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**CAUTION:**

This guide is not a complete statement of the law. In order to determine your strict legal rights, reference should be made to **The Labour Relations Act** and **Manitoba Labour Board Rules of Procedure** ("regulations") and board decisions. Furthermore, the law changes periodically. Amendments to **The Labour Relations Act** or other legislation and subsequent board decisions may affect the rights and obligations discussed in this publication. Check the date of this Guide and ensure that there have been no changes since its publication.

If there is a conflict between the Act and this Guide, **The Labour Relations Act** and its Regulations prevail, and it is the Act and Regulations to which the Manitoba Labour Board will have regard in carrying out its administrative responsibilities and in making its decisions.

Ce guide existe également en français.

A GUIDE TO

# THE LABOUR RELATIONS ACT

## Manitoba Labour Board

The basic principles of **The Labour Relations Act**, since 1972, as set out in the preamble to the Act are:

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 representatives of employees.

# INTRODUCTION

**The purpose of this guide** is to set out in a straightforward manner an explanation of **The Labour Relations Act** and its implications for employers, unions and employees. The primary statute regulating labour relations and collective bargaining in Manitoba is **The Labour Relations Act** which covers most employees in the private and public sectors. Whether you are an employee, a union, or an employer, it is important for you to understand your rights and obligations under Manitoba's labour legislation. This guide will provide a good place to start.

**This guide will not** provide you with an exhaustive statement of labour law. It will only give you a simplified statement of the basic principles. The information contained in this guide may not answer your own particular problem. If you have a specific labour relations problem, you should consult a competent advisor, either a lawyer, or someone knowledgeable with the terms of **The Labour Relations Act** and the practices of the Manitoba Labour Board. Although the Manitoba Labour Board cannot provide you with legal advice as to what steps you should take in order to solve your own particular problem, it is always willing to provide general information about the Act and the Board.

## The Labour Relations Act

The Act is intended to provide a means whereby a group of employees can choose a union to represent them. They do so by satisfying the Manitoba Labour Board that the majority of them desire such representation. Once a union is certified by the Board, it can then bargain on behalf of the employees in the unit, to arrive at an agreement with the employer as to what wages the employees will be paid, and what benefits, working conditions and obligations they will have.

The Act contains a number of provisions that protect the right of employees to organize, free from interference by their employer. The Act also ensures that the union continues to be the representative of the employees for whom it holds bargaining rights. The Act is intended to promote orderly collective bargaining and there are a number of sections regulating the bargaining process, the content of collective agreements and the timing of strikes and lockouts. These and other matters will be dealt with more specifically throughout this Guide.

## The Manitoba Labour Board

**The Labour Relations Act** is administered by an independent administrative tribunal called the Manitoba Labour Board. This tribunal has specialized expertise in labour relations matters. It is composed of a chairperson, one or more vice-chairpersons and as many other members, in equal numbers of employee and employer representatives, as Cabinet chooses to appoint.

In some respects the Board proceeds in the same way as a court - it may hold hearings, witnesses give evidence under oath, and its decisions are legally binding. However, its proceedings are more informal than those of a court. Parties are entitled, but not required, to be represented by lawyers. Most cases are heard by a panel composed of a chairperson or vice-chairperson, a representative of employees and a representative of employers. The Board's labour relations officers may attempt to facilitate settlement between parties in many areas, including certification applications and unfair labour practice complaints.

The Manitoba Labour Board is responsible for applying **The Labour Relations Act** to individual cases. Section 141 of the Act allows the Board to make regulations and to formulate general guidelines to further the operation of the Act. The regulations and guidelines are outlined in Regulation 184/87R, Manitoba Labour Board Rules of Procedure and various Information Bulletins issued by the Board. The principles set out in this guide represent a combination of the provisions of the statute and the regulation together with the policies of the Manitoba Labour Board.

