk. I am sure if you look at what happens before the Labour Board you will see that there are often people terminated during organizing times.

Right now, I have numbers of phone calls into my office in the last two days from employees at Woolco. They are very concerned because their bosses have dragged them in to have a discussion about unionization. They have taken them into the office one by one and told them that if a union came in here, there would be a real concern about the viability of Woolco stores in Manitoba. What is even more interesting is that there is no organizing drive going on here right now. There is an organizing drive going on in Saskatchewan right now in Woolco

stores, and they are afraid it might sneak across the border. If people are dissatisfied in Saskatchewan, they will be dissatisfied in Manitoba, so they are trying to cut it off at the knees before there is organizing even going on. If people are naive enough to believe that employers are talking to their workers on a continual basis about this stuff, they are hallucinating, frankly.

It has been very, very difficult even under the present act which is much more restrictive in terms of employer intimidation and interference and one's choice to belong. Frankly, it is very, very difficult to prove. We know it continues to go on. We have had objecting employees tell us after the thing is all over what has gone on, but it is very difficult to prove in a hearing before the Labour Board. We know it continues and this simply frees it up to continue on a greater basis.

The problem is, coupled with the fact that there will be votes for any unit that has less than 65 percent of the workers signed up, that that means from the time you apply and the employer is officially notified that a majority of people in this workplace would like to join a union, between that time and the time of a vote leaves all sorts of time for the employer to fire a key person, give somebody lousy hours as punishment for being involved in the organizing drive, commit all sorts of mischief to try and dampen the expectations and the outcome of that vote. If they can take some key players and make examples of them between the application date and the date for the vote, then it is a real advantage to them.

That is why the Chamber was so interested in having 100 percent of the applications go to a mandatory vote. Even if we had every single person in a workplace signed up, they still wanted it to go to a vote. Like, there might be a question that a majority of people wanted to join the union. Well, the reason they wanted that to happen is because exactly they know, as well as we do, that every time they have a period of time between the application and the vote, they can have some successes in clawing back that organizing.

**Mr. Ashton:** Madam Chairperson, so it is a difficult enough decision already. Employees are subject to pressures already and, presumably some groups of employees who have indicated their wish to be certified are ending up certainly in other provinces in between the time of the original signing of union cards and the time of the final certification date in terms of votes are persuaded, shall we say, not to join a union through the direct interference of an employer.

I want to take that a little bit further, because this act wants to expand on the ability of employers to be able to become part of that process, the process of employees deciding who is going to bargain for them and they were bargaining with the employer, and now this act the Conservatives are bringing in is indicating that there should be somehow greater–and I use this word advisably–freedom of speech on behalf of the employers to be able to have a say in terms of what the employees decide in who is going to bargain for them.

I want to ask you what you think is going to happen based on, as I said, the experience of the Manitoba Federation of Labour. Obviously, you have direct contact with what is happening on a daily basis in terms of certification drives, et cetera, with the latest suggestion by the government which would bring in a bill that would allow employers to make–and I am using the phrase here, and if the minister wishes to specifically clarify it, I have the bill in front of me–but it is basically a statement of fact or opinion reasonably held. It is allowing employers to say that.

It does not say what that fact is based on. It does not say that the statement has to be disclosed. I mean, unions have to disclose their dues, but companies do not have to open their books if they are making a statement. We think the impact of that kind of leeway in the act is going to do, given the fact that currently there are some very significant prohibitions in terms of the ability of employers–at least on the books, it is not always felt when I recognize that–to some very serious prohibitions about what employers cannot say. What is going to be the impact of opening that up so that employers now are going to be able to say a lot more during a certification drive than they currently can?

**Ms. Hart-Kulbaba:** Well, right now we know that this legislation stops good employers from falling into the trap of causing an unfair labour practice. They just say nothing now. It does not stop bad employers. Bad employers will find a way to intimidate and coerce. Anyway, it is very difficult to prove.

The wording that has been proposed here is, frankly, a piece of Vander Zalm legislation that the current B.C. government is looking at amending. We talked to our counterparts in the B.C. trade union movement, and they categorically say that this has

been a significant problem for them. In fact, it has been disastrous. They continue to have problems before the Labour Board and have lost votes on some rather large units. The permissive discussions do not mean that they have to be in fact true statements, as long as somebody truly believes them who is uttering them and if it is reasonable for them to think that. It depends what the Labour Boards will define as reasonably held opinions, which I think is a wording that has not been tested here and, frankly, you could probably drive a truck through.

So that leaves us really at risk, and it leaves a lot of workers in a position of having to either face a vote or lose that vote after they have already made a choice in an unintimidated way.

**Mr. Ashton:** I want to focus in on what you said in terms of the B.C. example, because of course in B.C. they have mandatory votes–I do not know what status the changed labour relations act is currently, but that has been the case. I know that is what the Chamber of Commerce was seeking. They used the Nova Scotia model which once again requires a mandatory vote on all applications, regardless of, as you said, even if 100 percent of people had signed union cards.

I know, for example, there was a recent case in British Columbia involving the ski industry, where employees had signed cards–the majority. By the time it was put to a vote, by the time management was able to get involved in the process, people had been "persuaded" not to support a union–once again the kind of concern that we were talking about earlier. But what struck me, in talking to somebody who was involved with that process, was the amount of legal bills that were incurred as a part of that dispute. We are not talking about thousands of dollars. We are not talking about even tens of thousands. It was upwards of $100,000–$100,000 worth of legal bills.

* (1610)

I am wondering, looking at this particular bill, if you have any thoughts on whether this might also have the same impact. I am not here just talking about the financial impact, but obviously you add all these items together, if you end up with more ability for the kind of scenarios we have seen, leading to more legal disputes, obviously it is going to lead to increased cost to everybody, employees, unions, presumably management as well. But when you look at this bill, what impact do you think it is going to have on unions and in terms of employees, the people who you represent, in terms of legal costs and certification drives?

**Ms. Hart-Kulbaba:** Madam Chairperson, generally the costs of an organizing drive take a long, long time before they are ever recouped by the union dues down the road, if they are ever recouped, especially in smaller units. It is much more difficult to ever recoup the kind of money that you spend on ensuring that people have the right to join a union and in fact get a collective agreement in place. For most unions, people do not pay any dues until they have their first collective agreement in place and they are receiving the benefits that the union has negotiated for them.

So any costs incurred up to and including the time that people have a collective agreement–that is dispute a first contract, that is a strike to get a first contract, that is any organizing drive, that is any support for people who have been dismissed during the certification drive, any unfair labour practices related to the certification that have to be heard–that all costs the union out of the treasury. It all costs the employer out of their profits. It all costs the government of Manitoba and the people of Manitoba to put in place votes and administer that process, some of which can be quite cumbersome.

It is not that certification only occurs here in Winnipeg, sometimes we have votes outside of the city of Winnipeg, and that can be costly and cumbersome, as well as when we have more than one work location and we are trying to get votes done in a workplace that has three or four different locations. That can be really cumbersome and it can also take a lot of time. As I said, it is that critical period of time for people to feel some safety and security about the decision that they are going to make without any undue pressure that is of concern to us much more than the money is.

**Mr. Ashton:** Madam Chairperson, I would like to thank the presenter, particularly for giving some of the perspective of certainly the union, the employees' side in terms of certification. I would hope that we would get some explanation from the Chamber of Commerce which has been actively lobbying for this as to their views on this. I certainly thank you though for giving us the views of the Manitoba Federation of Labour on the certification issue. Thanks so much.

**Ms. Hart-Kulbaba:** I appreciate the opportunity.

**Mr. Kevin Lamoureux (Inkster):** First, I wanted to say right from the onset that I do appreciate the MFL coming forward as it does on all pieces of labour legislation and giving their view. I think that is very important. I was somewhat pleased that Ms. Hart-Kulbaba had made reference at the beginning of her remarks to The Labour Relations Act in the WHEREAS.

I think that we think alike in terms of when we approached our arguments or put forward our arguments as to why it is that this is a bad bill. I can say from the onset that we will be voting against this bill, because we too, as the MFL, do believe that it is a bad bill, somewhat different no doubt in terms of the official opposition and different reasons as to why we believe it. In listening through the president's presentation, I think what it did was it reinforced why it is that we had taken the position that we took in opposing Bill 85.

I would even suggest to the MFL, far too often we have seen The Labour Relations Act change because of the will of the political party that is in government. Not only in the last three or four years, but I would suggest to you for the last number of years. Unfortunately, and I am sure the president might be even inclined to agree with me, what we have seen time after time is the worker has been paying the price of legislation such as this that has been brought in in order to please a relatively few, small, select individuals.

As she had pointed out with her own remarks, in this particular case, it is the Chamber and individuals that might contribute to the party. It is suffice to say that I concur with those remarks. We have suggested that in fact it is far too often that we let the Labour Management Review Committee bring forward recommendations that are not based on a consensus. Really and truly, if we want to live up to The Labour Relations Act and the WHEREAS if you like, what really is necessary is we need to have a consensus at that board from labour and from management. If they are unable to achieve that consensus, then one really has to question why it is we are seeing legislation being brought in.

No doubt, like the president of the MFL, we both want to see, both organizations, the worker being protected and far too often we see a political agenda as opposed to a worker, small business agenda.

I notice in the remarks, and I had two very brief questions that I wanted to ask. One was with respect to the increase from 55 to 65. I will be asking the minister this question and maybe he can somewhat take it as notice so that he can get back with an answer before we deal with clause by clause. Is the MFL aware of any certification votes that occurred between the 55 and 65 percent in the past couple of years?

**Ms. Hart-Kulbaba:** There have been, to my knowledge, no votes taken between 55 and 65, with the exception of anytime when there was more than one union on the ballot, where people were choosing to leave a union and go to another one, and then votes were taken. That had little to do with the certification process. They were already certified. They were just changing the organization that represented them.

In the last two years, in '90-91 and '91-92, it was my information that there was no application less than 55 percent that was certified before the board, which means that all of them were automatically certified, so there was no vote. The difference between the 55 percent and 65 percent in '90-91 was 81 percent were over 65, and in '91-92, it was 87 percent were over 65.

What that means is that rather than have automatic certification for all of them, they are trying to claw back anywhere between 13 percent and 20 percent of the applications before them and have an opportunity to intimidate those people into changing their point of view.

**Mr. Lamoureux:** I know that some unions, a number of them have in fact been a proponent of seeing 50 percent plus one for automatic certification, no vote required. Does the MFL have a position on that?

**Ms. Hart-Kulbaba:** Our position had always been 50 percent plus one. We had grudgingly accepted a compromise of the current legislation, although it may be added that when a vote is taken, it is still a simple majority that will win, so although you require 65 percent to get a vote, you must have a vote in that area. Once the vote is taken, it just requires a simple majority.

**Mr. Lamoureux:** I was disappointed to hear that the government had not, according to this presentation, received the recommendation with respect to the dues, giving the employer the right or making it mandatory to tell those who are forming a union what the costs are or the dues.

I think Ms. Hart-Kulbaba's assessment on that is quite correct in terms of what it is that she is saying

that this particular amendment will do. But the question is, is she familiar with other aspects of the legislation that did not go before the review committee?

**Ms. Hart-Kulbaba:** Really, that was the only piece that comes to mind for me that was not brought before the committee for our perusal, although I must say, the government continues to talk about labour-management co-operation and building consensus and what a wonderful thing it would be, and yet it picks and chooses what legislation it sends for advice to labour management review committee, as well.

We believe that any time there is an opportunity for labour and business to build consensus, that we should be given that opportunity and provide that advice to government. Unfortunately, we are at the whim of the minister in terms of what we get referred to us and what we do not, as we saw with both the pension act and we saw with Bill 70, for instance.

**Mr. Lamoureux:** Again, Madam Chairperson, I would just like to thank the MFL for making the presentation, and once again reinforce that there is a need that we see more of a consensus in that labour review committee and those recommendations coming forward. Thank you very much.

* (1620)

**Madam Chairperson:** Are there any further questions? If not, thank you very much.

I would just like to read into the record that I have been handed two more written submissions, one by Ross Martin of the Brandon & District Labour Council and another by Neil Harden, Professional Institute of the Public Service of Canada.

I would now like to call upon Mr. John Doyle. Mr. Doyle, whenever you are ready.

**Mr. John Doyle (District 3, United Steelworkers):** Good afternoon. I am appearing today to present this brief on behalf of District 3 of the United Steelworkers. My union represents the interests of about 5,000 steelworkers in Manitoba, including making representations to government when proposed legislation infringes on the rights of workers, such as Bill 85.

The Manitoba Federation of Labour, a central labour organization that the steelworkers are affiliated with, has just finished a brief which reflects the thinking of the USWA. While I will be making a few general observations on Bill 85, failure on my part to make specific references to any particular clause does not mean that my union endorses it.

Generally speaking, Bill 85 represents a serious attack on the rights of working people, particularly the unorganized and those yet to enter the work force. It is an effort to put unreasonable roadblocks in the way of workers trying to exercise their right of association as a union. The provisions that change the trigger of a mandatory vote during a certification drive is an excellent example of the kind of roadblock that I am talking about.

Requiring a vote when more than half of the work force signifies its desire to form a collective bargaining unit is not consistent with democratic traditions and is only designed to frustrate or impede the unionizing process. The mandatory-vote window should be called the employer's opportunity-to-intimidate window. The period between application for certification and the day of the mandatory vote, in my opinion, will become even more than it is already today, an intense lobbying period by the employer against the certification.

Employer intimidation, as you well know, can take many forms, ranging from constant monitoring of employees to dire predictions of business failure and resulting unemployment. The only requirement that should be met before the Labour Board certifies a collective bargaining unit is an indication that more than 50 percent of the potential bargaining unit has endorsed the application.

The proposed amendment that places an obligation on unions to inform potential new members about the dues structure is an unwarranted intrusion into the process. It assumes that new members are not going to ask for that information on their own and that unions, for some reason, are reluctant to let that information out. I know that neither case is true.

In my limited organizing experience, establishing what sort of dues they will be required to pay after they join the union is one of the first questions workers ask. In any event, I am not aware of any union that is sensitive about their dues structure. It is discussed on a regular basis from the local level up to the national level in a public forum. Revenues and expenditures are integral parts of all treasurers' reports.

Inserting this requirement into The Manitoba Labour Relations Act serves no other purpose than to provide companies with another opportunity to challenge or frustrate the certification application

and is an unwarranted interference with the internal workings of a union.

Many of the amendments proposed by Bill 85 will make it easier for employers to interfere in the union organizing drive by limiting further the grounds that unions can file unfair labour practice charges on. The only motivation I can detect is the willingness by this government to allow employers to discourage their employees from exercising their right to form a union. If the employer is concerned about the impact that a unionized work force would have on the business, then address those concerns at the bargaining table and through consultation with the employees through their democratic union structure. Do not address it by limiting the ability of the workers to establish their own structures and to bargain collectively.

I must say that I am puzzled by this government's determination to proceed with Bill 85, particularly at a time when it appears to be attempting to bring about greater co-operation between business and labour for economic renewal in our province. What gives the government the impression it can attack labour in the morning and obtain co-operation in the afternoon? Someone is giving the government bad advice.

Who is pushing for these amendments? I do not know of any ground swell of public demand for amendments to The Labour Relations Act. I can only assume that these amendments are a reflection of either misguided philosophy or the price of support from your political base.

In conclusion, the steelworkers are firm on our opposition to Bill 85, and we urge the government to let this bill die on the Order Paper and get on with more pressing business. Thank you very much.

**Madam Chairperson:** Thank you, Mr. Doyle. Are there any questions? Thank you very much.

I would now like to call upon Harry Mesman. Is Harry Mesman here? Irene Giesbrecht. Ms. Giesbrecht, did you have a written submission?

**Ms. Irene Giesbrecht (Manitoba Nurses' Union):** Yes, and I believe the Clerk had it.

**Madam Chairperson:** Would you just hold one moment, please. Would you just go ahead. We will submit it as soon as the Clerk comes back.

**Ms. Giesbrecht:** Madam Chairperson, members of the committee, honourable Minister, thank you for the opportunity to put forward the position of the Manitoba Nurses' Union regarding Bill 85.

The Manitoba Nurses' Union is an independent labour organization comprised of 103 local bargaining units. The Nurses' Union is Manitoba's largest health care union with a membership of over 11,000 nurses who work in health care facilities in all areas of the province. Our membership continues to grow, and we remain strongly committed to organizing other eligible unorganized nurses in the province.

Our union has concerns about the proposed amendments to The Labour Relations Act. We see the majority of amendments as an erosion of existing workers' rights. Generally speaking, the amendments proposed in Bill 85 will make it more difficult for unions to organize the unorganized and easier for employers to avoid a unionized workplace.

Our presentation will focus on our main areas of concern, first of all, Subsection 6(3)(f). This provision adds to the general list of what is not an unfair labour practice. It permits statements by employers to their employees during a union organizing drive to include "statement of fact" or "an opinion reasonably held with respect to the employer's business."

These amendments will open up the process to subtle and not so subtle pressures directed at employees. An employer or a supervisor will be given licence to say just about anything as long as it can be even remotely defended as being a "reasonably held opinion."

This could legalize statements such as, for example, " . . . in my opinion, bringing a union in will force cutbacks in staffing." Obviously, this will intimidate the workers. The government may say these questions will end up at the Labour Board and will be decided there, but this only leads to costly long drawn-out legal battles that serve to make lawyers rich and frustrate the rights of workers to organize. We feel that Subsection 6(3)(f) should be withdrawn from Bill 85.

Subsection 40(1): In this section, the bill proposes to change the criteria for a mandatory supervised vote on an application to certify from between 45 percent and 55 percent to between 40 percent and 65 percent. This means that unions will have to sign at least 65 percent of the workers in a workplace before automatic certification is granted by the Manitoba Labour Board instead of the current 55 percent. As has already been stated, this expansion of the mandatory vote range is bound to

increase the incidence of employer intimidation tactics as a means to defeat the effort by workers to form a union prior to the certification vote being held.

* (1630)

A percentage of less than 50 percent is the point at which votes should be held, not higher. The proposed lower limit of 40 percent is meaningless, since it is usual practice of unions not to apply for certification unless more than 50 percent of the potential bargaining unit members are signed up. Our position is that at the very least, Subsection 40(1) should remain status quo.

Subsections 45(3.1) and 45(4), and I am on page 5 for those of you who have just received it. The new Subsection 45(3.1) requires union organizers to explain the union dues structure before the worker signs a union card. This is a practice that our union and many others already maintain. However, it concerns us that now, by writing it into the law, it will make it easier for employers and dissenting employees to challenge the validity of an application. Some employees under pressure might claim they were not told about the dues structure even if they had been.