Where a statement in this guide is based upon a particular section of the Act, the section number has been indicated for reference purposes. Copies of the Act and Manitoba Labour Board Rules of Procedure are available from Statutory Publications at:
Manitoba Archives Building
10th Flr 155 Carlton Street
Winnipeg Manitoba R3C 3H8
Phone: 204-945-3101 or or 204-945-3103
(Toll Free 1-800-321-1203)

The offices of the Manitoba Labour Board are located in Winnipeg at:
Suite 500
175 Hargrave Street
Winnipeg, Manitoba R3C 3R8
Telephone 204-945-3783
Fax 204-945-1296

It should be noted that the Employment Standards Branch of Manitoba Labour and Immigration enforces the standards set by law for non-unionized workers regarding minimum wages, hours of work, holidays, vacation pay and other workplace benefits. The Employment Standards Branch distributes general information about employment standards in Manitoba, including the minimum standards required by law. If you have questions about specific work situations, or about any of the issues dealt with by the Employment Standards Branch, you may contact the Winnipeg office at:
Room 604 – 401 York Avenue
Winnipeg, Manitoba R3C 0P8
Telephone 204-945-3352
Fax 204-948-2085

The Conciliation and Mediation and Pay Equity Services Branch of Manitoba Labour assists labour and management with collective bargaining and resolution of grievances by responding to applications for conciliation and mediation services upon request of unions or employers, and acting as grievance mediators to resolve grievances under a collective agreement. In addition, the branch responds to inquiries and assists employers, unions and the general public in matters relating to pay equity issues. If you have any questions relating to these services, you may contact the branch at:
Room 606 - 401 York Avenue
Winnipeg, Manitoba R3C 0P8
Telephone 204-945-3367
Fax 204-945-3286

## APPLICATIONS AND COMPLAINTS - FILLING IN THE FORMS

All applications or complaints alleging a violation of any section of the Act are made on forms prescribed by the Board. The forms and rules govern the procedure before the Board and it is important that the forms be filled out carefully.

The person complaining to the Board is called the applicant. If a union is making a complaint on someone's behalf, the union is the applicant and the person on whose behalf the complaint is made is the person concerned. The person or organization or company against whom the complaint is made is called the respondent. The form should be read carefully and should set out the names and addresses of the parties. This is necessary so that everyone that may be affected can receive notice of the complaint. The sections of the Act violated must also be set out with a short statement of the actions that are believed to amount to a violation. It is important that all of the facts on which the complaint is based are summarized. The party against whom the complaint has been made is entitled to know the particulars of the complaint against it.

Except where the Board initiates a proceeding, every proceeding before the Board shall be commenced by the filing of an application or complaint, as the case may be, on Form A. [Rule 2(1)] Every application, complaint, reply, intervention, request, referral, statutory declaration or any other document filed with the Board in the course of any proceeding shall be filed in triplicate. [Rule 2(4)]

For more detailed information about completing and filing applications and complaints with the Board, contact the Registrar or a Board Officer at 204-945-3783.

Manitoba Labour Board
500-175 Hargrave Street
Winnipeg, Manitoba R3C 3R8

Note: Although the forms have been repealed (not contained in the "Manitoba Labour Board Rules of Procedure"), the forms are available for use to assist parties in the filing of various applications. Click here to access forms.

# OUTLINE OF THE LABOUR RELATIONS ACT

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| **Part VIII** | **Manitoba Labour Board and General Provisions** |
| Sections 133 – 150 | Establishment and composition of Board and panels, term of appointment and tenure, annual report, board powers and regulation-making authority, relationship between the Board and the courts, prosecutions and penalties. |

## GROUPS COVERED IN WHOLE OR PART BY OTHER LEGISLATION

**Unorganized workers.** This group refers to those employees not covered by collective agreements. Most of these employees are covered by minimum standards legislation such as **The Employment Standards Code.**