This provision does not exist in any other jurisdiction in Canada. Why is it deemed necessary to propose it here? Rather than this amendment, the Manitoba Nurses' Union would be in favour of implementing a practice of organizing cards which include or are accompanied by a simple declaration that the worker would sign indicating that the dues structure had been explained.

The revised Subsection 45(4) now expands this clause that permits the Labour Board to dismiss an application for certification if a union has failed to comply with the explanation of the union dues structure. This provision again would not be necessary if there were a dues information declaration statement included in the organizing process.

Subsection 48.1: This amendment restricts activities by unions and employers on the day workers vote on certification. The words "or other activity" in (b), we feel are extremely ambiguous and could be stretched to apply to just about anything the union did on the vote day. A union will be forced to defend itself in legal challenges more often than before.

This amendment in effect gives employers another means to frustrate workers' legitimate rights to organize. The employer by definition operates from a position of power. This is an obvious advantage at the place of work. The reality is, with this amendment, when taken with the previously mentioned amendments for allowable employer activity, the employer will be tempted and indeed facilitated in doing a great deal more to negatively influence the vote. The words "or other activity" should be removed from 48.1(b).

Subsection 68(3.1) and the related Subsection 87(1): This amendment proposes to require a conciliation officer who becomes involved in a first contract dispute to report to the Labour Board and the involved parties that in his or her opinion the parties are not likely to conclude a collective agreement.

We are very concerned that this provision will compromise the neutrality of conciliators. It will put pressure on conciliators to make a recommendation as to whether a matter proceeds to first contract. This changes the role of a conciliator considerably, and it will impact negatively on the ability of the conciliation department to perform its services in bringing the parties together in collective bargaining. This would be most unfortunate as currently, the conciliation staff have a high success rate in resolving disputes.

As well, proposed Subsection 68(3.1) does not include any time limits. This could mean that the process becomes a lengthy drawn-out one before the parties could get to the first contract stage at the Manitoba Labour Board. Under the current provisions of Section 87 of The Labour Relations Act, the Labour Board can inquire into the negotiations between the parties. Their investigation could include asking each of the parties whether they thought further progress through conciliation would be viable.

The Manitoba Nurses' Union position is that Subsection 68(3.1) should be withdrawn. We believe that the Manitoba Labour Board has discretion in the current provisions of Section 87 to refuse an application for first contract to be imposed where there has been no attempt to bargain.

Subsection 130(6): The proposal to repeal this subsection would end the practice of appointing a part-time vice-chairperson of the Labour Board to act as a grievance arbitrator. We are concerned that the parties lose the services of expert vice-chair appointees to act in the role of arbitrator. Thus, our

position is that subsection 130(6) should remain in the act.

In conclusion, the right to be represented by a democratically elected union is a fundamental right of Canadian workers. We can choose to organize and become unionized, or we can choose to not. However, we must have the freedom to choose without intimidation or undue suasion. Amendments such as those proposed by Bill 85 would erode that freedom and pave the way for abuses, either for political or economic ideologies, by those interested in preventing workers from organizing.

Labour in Manitoba is well able to stand upon its own merits, but when the equation becomes as unbalanced in favour of the employer as it would as a result of Bill 85, merit means little. Amendments such as these can only be interpreted by labour as an assault by antiunion forces. As we have demonstrated in the past, nurses in Manitoba will not sit passively by and watch as their rights are assailed.

Our desire is to work toward a stable and harmonious relationship between workers and their employers. We will do everything in our power to ensure that we as workers and caregivers are treated with the respect we are due. In keeping with this, we urge that Bill 85 be withdrawn or amended as we have proposed in this presentation. Thank you, and I would be pleased to answer questions.

**Madam Chairperson:** Thank you, Ms. Giesbrecht.

**Hon. Darren Praznik (Minister of Labour):** Ms. Giesbrecht, I have some specific questions. You have suggested some amendments to this bill that have caught my interest. Some of them have been brought to my attention in the last couple of weeks, so I am asking some questions. There are three or four in particular that I just would like to discuss with you.

The first has to do, I believe, with page 6 of your presentation. The intent of this particular clause–we are talking about the provision to disclose information, and you have suggested some sort of statutory wording on the card. We had some difficulty with that because we thought that would be best to leave up to individual unions to draft the appropriate wording that they would want to use in the circumstances.

But our intention under that section was to have any cases that arose treated like we do under The Elections Act, which is those particular circumstances or individual cards would be dropped off the list, and the appropriate action would be taken, depending upon how they affect the numbers. So if you had 70 out of 100 people assigned cards, and you had one or two who did not have that disclosure, then you would be dealing with 68, and still have an automatic certification. Amendments that would clarify that further would be something you would recommend, I take it.

**Ms. Giesbrecht:** Actually, our proposal is that there not be an amendment to this section to require that in the act, but simply the Labour Board could have a practice of ensuring that unions had this type of organizing card or some simple declaration that could be used that would satisfy in a certification procedure.

**Mr. Praznik:** To do that, we would require a provision to enable that type of declaration, but very interested on that position.

The other section on page 7, the words were "other activity." I take it, if those words were removed, then that would clearly ensure that the section meant strictly electioneering and not the process–

**Ms. Giesbrecht:** Well, I think that section–I do not have it in front of me–sorry.

**Mr. Praznik:** –or other activity, I believe–excuse me.

**Ms. Giesbrecht:** I think that section–like I say, I do not have it in front of me, but I think it clearly states that there should shall not be electioneering or a distributing of printed materials, but this phrase "or other activity" leaves it wide open.

**Mr. Praznik:** I would just indicate to you that I am, at this time, not adverse to an amendment in that particular area. I think that point has been raised with me. I appreciate hearing it again in your presentation.

The third area that I wanted to raise appears on page 9 of your presentation, and that is with respect to time limits in the use of first contract. You may not be aware, but we know from time to time there has been abuse of that particular provision, where you have had the application for a conciliation officer and an application for first contract on the same day. It was not the Manitoba Nurses' Union that uses that particular practice. There are two particular unions in Manitoba that do that fairly regularly, and what our

intent is is to provide some opportunity for conciliation to work.

* (1640)

If we were to put some time limits in this, do you have any recommendation or suggestion to us on the time that would be needed by a conciliation officer in a first contract to really have an attempt at getting the parties to bargain?

**Ms. Giesbrecht:** Not specifically in terms of a specific time frame at this time, but it is certainly something that I could give some thought to and have some further discussions on, but I think the key–I would not want the committee members to miss the key point that we are trying to make here–is that the current Section 87 already allows the Labour Board to inquire into negotiations between the parties and investigate what has happened as to whether there has been an attempt to bargain.

Certainly, from my dealings within the labour movement, my understanding is that it has maybe happened once that an application for first contract went in the same day as the application for the conciliation process. So it is very infrequent. We feel that the current Section 87 clearly allows the Labour Board to do the investigating, so there would be no need to have anything proposed as a Section 68(3.1).

**Mr. Praznik:** Ms. Giesbrecht, my information from the Labour Board is, it tends to be a more common practice, particularly with–I believe there are about two unions that have made about 90 percent of the applications under first contract, but those numbers are something I should check.

What I would appreciate–I will certainly take you up on your offer if you would not mind giving some thought over the next–you know, later on in the day. Perhaps if you have some advice you could offer me on the time limit from your experience, I would certainly appreciate that.

If one were to have this provision with a time limit, because the concern is, and it has been expressed by some of our conciliation officers to us, that there are many circumstances in which the obligatory appointment of a conciliation officer is made, and yet there is no effort to use that conciliation officer. That is what we are really trying to put into this clause to ensure that if you are going to apply for first contract, it has only been after a period where you have really tried to bargain. That is not to point fingers on either side but to ensure that there is really a legitimate attempt made with a conciliation officer to bargain. If you have some advice to me from your experience on time limits, I would certainly appreciate that very much.

**Ms. Giesbrecht:** Just in response to that, if I may, in terms of the time frame that is currently in there, we would not want to see it lengthened at all, like in terms of the time frame that is currently in the act with respect to the time that a union can apply for first contract and the procedure that they have to go through.

**Mr. Praznik:** One last comment, Ms. Giesbrecht, and that is, you made some reference to subsection 130 sub 6 and the use of the two vice-chairs on the list of arbitrators. I just wanted to assure you that the intention here is to, as is practised now, only use arbitrators who are mutually agreeable to labour and management on that list, and the proposal here was not to remove the vice-chairs, just to ensure that they were mutually acceptable to the labour-management caucuses of LMRC that make the recommendations for arbitrators. So if there was a vice-chair who was not mutually acceptable, they would not be on the list of arbitrators. That was the intent of that particular clause.

So thank you for your presentation. I enjoyed it very much and found it most useful with respect to some potential amendments.

**Mr. Ashton:** Madam Chairperson, I appreciated the detailed list of problems in the act. Many of these, by the way, are areas where we have already flagged them for significant concern, because it does more than just make it more difficult in terms of certification for employees by the change from 55 to 65.

(Mr. Bob Rose, Acting Chairperson, in the Chair)

As you pointed out, it has some other very broadly worded sections in it, which really have very little bearing on any sort of reality in the words "or other activity" and are in particular areas that we flagged. I am wondering, as a matter of fact, in looking at the wording in that whole section, which is basically the labour relations code, shall we say, of an elections act, under The Elections Act, if it is a federal or provincial election, the main prohibition is in terms of the polling booth. This bill goes much further than that. It has prohibitions in terms of activities at the polling booth, in the place of work. It talks about electioneering and/or other activity.

I am wondering if really the logical conclusion of what you are suggesting really is not that if they are going to have elections they should be more in keeping with the kind of promises we have for elections at federal or provincial levels in terms of elections.

**Ms. Giesbrecht:** Just in terms of the stated concerns of our union, it was particularly that phrase that caused us a lot of concern. Obviously, it would have been better to just leave the section the way it is in the current act, which would have been our preference, because we feel that really overall Bill 85 should be withdrawn and we should leave The Labour Relations Act status quo.

Failing that happening, we are making some suggested amendments, and that "or other activity" caused us particular concern because it is so ambiguous and could be stretched to mean anything.

**Mr. Ashton:** Mr. Acting Chairperson, by the way, on that I can indicate we have already been working on an amendment that would delete that particular set of wording.

Similarly, I found your comments to be particularly interesting in terms of the disclosure of union dues because, as I said earlier to a previous presenter, to Ms. Hart-Kulbaba, some of us have looked at the act and in sort of reading between the lines, shall we say, assumed that part of this reflects simply the bias of people in the government, that if people have signed a union card they did not really know what they were doing. That seems to be the assumption behind this section.

Are you saying there is really nothing in any other jurisdiction of a similar nature, that this is something that the Conservative caucus in Manitoba has for some reason come up with in this bill?

**Ms. Giesbrecht:** My understanding again is that it is not evident in any other jurisdiction, and that really looking at our own experience, I mean, that is something that our union provides at the time organizing is carried on. But we are concerned that this now will open it up to challenges and we will be spending time at the Labour Board debating things and causing legal bills, et cetera.

**Mr. Ashton:** In fact, I look forward to the government coming up with some of the background in terms of that particular section and the way it is worded, because it certainly seems to be something that has been pulled out of thin air to some of us.

Also, I just want to focus on your comments on the role of the conciliator, because I can indicate once again that is an area that we have already raised. To my mind, I disagree with the minister, by the way, when he talks about abuse. If the act is written in a certain way and people are following the act, I do not think it is fair to talk in terms of abuse or even to use critical words of the fact that one or two or three, or whatever number of unions are responsible for 80 or 90 percent of the certifications.

We have to remember that in certain industries the number of employees tends to be fairly small or tend to be for a number of employers—if you were to take the retail sector, obviously. So by definition, you would expect that retail unions would most likely be more involved in terms of certification and there would be more applications. Steelworkers probably would be dealing with 500, 1,000, 1,500 units, but only one union unit.

So I think those comments the minister made perhaps were a little bit misleading in that sense. But I really want to focus in on what you are suggesting is a concern in terms of the conciliators. Just to make it very clear to the members of the committee, this is another error, for example, we said we feel should be amended in what is, to my mind, a bill that is still bad in terms of principle, but obviously could become far worse in terms of practice with these kinds of sections.

Your concern is really the fact that now the conciliators are going to have get right involved in the process of deciding whether first contract kicks in. So, in other words, they have to take a position which is not normally the role of the conciliator which essentially is more to bring the parties together.

**Ms. Giesbrecht:** Yes, definitely it is our concern that the conciliator's neutrality could be compromised because in offering his or her opinion in terms of whether there has been enough progress, or whether the parties have done everything possible to try and conclude a collective agreement, we think that changes very much so, the role of conciliators, as we have known it to date.

We think that would compromise the job they do, the respect that they are given from both employers and from unions. Certainly, that is a major concern of ours.

* (1650)

**Mr. Ashton:** In other words, your concern relates not just to the principle of some of the changes in the act in regard to certification, but also the fact that other provisions of the act will have even greater impact in terms of impacting the process of labour relations on a normal basis, in this case, for example, the conciliators.

So this is not strictly a question in this case of problems with some of the major changes in terms of certification, but also the way the whole act and the way the first contract, for example, operates and the way certification operates.

**Ms. Giesbrecht:** We certainly have an overall concern that the relationship–and other presenters have made note of the Preamble of The Labour Relations Act, and it talks about striving for harmonious relationships.

We are concerned that Bill 85 will erode that. It will prevent us from having harmonious relationships and something like this section that you were just talking about in terms of the conciliation and first contract affecting the relationships of the parties in collective bargaining. Even after a new group has been organized and certified and a first contract has been achieved, but that type of conciliation process or that type of flavour left with the conciliation process might affect the parties' relationship later, too.

**Mr. Ashton:** Once again, I would like to thank the presenter. I have indicated, as I have said previously, that we certainly will be proposing a number of amendments. We obviously have difficulties with some of the sections in terms of principle, but I think this particular brief is particularly useful in terms of that. I think some of the amendments that you have suggested here are amendments that all members of the committee should consider.

Because as you have said, this bill could have impact far beyond what appears to be the intent which is to target certification, and may in the process, which we oppose obviously, be involving other aspects of the functioning of the Department of Labour, the Labour Board, conciliators, et cetera. So this brief has been very useful and I thank you for the presentation.

(Madam Chairperson in the Chair)

**Madam Chairperson:** I would like to call upon Sid Green. Mr. Green, do you have a written presentation?

**Mr. Sid Green (Leader of the Progressive Party of Manitoba):** I have a presentation. It is not written, but my understanding of the procedure is that tomorrow you will have it written.

**An Honourable Member:** In a few days.

**Mr. Green:** Well, in a few days. It is not that fast anymore.

Madam Chairperson and members of the committee, I had some terrible misgivings about this piece of legislation, and I was rather encouraged by two of your previous presenters because Susan Hart-Kulbaba was talking about lawyers' fees and the hundreds of thousands of dollars, and the representative of the Nurses' Union was talking about the bill making lawyers rich. These two features seem to me to be perhaps somewhat redeeming.

The fact is, Madam Chairperson, that I am a lawyer. I appear before the Labour Board, rarely for unions at the present time, although once I appeared almost exclusively for unions. I still have appeared for unions. I appear rarely for employers, although I do appear for employers, and I appear regularly for employees, regularly.

I do not think anybody who has spoken to you up to this point has spoken to you on behalf of employees per se, that is employees of employers who have a position to put which is not reflected by the employer and is not reflected by the union. You should be aware, and I know this will hurt some of my trade union friends, that over 65 percent–and if I am wrong, I am wrong by 5 percent–of the labour force is not organized labour. I do not pretend to speak for those, because they are generally not appearing before the Labour Board. But I have, on a regular basis, been asked to speak for employees, who do not like what is happening, before the Labour Board ostensibly on their behalf, when the only parties before the Labour Board are the employer and the employees.

Madam Chairperson, members of the committee, you will be appreciative of the fact that I have made presentations to every Industrial Relations committee that has been considering labour legislation since I left the House in 1981. I am able to say with some consistency, and I have never been accused of anything to the contrary, that before I became involved politically, I represented trade unions from 1962 to 1966 and took a particular position with respect to those unions which apparently commended me to them because they

continued to hire me. Between '66 and '69, in opposition, I presented several resolutions to the Legislature concerning The Labour Relations Act, all of which became law between 1969 and 1977. There was not a single thing that I proposed that was not subsequently enacted by the government, which cannot be said of the Pawley administration.

During my years in government, I continued to take the same position; that is, I took the position as an honourable member of the opposition. I took the same position as an honourable minister of the Crown. I took the same position as an honourable member of the opposition again between 1977 and 1981. I have taken the same position as an honourable nobody between 1981 and 1992. That position, Madam Chairperson, is one that changed, not on my part but on the part of organized labour, for reasons which I will deal with; and on the part of the New Democratic Party, for reasons that I will deal with. The position that I took was that the state should be involved as little as possible with relations between trade unions and employers.

This position is now being bandied about by various New Democrats as saying that I want no labour laws at all. They say I do not want the minimum wage, which I never commented upon at all, or factory legislation, or safety legislation, or workplace and health legislation. I am being put forward as an opponent of all of this legislation, when the only legislation which I said should be reduced to the point that the state stayed out of the affairs of unions and management was trade union legislation. The reason that I gave, and I give it now, was that every piece of trade union legislation has been used by one government or another, contrary to the interests of the employees. It also, since freedom is indivisible and if you take it away from one, you automatically take it away from everybody. In infinitely minute respect, it also affected the employers and it also affected all of the citizens of our society.

Therefore, between 1969 and 1977, with minor exceptions, which are still embarrassing to me, because even though they are minor they are exceptions, the direction of Manitoba labour relations law was to have the freedom of the parties assured so that the employer had the same freedom to behave as any other person in society did and the employees had the right to behave as any other persons in society did, and we eliminated most of the restrictions to what we regarded as free collective bargaining. It is significant, Madam Chairperson, and members of the committee, that people who now talk about collective bargaining eliminate the word "free," because they are no longer interested in free collective bargaining.

The trade union movement, starting in 1973 when they thought that they had a friendly government and one which would bow to their interests, said, we do not want free collective bargaining, we want you to pass legislation that will help us in our dispute with the employer. The government said, no. We continued the legislation which had been put into place, which guaranteed, or which moved towards–because there were some warts on the legislation–free collective bargaining.

* (1700)

(Mr. Ben Sveinson, Acting Chairperson, in the Chair)

The proof that the legislation was not employee-oriented or employer-oriented, but rather dealt with the rights of everybody, was the fact that when the Lyon administration came in–and I want Mr. Ashton to be here particularly, because I am going to quote him–he is leaving–in 1977, they did not change the labour legislation.