**Teachers.** Prior to August 18, 2000, **The Labour Relations Act** did not apply to a person or organization to which Part VIII of **The Public Schools Act** applied. With the passing of **The Public Schools Amendment and Consequential Amendments Act**, Chapter 43, **The Labour Relations Act** now applies to teachers, bargaining agents for units of teachers, and school boards. Further, a principal or vice principal employed by a school board is deemed to be an employee under **The Labour Relations Act**, and a unit that includes a principal or vice principal with other teachers is deemed to be a unit, appropriate for collective bargaining. Part VII of **The Labour Relations Act** applies with respect to the collective bargaining process, however, it does not apply to the dismissal of teachers or the determination of class size and composition.

**Firefighters.** They are covered by both **The Labour Relations Act** and **The Firefighters and Paramedics Arbitration Act.**

**Provincial Civil Servants.** They are covered by both **The Labour Relations Act** and **The Civil Service Act.**

**Municipal Police Officers.** They are covered by both **The Labour Relations Act** and by Sections 462 and 463 of **The City of Winnipeg Act.**

**Persons employed in industries or occupations regulated by Federal Labour Legislation.** The constitutional division of powers between the Province of Manitoba and the federal government results in labour relations matters concerning persons employed in areas regulated by the federal government being subject to federal labour laws. Federal government employees, people employed in inter-provincial transportation or communication (for example: railways, shipping, airlines) and other businesses under federal regulations such as banks, television and radio stations, and grain elevators are governed by federal legislation. Their minimum wages, hours of work, vacation pay and other conditions of employment, as well as collective bargaining rights, are determined by federal law, notably the Canada Labour Code.

**Employees exercising managerial and confidential functions.** People who primarily exercise management functions or who are employed in a confidential capacity in labour relations matters are excluded from the Act. A managerial or supervisory title does not, by itself, make a person managerial. The Manitoba Labour Board decides whether people will be excluded because they are managerial or confidential employees. [Sections 1, and 142(5)]

## OTHER LEGISLATION AFFECTING WORKERS

Non-unionized employees generally settle their wages and other working conditions individually with their employer. However, most individual employment relationships are affected by minimum standards legislation. Historically there has been an attempt to provide a basic framework of minimally acceptable working conditions by legislation. Employment Standards or minimum standards legislation deals with the rights of **individual workers**, whether or not they belong to a union or are subject to a collective agreement. In most cases, however, workers who are not covered by a collective agreement are governed by the **Employment Standards Code** and other related legislation.

The following is a partial description of the minimum standards legislation which governs the regulation of hours of work, wages and working conditions:

**The Employment Standards Code** is administered by the Employment Standards Branch of Manitoba Labour (phone: 945-3352 or long distance toll-free 1-800-821-4307). It governs such matters as hours of work, minimum wages, over-time pay, statutory holidays, the payment of equal pay for work of equal value by men and women, maternity leave, and notice of termination.

**The Construction Industry Wages Act** is also administered by the Employment Standards Branch of Manitoba Labour. This Act governs the hours of work and minimum wages paid in the heavy and building construction industries throughout the Province of Manitoba.

**The Workplace Safety and Health Act** is administered by the Workplace Safety and Health Branch of Manitoba Labour (phone: 945-3446). This Act regulates the working environment of Manitoba workers.

**The Pension Benefits Act** is administered by the Pension Commission of Manitoba Labour (phone: 945-2740). This legislation governs pensions under provincial jurisdiction.

**The Human Rights Code** is administered by the Manitoba Human Rights Commission (phone: 945-3007). This Act forbids discrimination with regard to hiring, dismissal, promotion, training, seniority, or any term or condition of employment on the basis of race, nationality, religion, colour, sex, age, marital status, physical or mental disability, ethnic or national origin, or political beliefs or family status of any Manitoban coming under its jurisdiction.