I say that Mr. Ashton in his speech before the House on labour legislation was extolling the fact that Mr. Lyon in 1977 did not change the labour legislation. Who then changed it? Who changed the labour legislation? In 1981, the Pawley administration came to power–and that is why Mr. Ashton is not here–because it was his government that went back to what I said would inevitably occur. It is occurring with this piece of legislation, Mr. Minister, and you should be ashamed.

I said it would inevitably occur that you would have a government that was kowtowing to labour, that would pass legislation in one direction, and when the next government came in, the pendulum would swing, and they would pass legislation in another direction, each legislation, each piece of legislation, infringing on the rights of the people who were going to be affected thereby. That is what this piece of legislation is doing.

We cannot excuse it. We can only understand it. We can say that for a good number of years the New Democratic Party came in, passed legislation which was atrocious, which went against every principle of free collective bargaining, which was in all respects identical in principle to that passed by Mr. Vander

Zalm in British Columbia, except that it was going to be done for labour rather than being done for the employer, but in principle, exactly the same. So the NDP passed what they called state first contract legislation which is state imposed agreements, it is not free collective bargaining. They passed final offer selection, which is state imposed agreements and not free collective bargaining.

Now in Ontario, Mr. Rae is talking about passing a law which says that when the nurses in a hospital go on strike and your mother is in the hospital, the hospital is prohibited from finding somebody to go in and look after your mother. That is what they are doing in the name of–and Mr. Rae calls it free collective bargaining. I think he has an out, the same way as Mr. Levesque has an out.

Mr. Levesque passed a law saying that if there were a strike, the employer is prohibited from hiring anybody during the existence of that strike. The next law, by the way, will be that the employee is prohibited from working during that strike, and it will be requested by the trade unions. If you think that I am exaggerating, then I tell you that everybody who decided that they wanted to work during the postal strike, there was an attempt to penalize them by the union. So if you think that what I am saying is exaggerating, I am telling you that it is borne out by events.

Now let us talk about what is being said in the name of collective bargaining, which I choose to call free collective bargaining. What does it mean? We all know what bargaining means–at least, I hope we do. Bargaining means that if somebody wants to sell something and he is talking to somebody who wants to buy something, each of them is trying to get the best proposition, but each of them reserves a position.

(Madam Chairperson in the Chair)

The person who is selling says, if I do not get my price, I will not sell. No state can impose a sale on me, a sale price that I do not want. The person who wants to buy says, if I cannot get it for the figure that I want, I will not buy; I will walk away. But there is no law that says that you then cannot sell it to somebody else. That is what bargaining is.

Now take it one step further. What does bargaining in the employment sense mean? Well, an employer says: I would like to have this man. These are my terms. If he does not want to work for me–or this woman, then I will not hire her. The employee says, I would like to work for this person, but if he cannot meet my wages, I will not work for him, and I reserve the right to say I will not work until he meets my position. But there is nobody who comes in and says you must hire and you must work. That is not free collective bargaining. That is a step towards the path of serfdom and a step which was taken by the Pawley administration and was taken in the name of free collective bargaining.

Now what is collective bargaining as distinct from bargaining? An employee who went to his employer and said, I would like a raise, was told by the employer, I will give you a raise, a quick raise in the back seat of your pants; get out of here. They could not bargain individually. So they said, we would like to bargain collectively. When I walk in and tell the employer that we would like a raise and he says, I will give you a quick raise in the pants, we will all say, we will not work until we get that raise.

That was the principle that was fought for in 1919, and that was the principle of free collective bargaining as I was taught the concept in the trade union movement, not by Susan Hart-Kulbaba or Bernard Christophe, but from the last guy who I know participated in that strike. That was Bob Russell and Jimmy James. They never suggested–it would be unheard of for them to suggest–that free collective bargaining means, if you cannot get an agreement, the state comes in and imposes one, or if you cannot get an agreement, there are all kinds of government sanctions that are used against one side or the other to bring about an agreement.

Now, you have heard from some people, officials of trade unions, who have said that this is going to prevent us from organizing. Would it be a surprise to this committee that all the terrible things that they talk about, all of the restraints on organizing that an employer can use, all of those things existed when the major labour force in this country achieved free collective bargaining without any labour relations act by the free forces, by the law applicable to everybody else between–I will try and make the figures conservative, to use a bad word–23 percent and 26 percent of the labour force was organized without any labour relations act at all.

* (1710)

When the things that these people say happened, that people were fired, it is true. Employers fired people, but in those days, they had what is called union solidarity, and when the employer kicked one person out, and if there were 100 people in the plant,

99 walked out too. They said we will not work until this person is rehired.

Twenty-six percent before Ms. Hart-Kulbaba was born, before she was involved in labour relations at all, 25 percent of the labour force in this country was organized, and they had Labour governments in England since 1920 and not a word of labour legislation, and that country was one of the most organized countries in the world.

In 1944, the mid-'40s, the federal government during the war enacted what they called PC 1003 which was a copy of the Wagner Act in the United States, which was not intended to facilitate labour organizing. It was intended to facilitate peace during the war and was used between 1945 and 1962, as can be demonstrated by looking at the labour relations decisions of the Manitoba Board, to thwart organizing.

It was during that period that the labour unions took the position, we want as little labour law as possible. We want to have one thing preserved, one thing above all. this above all, our right to say we will not work and to do it together because that is the strength of our position. If you take that from us, you take everything.

Who took it? The organized trade union movement in Manitoba, by asking for final offer selection which prohibited a strike when it was requested, and the New Democratic Party which said we are going to establish industrial peace by eliminating strikes.

The one thing, the possibility of withdrawing labour, that is essential to the existence of any free collective bargaining. So Mr. Ashton has given you the clue. Mr. Ashton, the Labour critic of the New Democratic Party, has said to you, why are you changing the legislation? Lyon left it alone. You are the villains. Lyon left it alone. Who was the villain? Mr. Pawley came in, changed the legislation and introduced a whole slew of amendments which imposed the state as an adversary to the employer in labour negotiations.

The figures that are going to be quoted to you as to what happened and what labour peace there was do not tell the story. The fact is, business opportunities went down, the rights of employees went down during all of those years. I expected this government to undo those things. They did, after many, many years, after when it was about to die a death in any event. They eliminated final offer selection. They have not eliminated first contract legislation. Although, legally I can see lawyers advising their clients–and you have had a hint of it, Mr. Minister.

If you will look at 68(3), it says: Where there is a conciliation officer appointed, the officer has to be satisfied that the parties have made reasonable efforts to conclude a collective agreement; and–not or–and these two things must happen: He must be satisfied that they had made reasonable efforts to conclude an agreement and he is of the opinion that the parties are not likely to conclude an agreement–it must be both, not one–then he shall, for purposes of 87(1) notify the board that they have not made one. He must notify. Then they amend 87(1) in saying that you can apply for first contract legislation after a conciliation officer, appointed under subsection 67(1), has notified the board and the parties under 68(3.1). So if he does not notify them, you cannot apply for first contract legislation. Am I right? He must notify them. But he cannot notify them if he is not satisfied that they have made a reasonable effort to conclude an agreement.

So I am the lawyer for the employer, let us assume, and I do not want a first contract, or I am the lawyer for the union, and I do not want a first contract because it is ironic that the first request for first contract legislation came from the Seven Oaks Hospital, by the employer. The union said, no, we do not want it; we would like to continue our strike. But they made the first request.

But let us say that I am the lawyer for the union. I have the company on its knees–I have heard that language. The company wants to apply for first contract legislation. I tell the conciliation officer that I am not making every reasonable effort to conclude an agreement, and the conciliation, in the face of my statement that I am not making any reasonable effort to conclude an agreement, cannot report that I have made every reasonable effort to conclude an agreement–employer or employee.

Now, I do not object to that except it is devious. Since I want the legislation wiped out in any event, since it is my suggestion to you that you cannot have a state-imposed labour contract and maintain industrial peace, I am suggesting that you eliminate this clause and walk in through the house through the front door and say, there is no longer first contract legislation. If you cannot conclude an agreement–employer and employees–there is no agreement, and the state will not impose one and then you will unfortunately lose all those lawyers'

fees and the six-figure figures and what have you, and we will just have to get by as best we can.

But the minister is smart by halves–I should say he is smart by quarters–that he wanted to eliminate first contract legislation. You want to eliminate the bad effects of it? Say so. Eliminate it. Where have you gone? You have only gone to where Mr. Ashton said the legislation should be left alone. He has told you that. The New Democrats have told you that the '69-77 legislation should be left alone. Mr. Lyon did not change it, and it should not be changed. Therefore, by taking that out you just put yourself back in the same position.

Madam Chairperson, when dealing with the certification, it is my submission that you have dealt with it peripherally and you have not dealt with the most important feature of the legislation as it affects employees to this day. I am going to surprise this committee. I am going to tell you that an employer with 15 employees, if, today, cards are brought in by a union that say we have 13 out of 15 cards and they go to the Labour Board, tomorrow, the same 13 people cannot say, they are prohibited from saying, we changed our mind. We do not want this union. We did this in a moment of peer pressure. I thought the other guys wanted it. The other guys thought I wanted it. We do not want this union. They had no right to appear before the Labour Board. Are you aware of that? They cannot appear before the Labour Board unless they tell a lie, unless they say that there was fraud, that there was intimidation.