***ARE EMPLOYEES ENTITLED TO RECEIVE WAGES AND BENEFITS ABOVE THE BASIC MINIMUMS?***
Many employees have an individual or personal contract with their employer or are covered by a collective agreement which provides for wages and benefits above the basic minimums. In these situations, an employee's rights to the amounts above the minimum will depend upon the terms of the individual employment contract or the collective agreement.

# PART I: UNFAIR LABOUR PRACTICES & INFRINGEMENT OF RIGHTS

## INTERFERENCE WITH RIGHTS CONFERRED BY THE ACT – UNFAIR LABOUR PRACTICES

***CAN EMPLOYERS INTERFERE WITH THEIR EMPLOYEES' RIGHT TO JOIN A UNION?***

No. **The Labour Relations Act** protects the right of employees to join a union. [Section 5(1)] The Act states that no employer may interfere with the formation, selection or administration of a union. Employers must not try to influence their employees one way or another. [Sections 6(1) and 32(1)]

***DOES THE ACT IN ANY WAY PROHIBIT A UNION FROM INTERFERING WITH THE RIGHTS OF EMPLOYEES?***

Yes. A union is not allowed to use intimidation, fraud, coercion, or the imposition of a penalty to compel any person to join a union. Unions are also prohibited from unlawfully interfering with any person exercising their rights under the Act. [Sections 19 and 5(3)]

***TO WHAT EXTENT CAN EMPLOYERS IN MANITOBA LET EMPLOYEES KNOW ABOUT THEIR FEELINGS REGARDING UNIONIZATION DURING AN ORGANIZING DRIVE?***

Employers must exercise extreme caution when making their views about unions known. Employer conduct must not be designed to inhibit unionization.

Certain types of actions by employers will be deemed to be interference with the formation or selection of a union. For example, employers are not allowed to indicate to their employees that they object to unions or to a particular union, or that they prefer one union over another, or that their attitude or policies will change in any way if the union is certified or if a collective agreement is entered into.

However, the employer is free to express its views, or make a statement of fact, as long as it does not use intimidation, coercion, threats, or undue influence or interfere with the formation or selection of a union. [Sections 6(1), 6(3), 17, and 32(1)]

***WHAT CAN THE UNION DO IF AN EMPLOYER'S CONDUCT HAS THE EFFECT OF INHIBITING UNIONIZATION?***

The union can apply to the Labour Board if it has evidence of membership support adequate for purposes of collective bargaining and ask the Board to certify it without a vote. If the Board feels that a vote is not likely to disclose the true wishes of the employees because an unfair labour practice was committed, it will grant certification. The Board must find that the employer's conduct violated the Act before it will certify a union in this way. [Section 41]

***WHAT IF THE EMPLOYER INFLUENCES OR DOMINATES THE UNION RATHER THAN OPPOSE IT?***

A union that is influenced or dominated by an employer will not be certified by the Board. An employer is not allowed to support a union in any way. However, an employer will not be contravening the Act if it provides free transportation to representatives of a union for purposes of collective bargaining, permits the union to use its premises for purposes of the union, appears on an application for certification or decertification for purposes of providing information to the Board about the appropriateness of the unit for purposes of collective bargaining, provides financial support to pension, health or other trust funds established for the sole purpose of providing benefits to its employees, and/or allows an employee or a union representative to meet with him during working hours or to attend to union business during working hours without a deduction of wages. [Sections 43 and 6(3)]

***CAN AN EMPLOYER FIRE OR REFUSE TO EMPLOY A PERSON BECAUSE THE PERSON IS A UNION SUPPORTER?***

No. It is contrary to the Act for employees to be fired or penalized because they support a union. If this happens, the person or the union may file an unfair labour practice complaint with the Board. The employer must then prove to the Board that the persons were fired or not hired for some other reason, and not because they were union supporters. [Section 7]

***WHAT HAPPENS WHEN AN UNFAIR LABOUR PRACTICE COMPLAINT IS MADE?***

The Board may send out one of its Board Officers to try to settle the matter. If a settlement cannot be reached, the Board will either hold a hearing or dismiss the complaint if it is clear that there is no legal basis for it. At a hearing involving a dismissal, the onus will be upon the employer to prove that the discharge was not related to lawful union activities. [Sections 7, 30, and 31, Rules 19(1) to (4)]

The key issue is whether or not the employees were fired for exercising their rights under **The Labour Relations Act.** The Board does not rule on the fairness "of the firing". An employer may have grounds for firing an employee, but these grounds must be the reason for the firing and not just the excuse for the firing. The Act will have been violated if the Board finds that an employee's union activity was the real reason or part of the real reason for the firing.

***WHAT WILL HAPPEN IF THE BOARD DECIDES THAT AN EMPLOYEE WAS FIRED FOR UNION ACTIVITY?***

The Board has a number of broad remedial powers available to it. The Board has the discretion, for example, to order reinstatement, with back pay and interest. It may order that the employee be reimbursed for lost wages until another job is found, and that the employer sign and post notices stating that it violated **The Labour Relations Act** and that it will comply with the Act in the future. The Board has also in the past given a union access to employees on company time and company premises and required the employer to post certain notices. [Section 31(4)]

The amount of any back pay awarded to an employee will be decreased by any amount the employee has earned at another job between the time of discharge and reinstatement. If the employee did not look for other employment, the back pay awarded may also be decreased by the amount that could have been earned if the employee had actively sought a job.

***CAN AN EMPLOYEE BE FIRED FOR TAKING AN ACTIVE ROLE IN THE UNION?***

No. An employee may not be fired for engaging in lawful union activity as set out in **The Labour Relations Act.**

***CAN EMPLOYEES JOIN A UNION DURING WORKING HOURS?***

Generally speaking, union activities including signing union cards should be carried out during non-working hours, such as lunch and coffee breaks and before and after shifts. Engaging in this activity during working hours must be avoided if it would disrupt business operation. Union representatives will not be allowed on employers' premises without their permission for purposes of union organizing. The only exception to this is if the union obtains a Board order permitting its organizers to have access to the property where employees reside on land owned by or under the control of an employer. Such a situation would usually only arise in remote logging and mining camps. [Sections 33(2), 21 and 22]

Employers are not allowed to punish or dismiss employees merely because they have signed union cards during working hours. The employer is however allowed to take appropriate disciplinary action if the employees' union activities disrupt the employer's business operations. [Section 33(2)]

***WHAT OTHER ACTS BY AN EMPLOYER ARE UNFAIR LABOUR PRACTICES?***

Other unfair labour practices include:

- transferring, suspending, or altering the status of an employee who is a member of a union or who has applied for membership in the union [Section 9]

- changing the terms and conditions of the employment without the approval of the Board after the union has applied for certification, after certification but before a collective agreement has been concluded without the approval of the union, and for one year after the termination of a collective agreement. [Section 10]

- imposing a condition in the contract of employment or collective agreement which restrains employees from exercising their rights under the Act. [Section 23(1)]

- bargaining with one union when another union holds the bargaining rights. [Section 24(1)]

- during a job interview, inquiring as to whether a person is a union member or is involved in union activities. [Section 25]

- engaging in strike-related misconduct [Sections 1 and 14.1]

***WHAT ACTS BY A UNION ARE UNFAIR LABOUR PRACTICES?***

- suspending, expelling or penalizing a member because he or she has refused to engage in or refused to continue to engage in a strike prohibited under the Act. [Section 19(a)]

- requiring an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the union for a reason other than a failure to pay the periodic dues, assessments, and initiation fees. [Section 19(b)]

- expelling or suspending an employee from membership by applying to him in a discriminatory manner the membership rules of the union. [Section 19(c)]

- seeking by intimidation, fraud or coercion, or the imposition of a pecuniary or any other penalty, to compel or induce a person to become or refrain from becoming a member or officer of a union. [Section 19(d)]

This is not a complete list. Other unfair labour practices will be dealt with elsewhere in this Guide.