They cannot go there and say we made a mistake. We changed our mind. We do not want this union. Do you know why they cannot do that? Because as has been put to the Labour Board by union lawyers, the wishes of the employees are irrelevant and I am quoting. I am quoting his words as confirmed by the Court of Appeal for the Province of Manitoba who said this procedure was not right, that the 13 have a right to go to the board, have a right to complain, and then the Pawley administration which worked for unions, immediately that decision was made, eliminated that right and these employees cannot appear before the Labour Board.

* (1720)

Now, Mr. Minister, are you not aware that this is the case? Why do you not just say that where a majority of employees–by the way, all done in secret. The names are obtained secretly. Nobody can see who they are. They do not have to have a dollar anymore. They have to swear. There has to be an affidavit that these are the cards, but nobody has to file an affidavit that each person signed one. The employees–and these are the employees who I have represented–come to the board, not once, but many times, and say we did sign a card, but you know we thought we were going to be called scabs.

The unions talk about intimidation as if it is one-sided, as if there is only one person who will ever intimidate an employer, that is a union. It is not true. I have sympathy with both positions, but it is not true. Employees can intimidate employees. If you do not believe it, Bernard Christophe's union sued an employee for a million dollars, because she was trying to prevent them from going on strike. He did it; that is intimidation. They sued. I represented the employee. They took this employee, this young girl, I think she was 18 years of age, they served her with documentation a half inch thick, including a suit for millions of dollars because she was doing wrongful things with respect to a strike action.

Have any of you looked at what happens in some of the strikes when there are employees who see other employees, they are other human beings, they have a right to go to work, and they are pelted and they called names? It is not as if the intimidation is a one-way street.

Now, Madam Chairperson, the New Democratic Party passed laws that says if a door-to-door salesman comes and sells you a vacuum cleaner, you have–it used to be 48 hours, is it now extended?–I think it is more than 48 hours. You have 48 hours to say I made a mistake, I do not want this vacuum cleaner, and there is no contract. [interjection] Seven days.

Do you know that a guy who signs a union card has not got seven seconds? He has not got seven seconds. Now I am not trying to stop the certification. [interjection] Oh, I hear a laugh behind me. Now, listen to what I am going to say and then you laugh. What I am saying is that if–and this was the law, and is the law in many places–you have 13 out of 15 who say they want the union, and then the Labour Board gets a letter from 13 out of 15 who say they do not want the union, it does not take Einstein to figure out that the same names are on both lists.

I am not saying that should stop the certification, I am saying that where there is confusion as to whether or not there is a majority, take a vote, a secret ballot vote. The board, Mr. Minister, are you aware, that the board now says it cannot take a vote? It is illegal under the Pawley legislation. It

was legal under the legislation that Mr. Ashton said you should not have changed, which was passed, by the way, by a New Democratic Party government.

The legislation that Mr. Ashton said should not have been changed, that Mr. Lyon was a nice fellow because he did not change it, I never ever heard the NDP refer to Lyon as a nice fellow, but suddenly, Mr. Lyon became a decent man because he did not change that legislation. I am telling you that under that legislation the board was entitled to consider, in an application for certification, the views of the objecting employees, and it was entitled to consider that 13 out of 15 of them have come and said we do not want the union.

Maybe they were intimidated, maybe they were pressured. Maybe the original 13 were pressured. How do you know? Conduct a vote, and if there is a vote, and there used to be a law that if the employer intimidated people during the vote, that they would cancel the vote and certify. I am not saying you should go back to that because I do not think union people are intimidated. My friends talk about, say that the 25 percent that workers are easy to intimidate; they are not easy to intimidate.

If Mr. Ashton is so concerned that none of the members of this committee have ever been in a union, have ever been involved in certification, have ever been involved in a strike, I have. I was on strike. I was not intimidated, and my fellow workers were not intimidated because we–what was that?

**An Honourable Member:** I said nothing would intimidate you.

**Mr. Green:** Well, I am thinking about that. The fact is that my fellow workers were not intimidated, nor were the workers who fought for the trade union movement before Mr. Christophe was alive, before Susan Hart was alive, who brought the benefits of organized labour to this country, to Britain and to other places in Europe. They were not intimidated.

If, as Susan Hart has said, Susan Hart-Kulbaba, the legislation which prohibits the intimidation does not work anyway because they will do it under the table and it is harder to prove, is it not better for the workers to know that there is no legislation that is going to protect them, that the only way that they will be protected is through their own solidarity? Wipe out the section, and let them know that organizing a trade union is a problem. It is something that requires effort; it is something that requires solidarity. It is something that requires commitment, and nobody will ever be able to say, as has been said by the present representatives of trade unions, and I have got it in writing, the wishes of the employees are irrelevant.

Madam Chairperson, I am suggesting to you and to the members of this committee that this legislation does not do for trade unionists, for employees, for employers, what needs to be done. What needs to be done is for the state to get out of being involved in bringing about or trying to bring about collective bargaining between the employers and the employees because that will happen without the state intervention and it will happen better without the state intervention.

Furthermore, you will have under freedom a more stable industrial peace than you will have under what these people say is the way of doing it and which I say is the law of the jungle. When you look at this, when you talk about lawyers making hundreds of thousands of dollars–and Mr. Christophe is here–I took exactly the same position, I said that lawyers should not have to be involved in the Labour Board. You should not be involved in legalities; you should be involved in the same kind of bargaining that takes place with any two groups, that the common law will tell you.

But there is some notion, particularly amongst liberals of all three political parties that legislation creates rights, that the legislation that you passed has created rights which are being taken away. Are they not aware that the only thing that legislation does is to restrict rights? They got this notion out of the Charter of Rights and Freedoms that this created our rights and our freedoms, that before that Charter we did not have freedom of speech. The only difference now with the Charter of Rights and the previous legislation is that the arbitrator who determines as to whether we will have the right or not is no longer the elected representatives of the people; it is now nine judges who are responsible to nobody, and who have lifetime tenure and a hell of a good pension.

* (1730)

But here, talk about legislation creating rights. First of all, prior to this legislation, employees who objected to a union could always object. They could say, we will not walk out with you; we will be intimidated or not. Now they are bound by the collective agreement because of a certification. You could always get collective bargaining before the legislation came into effect. It did not create the right to free collective bargaining. That was

obtained the hard way, through the General Strike of 1919. PC 1003 did not confer any rights. It took away rights as to how you would get there, because it said you could not go on strike until you were certified.

I will give you a better example. In the legislation today there is a statement that if a union does not behave fairly towards an employee, you have a right to go to the Labour Board and sue that union. I suppose the New Democrats and the liberals of all parties will look at that legislation and say, is it not wonderful; we have given an employee a right to sue his union. It is as if without the legislation he did not have that right, but anybody who knows the law will tell you that if a union behaved unfairly towards an employee, he could always sue the union and get damages and did get damages.

So what did the legislation do? It took away that right. There are now two decisions in Canada: one, Gendron v. the public union alliance; and the other one, Paulet v. Brandon University, where the judges have said, because they put that into the legislation they no longer have the right to do it as they used to be able to do it. You have to go to the Labour Board, and you have to go through the union.

In Paulet, the problem was caused by a concerted action between the employer and the employee. You gave him the right to go to the Labour Board, took away his right to go to an independent court. When he comes to the Labour Board, who is sitting there? The representatives of unions and the representatives of employers. These are the people who did him in.

Now, it is okay to give him that right to go to the Labour Board. It is nothing terrible as long as you preserve to him the right that he always had, namely to sue the union for what it has done. You have not put that in. The decision is there. It was made by the courts. It is on the record. Why do you not give an employee the right to sue his trade union? Because Howard Pawley's government, which was the lackey for the trade unions–and which wants to be the lackey again.

The funniest thing I hear comes from Mrs. Hart-Kulbaba who said, if you want our co-operation, why do you not co-operate with us? If you co-operated with them, would they not still say, bring down the Tory administration? They have a right to, and I agree that they should have the right to. But the joke is that they tell you that if you are nice to them, they will be nice to you. If you are nice to them, they will undo you, and that is their vowed intention, and why should they not?–they do not agree with you. It makes me sick to hear them say that we would be nice to you. They are a political partner of the New Democratic Party. How could they be nice to you? And who wants them to be nice to you? They are right to be not nice to you. They do not agree with you.

They say, if you were not bringing in this legislation where we have to fight for ourselves, we would do something else. Sure, they would do something else. They would campaign against the Tory administration, which is their right to do and I expect them to do it. When I hear that they are going to be nice to you, it sickens me, because they are not going to be nice to you and they should not be nice to you, nor should I be nice to you, because you have put yourself in a position where you are going to bring forward a piece of legislation which you are going to have to take flak from.

Every government has to do that, and it is right that they should have to do that. If you are going to take flak, if you are going to be criticized, at least do something to deserve the criticism. This legislation does virtually nothing. It does some bad things. It pretends that first-contract legislation is in existence when, as I see it, it could be easily undone. It requires a union to make statements about membership dues.

I think the unions are right. The employees ask about membership dues. There are many other things that they say that if you wanted to pass legislation as to what people should say and should not say, they should not say that we will get you an agreement, because they may not be able to get them an agreement. They should not say that they will make things better for them, because they may not be able to make things better. I would not have legislation saying what they say and could not say.