***WHAT CAN THE EMPLOYER OR UNION DO IF THE PARTY COMMITS ANY OF THESE UNFAIR LABOUR PRACTICES?***

The party may file a complaint under Part I of the Act and ask the Board for an order forbidding the other party to continue committing the unfair labour practices or to compensate the employer, union or employee for any damage done by the unfair labour practices. This can be done by filing a form available from the Board (click here to access forms).

# UNION'S DUTY OF FAIR REPRESENTATION

***WHAT IS THE NATURE OF THE UNION'S DUTY IN REPRESENTING EMPLOYEES COVERED BY A COLLECTIVE AGREEMENT?***

**The Labour Relations Act** imposes a duty upon a union to fairly represent all of the employees in the bargaining unit covered by the collective agreement, whether or not the employees are union members, in any matter arising out of the administration of the collective agreement. It is an unfair labour practice for a union to represent employees in a manner that is arbitrary, discriminatory, or in bad faith, when they are administering a collective agreement. In dismissal cases, the union will be committing an unfair labour practice if it acts negligently. If, for example, an employee's complaint concerns the alleged mishandling of a grievance, a breach of that duty will not be established if the employees simply show that the union could have, or even should have, treated the grievance differently. It is not whether the union was right or wrong that is the concern of the Board, but whether the union's actions were motivated by bad faith, whether it was discriminating against the employee or whether it acted in an arbitrary manner, and, in a dismissal case, whether the union failed to take reasonable care. [Section 20]

***WHAT ACTIONS ON THE PART OF A UNION WILL BE CONSIDERED ARBITRARY, DISCRIMINATORY OR IN BAD FAITH?***

**Arbitrary** refers to the absence in decision making of those factors which should be present. Unions have been found to act arbitrarily when they completely ignore a grievance or where they treat a matter in an indifferent fashion. However, it is not arbitrary for a union to put its mind to a complaint or grievance and honestly decide not to take the complaint or grievance further.

The duty not to act in a **discriminatory** manner protects against the making of distinctions between employees and groups of employees for reasons that have no relevance to legitimate collective bargaining concerns. A union is only entitled to treat members of a bargaining unit differently where it has valid reasons for doing so.

The **bad faith** requirement ensures that the union will act honestly and free of any personal animosity toward members of the bargaining unit. A union acts in bad faith when its conduct is motivated by ill-will, hostility, or for some reason which has nothing to do with the matter at hand.

***CAN A UNION REFUSE TO PROCESS A GRIEVANCE OR REFER IT TO ARBITRATION?***

A union is entitled to make decisions that may adversely affect some employees in the bargaining unit as long as it is not acting on improper motives and honestly considers the matter. The duty of fair representation does not impose an absolute duty on a union to carry every grievance filed by an employee to arbitration.

***WHAT FACTORS MUST A UNION CONSIDER WHEN DECIDING WHETHER OR NOT TO PROCESS A GRIEVANCE OR REFER IT TO ARBITRATION?***

The union is entitled to consider many factors, including the merits of a grievance, the relative chances of success and the interests of the bargaining unit as a whole. Union officials may make honest mistakes or exercise poor judgement but these occurrences may not in themselves be a violation of **The Labour Relations Act.** The standard of care required will vary according to the seriousness of the consequences and the nature of the job interest at stake.

***DOES THE BOARD RESOLVE THE MERITS OF AN EMPLOYEE'S GRIEVANCE WHEN THE UNION REFUSES TO REFER IT TO ARBITRATION?***

No. While the merits of the grievance may be relevant in assessing the union's conduct, the Board will not resolve the merits of the grievance. This is a matter for an arbitrator or arbitration board established in accordance with the terms of the collective agreement. However, when the union is found to have breached the Act, the Board may refer a grievance to arbitration. For this reason, the Board may add the employer as a party in a fair representation complaint.