You know what this legislation reminds me of? I refer to the Minister of Health (Mr. Orchard). Mr. Mercier, the Attorney General in 1979 or so, Mr. Downey was there too, brought in a piece of legislation that said that a politician shall not tell a lie during an election campaign. They were going to pass it, and I got up and I said, now look, I say that the other side is lying; they are saying that I am lying. Are we going to take the election campaign into a provincial judge's office?

I got, immediately, by the way, calls from right across the nation. I can remember very clearly a call from The Globe and Mail where the reporter said to me, I understand that you are defending the right of all politicians to lie. So I handled it in my usual way. I said to him, no, I am defending your right to continue lying. I said, politicians generally try to tell the truth because they are going to be hurt by a lie, but newspapers, they are totally irresponsible. This legislation does not talk about politicians. It says anybody that tells a lie during an election campaign is subject to prosecution, et cetera. I am defending your right, not my right.

In any event, how do you get involved with what is being said by one side or the other side? There are lots of things that people say, and what if it is, you know, when a union is organizing, particularly in a big plant, it is not simply the organizer. They have a committee of people who want the union and they go out and try and sell memberships. What if one of them is a company spy, and he tells a lie, or excuse me, he does not tell the guy that the union dues are payable, does not tell him the amount. The sanction is horrendous. The sanction is not as the minister said, that you take those numbers off the cards. The sanction is that the board may dismiss the application–dismiss the application. It is outrageous, absolutely outrageous, and has no business being in legislation. Now I can understand it being in the legislation, because just as hate begets hate and love begets love, bad legislation begets bad legislation, and this bad legislation is begotten out of the Pawley legislation. That is where it comes from.

* (1740)

It is the swing of the pendulum. You did it to us, and we will do it to you. That reminds me of Johnny Carson, who was talking about youngsters in school dealing with proverbs like a stitch in time, and they were supposed to fill in the end and they said, sews up your pants. He gave a whole bunch of them, and one was, do unto others before they do you.

In this case, what the minister is doing is falling into the very same trough. You want to change the legislation: Change all of those areas which impose what is going to be in an agreement. Change all of those areas which do not permit the objecting employees, whom I have represented, from coming to the board and stating their position and contesting. That is the most important change that is necessary.

Mr. Minister, I have tried. I do not know who gets your ear, but I have tried personally, by telephone, and in every other way to get your ear. I did not get it, but now I got it. I am telling you I should have had it before, that the most nefarious part of the existing legislation is how it deals with objecting employees. You are not going to get that out of the Labour Management Committee. The Labour Management Committee is composed of trade unions and employers who are organized, and it is in their interest to keep everybody in the same boat as they are. You are not going to get it from them.

You go to your board and you will see that I have appeared, and I do not get the fees that Susan Hart-Kulbaba was talking about and that the representative of the nurses' association said will make me rich. I act for objecting employees. I am told by the board that your wishes of your group are irrelevant. You have no status here. You can stay if you want to waste your time, but you will not be listened to.

Now that is before the Court of Appeal at the present time, but why should it be before the Court of Appeal? Why does the Legislature not say that employees who object to an application for certification have a right to appear and challenge the application both as to the claim that over 50 percent is represented and also that some of these people have changed their minds? The trade unions say, oh, they were intimidated.

Intimidation can work both ways. I have a little bit more confidence in the strength of workers in this province, who, I know, organized prior to any laws that said that they were protected from an employer who was going to use intimidation, to think that workers will express their wishes. Now who is representing the workers? These are a group of people who will tell you that the workers are scared little guys who will not sign a card if they think that the boss finds out about it. You get a guy who tells you that employees, through the ages and in every country, have organized and bargained collectively and they have done this in face of intimidation and did this in this province.

I am not, at the moment, saying that you should undo those laws, but I say that you should adopt a course that moves in that direction. The most vicious provision today is the provision as they affect employees who are fighting for an independent stand from their union, both as to lawsuits–which you have taken away from them. You did not do it.

The Pawley administration did it, but you did it by not changing it. Mind you, I cannot blame you. I did not think that was the result of it until the courts told me so. But now that they have told us so–and I see that Mr. Edwards is here.

It used to be the law that any employee who sued his union for unfair representation could sue them. Then the Legislature conferred rights. They said you could do it, but you have to do it at the Labour Board. So now the courts say you cannot do it in court. That has to be changed. That is something–and you will get flak.

You will have the unions coming up here–we are going to have to have lawyers; we are going to be sued by the disgruntled people who do not like us. Well, that was the law all of these years, and that is not what happened. There have been relatively few suits by employees against unions.

Now when they do sue, they are told, no, you have to go to a group of the people who did you in. You have to go to the unions, who are on the Labour Board, the management, who are on the Labour Board–they are a majority. If they agree–and they agreed with what happened to you, both in Gendron and in Paulet–then you are out of luck. Your right to go to a Section 96 court has been taken away by us granting you rights.

Madam Chairperson, it is my submission that this legislation is bad, both from the point of view of employers and the point of view of employees. It contains a provision that there will be no electioneering on the day of a vote. You stop people from winking at each other.

You know, I found to my dismay, an astonishment that there is a City of Winnipeg by-law that says that you cannot start campaigning for mayor until a certain day, and they are prosecuting a man for campaigning. I am amazed that a group of politicians could pass such a law.

I never, ever stopped campaigning. When I was trying to get elected, I was campaigning. When I was elected, that night, if they put a mike in my face, I was campaigning for the next election. Are you not all campaigning? Are you not all, every moment of the day, hoping that you are going to attract voter support and behaving accordingly? That is campaigning.

The City of Winnipeg, you know, they can pass such a law because they have seen the crazy things Legislatures have done and they think it is in order. You have a law that says how much money you can spend on election campaign, even if you are not in the election. How can they tell you how much money? Will they take the law about spending money during an election campaign?

Let us assume, as has been the case, that the Winnipeg Free Press favours a political party. On the front page of their newspaper, $50,000 worth of space is devoted to talking about what these candidates did, all of one party. Will you then have a law that is saying a newspaper cannot publish bad news during an election campaign because they are spending money, or anybody else, or the Manitoba Federation of Labour?

I get people like the Leader of the New Democratic Party (Mr. Doer) in Ottawa saying that there has to be spending limits on the yes-no vote, we do not want anybody to buy confederation, or what have you. I do not like what they are saying constitutionally; I do not like the referendum. Who is going to finance me to say I do not think you should vote either way, and is that a legitimate position?

Are we going to go to that path of fascism where the government dictates what you can do and what you cannot do, and what you can spend and what you cannot spend, and when you can run and when you can start campaigning, and how you must campaign and the kind of literature you must put out in a political situation? You have put that into a piece of legislation.

How can you stop people? It used to be the law generally–and I am talking in front of the chairman of the Labour Board, who wisely said it should be out–that you could not have propaganda after a vote was called. That was taken out and now you say you cannot have propaganda on the day of the vote. What so terrible has happened on the day of any votes that have been held in this province under The Labour Relations Act that you have to put in a section that says here you cannot distribute printed material? How about tape recordings?

You cannot engage in electioneering. How about patting people on the back and buying them a cup of coffee or buying them a bottle of beer and winking at them? How do you control that type of stuff? How do you presume to control that type of stuff? Get out. You are a Conservative, my God. The state should get out unless it is absolutely necessary. Let freedom reign, and if that is a Conservative statement, I tell you that was the

statement of the New Democratic Party between 1966 and 1977, and it worked.

* (1750)

It worked until some organizers felt that life is a little miserable for them, they called bad strikes and they are losing, we have got to get the government to come in and be on our side. Now you have the Chamber of Commerce saying they are having some troubles, come in and be on our side. I am saying be on nobody's side. Be on the side of what is right. Be on the side of freedom and be on the side of free collective bargaining as the term was understood before the new age of trade union organizers.

That is my position, Madam Chairperson.

**Madam Chairperson:** Thank you very much, Mr. Green. There may be some questions.

**Mr. Green:** Come on, Ashton, ask some questions.

**Floor Comment:** You do not have to be nice to him either.

**Mr. Green:** That is right, you do not have to be nice to me at all.

**Madam Chairperson:** If there are no questions, may I just ask the committee to clarify something. I understand that we are going to break at six o'clock for one hour until seven o'clock. Is that correct?

**Mr. Green:** You still have five minutes to ask questions. No questions? I will be back tonight on the multicultural, racist bill.

**Madam Chairperson:** Since there are no questions, if it is the will of the committee, I would suggest that we recess until seven o'clock. Agreed.

**COMMITTEE ROSE AT:** 5:52 p.m.

## WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 85

The Brandon and District Labour Council is appalled that the government is not holding hearings on this very important bill in Manitoba's second largest city, the city of Brandon.

While we recognize that over half the population of Manitoba resides in Winnipeg, we feel that we, too, have a contribution to make to these legislative hearings, especially on a bill as important as this one is to our labour people. Quite frankly, we are tired of running into Winnipeg every time something comes up just because your committee has perimeter perception.

The Brandon and District Labour Council is requesting that you schedule a set of hearings in Brandon so that the 40,000-plus citizens of Brandon and area have the opportunity to make their concerns known.

Sincerely,
Ross C. Martin.

* * *

Submission of the Graphic Communications International Union to the Standing Committee on Industrial Relations of the Legislative Assembly of the Province of Manitoba concerning Bill 85, The Labour Relations Amendment Act

**The GCIU**

The Graphic Communications International Union (GCIU) represents workers in all aspects of the printing and graphic communications industry. We produce newspapers, packaging, catalogues, books, magazines and a wide array of commercial printing.

Of the 22,000 men and women who comprise the GCIU Canadian membership, some 500 are located in Manitoba

We welcome the opportunity to make submissions on the government's proposed amendments to the labour relations action (Bill 85).

We regret that much of what the government has proposed is antiworker, antiunion and anticollective bargaining.

Our submission is not intended to be comprehensive nor exhaustive. Instead, we have focused our attention on those areas which are of particular concern to us. We sincerely hope that our contribution is constructive and useful to the committee's consideration of this important matter.

**Access to Collective Bargaining**

Union representation and collective bargaining are a proven method of democratizing the workplace, improving working conditions and living standards and promoting social equality. Thus, the role of trade unions and collective bargaining in the economy and labour market must be further legitimized and enhanced, and labour relations legislation must encourage and facilitate access to effective collective bargaining, rather than impede it.

This is especially important given the restructuring of the economy and the changing composition of the work force. There is a need to modernize and revitalize the system of labour relations to respond to the changing needs of the Canadian work force and economy.

We regret, therefore, that the government has proposed amendments to The Labour Relations Act that are designed to impede access to collective bargaining, rather than enhance it.

**Employer Involvement in the Decision to Unionize**

The right to organize into trade unions and participate in collective bargaining is fundamental. However, workers face substantial hurdles when they attempt to exercise this right, not the least of which is employer resistance.

The decision to unionize or not is one to be made by workers, and it ought not to involve the employer.

Inevitably, employers do involve themselves in organizing campaigns, and their activities are invariably designed to interfere with the right of workers to freely choose whether or not they want union representation. This activity results in bitter and costly confrontations, unnecessary delays in the certification process and the creation of adversarial relationships between the union and the employer at the outset of the collective bargaining relationship. These difficulties are, of course, exacerbated in smaller workplaces.

As a general rule, therefore, labour legislation should restrict the role of employers in organizing and certification matters. Their involvement should be limited to matters of a strictly technical nature, such as bargaining unit configuration.

We regret, therefore, that the government has proposed amendments to The Labour Relations Act that are designed to increase rather than restrict employer involvement in organizing and certification matters.

**Discussion of the Proposed Amendments**

SUPERVISORS

The right to organize and participate in collective bargaining is fundamental, and there is no practical or principal reason why supervisory employees should have their rights restricted by the act.

The current provisions of the act, excluding supervisors from the bargaining unit in cases where they exercise management functions or are employed in a confidential capacity in matters related to labour relations, are fair and balanced.

The proposed amendments will classify more supervisors as management, thus denying them the right to join a union and participate in collective bargaining, merely because they have supervisory duties. This is unacceptable.

CERTIFICATION

Workers exercise their right to choose a union by signing a union membership application.

The current legislative provision requiring the support of 55 percent of the bargaining unit, in order to obtain certification, is objectionable not only because it is undemocratic but because it is insulting to the intelligence of workers and the integrity of union organizers. The act should be amended to reduce the certification threshold to a simple majority.

Instead, the government has proposed raising the support requirement to 65 percent. This will result in certification votes being conducted in more organizing drives.

If one accepts the fact that a person has indicated his or her intention by signing a membership card (which the act does), then a certification vote is, in fact, a second vote.

Extending the requirement of a second vote to more certification applications will result in increased employer interference. It affords employers the opportunity to "convince" workers to change their minds. What, in fact, will result is an increase in intimidation, threats and scare tactics, all of which will result in charges and delays at the Labour Relations Board, and where the unit is certified the parties will begin their collective bargaining relationship within the context of an acrimonious, confrontational and hostile organizing and certification process.

In that these amendments are undemocratic, insulting, will result in increased litigation and will impede access to collective bargaining, they are unacceptable to the GCIU.

**Employer Interference**

The government has proposed amendments to the act that will substantially increase the parameters of permissible employer communications to employees during organizing campaigns. They also repeal current provisions which deem certain employer statements to be unfair labour practices.

The combined effect of these amendments will be increased employer interference in the workers' right to join a union, and increased charges, litigation, and delay at the Labour Relations Board, all of which will contribute to a more acrimonious, confrontational and hostile organizing and certification process

These amendments are, therefore, unacceptable to the GCIU.

**Dues Declaration**

During organizing campaigns, the issue of union dues is invariably raised and discussed by workers and union organizers. The issue is also invariably raised by employers who somehow think that their employees are not intelligent enough to think to make such inquiries; that union organizers are unscrupulous and will conceal this information and that, hopefully, union dues will discourage the workers from unionizing.

The proposed amendments to the act requiring a declaration of dues and initiation fees is as insulting to the intelligence of the workers and the integrity of union organizers, as the employers "suggestion" and is, therefore, objectionable.

This amendment will also result in delay at the Labour Relations Board. Inevitably, employers will attempt to use this provision in an attempt to cause delay, to discredit the union and ultimately to defeat a certification.

Because this provision is unnecessary, insulting and will result in increased litigation, it is unacceptable to the GCIU.

**Conclusion**

The preamble to The Manitoba Labour Relations Act states that "it is in the public interest of the Province of Manitoba to further harmonious industrial relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees."

Any amendments to The Labour Relations Act should be consistent with and reflect the spirit of this passage.

None of the government's proposed amendments discussed in this submission meet this test and should, therefore, be rejected. We encourage the committee to do just this.

Respectfully submitted,
Graphic Communications International Union,
Canadian Office, Suite 600-1110 Finch Avenue W.,
Downsview, Ontario, M3J 2T2

* * *

Professional Institute
of the Public Service of Canada
Submission to the Standing Committee
on Industrial Relations
Studying Bill 85
Amendments to The Labour Relations Act

I wish to thank the committee for this opportunity to address it. My name is Neil Harden, and I am the Director for the Prairie Region of the Professional Institute of the Public Service of Canada. The Institute is the certified bargaining agent representing over 27,000 professional employees in the Governments of Canada, Manitoba and New Brunswick, as well as a number of federal Crown corporations. We are not affiliated with the Canadian Labour Congress or the Canadian Federation of Labour. I am making this presentation on behalf of the Professional Institute.

In Manitoba, the Professional Institute represents professional engineers employed in the main line Civil Service of the province and doctors, nurses and other health care professionals at Deer Lodge Center, a total of about 300 people. All of these people are covered by The Labour Relations Act, hence our interest in the proposed amendments.

The Professional Institute has some serious concerns regarding the proposed amendments to The Labour Relations Act. Perhaps, our major concern is the deletion of Section 2(2) of the existing act. This section reads as follows:

"For the purposes of this Act, an employee is not exercising management functions or employed in a confidential capacity in matters relating to labour relations by reason of his duties and functions as an employee including the supervision of other employees of the same employer."

The definition of employee remains the same under the act, and the deletion of Section 2(2) may therefore be regarded as cosmetic. We believe, however, that this section adds clarity to the definition and should be retained. If the change is indeed cosmetic, why bother making it? Our concern is that employers may argue that since a change has been made and the section deleted, the definition must be interpreted in light of that change. This could potentially result in the exclusion of

employees for the simple reason that they supervise another employee. If this is not the intent of the amendment, I urge the committee to opt for the greater certainty of leaving Section 2(2) of the existing act as is. If greater exclusions are the intent, I urge the government to reconsider.

Bill 85 makes a number of changes regarding the provisions of the existing act dealing with organizing and certifying of unions, the thrust of which we believe is to needlessly complicate procedures. The amendments to Section 6 of the existing act to allow the employer to make a statement of fact or "reasonably" held opinion during the formation of a union neglect to account for the unbalanced power that management has in the workplace. This unbalanced power is becoming increasingly recognized in the areas of personal harassment and abuse of authority in the workplace. What can seemingly be "reasonably held opinion" by a senior manager can be taken by a subordinate as a dictate.

The proposed amendments to Section 45 are rather curious. These amendments would require a union to provide employees with information regarding initiation fees and union dues during an application for certification. The Labour Relations Act should establish the overall framework for labour-management relations and should not waste time with such a trivial technicality. Surely, there must be better things to write into legislation.

It has been the experience of the institute that potential members are far more interested in the quality of representation that a union can provide and its internal political process than in dues payable. The amendments seem to imply that the government thinks that dues are so important as to make failure to provide such information sufficient cause for the dismissal of an application. We believe this to be heavy handed and unnecessary. It represents an unnecessary intrusion into the internal affairs of unions, implies that unions would conceal such information from prospective members and that such people would not have the intelligence to ask what their dues would be.

What would be the consequences if the dues should change during the course of a recruitment drive? Would the application be dismissed? Would we have to start over? Moreover, in no other jurisdiction in Canada is similar language included in labour legislation.

We believe that the proposed new Section 48.1(b) is too vaguely worded. The wording "engages in electioneering or other activity" is wide open to interpretation and provides no guidance. The words "or other activity" should be deleted or alternatively the act should define exactly what is permitted and prohibited activity.

Lastly, we have a concern with proposed Section 68(3.1). We believe that this amendment increases the potential for delay in the first contract process. Subsection (b) could also compromise the role of a conciliator as an independent facilitator. We do not know how a conciliator is supposed to make the determination that the parties are not likely to conclude a collective agreement. All a conciliator can say with certainty is that the parties have been unable to reach an agreement. Anything further is sheer speculation. We do not believe that the need for such speculation should be enshrined in legislation. Given that the application to the board under Section 87 of the existing act means that the parties cannot reach agreement, we view the proposed Section 68(3.1) as being highly redundant.