***WHY IS THE EMPLOYER ADDED AS A PARTY?***

The remedy sought by an employee alleging a breach of the duty of fair representation usually affects the employer. Therefore, the employer should be named as a party to the complaint. The person will have the opportunity to present the full merits of the grievance to an arbitration board if the union is found to have committed a breach of its statutory duty and arbitration is ordered.

***WHAT CAN BE DONE IF AN EMPLOYEE FEELS THE UNION HAS ACTED CONTRARY TO ITS DUTY?***

It is not necessary for an employee to be a union member to file a complaint against a union under the Act. Any employee in the bargaining unit who is subjected to union treatment that is allegedly arbitrary, discriminatory or in bad faith, or in the case of a dismissal, without reasonable care, may file such a complaint. An employee who thinks that the union has violated its duty may submit a complaint to the Board on a form available from the Board (click here to access forms).

***WHAT HAPPENS AFTER A COMPLAINT IS FILED?***

Once a complaint is filed, the Board may appoint a Board Officer to attempt to settle the dispute. If the Board Officer cannot help the parties reach a settlement, the Board may hold a hearing to deal with the allegations made by the employee. [Sections 30(3) and 31(1)] Upon receipt of a properly-completed application, the Board will review it and determine whether there is a *prima facie* case; i.e. whether the allegations and supporting evidence contained in the application, if proven true, could constitute a violation of Section 20. If the Board is not satisfied that a *prima facie* case has been established, the application may be dismissed without the holding of a hearing. [Rule 5(5)] Additionally, the Board may dismiss a complaint or application at any time if it concludes that the complaint or application is "without merit". [Section 140(8)]

***WHAT CAN THE BOARD DO IF IT FINDS THAT THE UNION HAS NOT FAIRLY REPRESENTED THE EMPLOYEE?***

The Board may issue various orders including a cease and desist direction; an award of compensation and interest; a referral of the grievance to arbitration [Section 31(4)]; and, a requirement that the union sign and distribute notices stating that it was found in violation of **The Labour Relations Act** and undertakes to comply with the Act in the future.

## ACCESS AGREEMENTS

***AFTER THE UNION IS CERTIFIED, IS THE UNION REPRESENTATIVE ALLOWED TO VISIT EMPLOYEES IN THE BARGAINING UNIT AT THE WORKPLACE?***

Yes. Once the union is certified, it has the right to negotiate an access agreement with the employer. The first meeting to conclude an access agreement should take place within fourteen days of the certification of the union or at such later time as the union and employer jointly agree. [Section 22(2), (3)]

***WILL THE LABOUR BOARD ASSIST THE PARTIES TO REACH AN ACCESS AGREEMENT?***

Yes. Either party can request the Board in writing to appoint a Board representative to confer with the parties in order to reach an access agreement. The parties must then meet with the Board representative for purposes of concluding such an agreement. [Section 22(4)] All access agreements must be committed to writing and a copy filed with the Labour Board. [Section 22(5)]

***WHAT HAPPENS IF THE UNION AND THE EMPLOYER CANNOT REACH AN AGREEMENT?***

Either party may apply to the Board for an access order which will allow representatives of the union to visit the employers' work place for the purpose of communicating with the employees in the bargaining unit. [Section 22(6)]

***DO THE PARTIES HAVE TO CONCLUDE A SEPARATE ACCESS AGREEMENT OR CAN THEY INCLUDE TERMS OF ACCESS IN THEIR REGULAR COLLECTIVE AGREEMENTS?***

The parties can include access rights in their regular collective agreements. However, where collective agreements have not yet been negotiated, or did not contain access rights at the time this legislation came into force, the parties may want to enter into a separate access agreement. As well, a separate access agreement will continue even after the collective agreement expires. Such rights are enforceable by the Board.

# PART II: CERTIFICATION & BARGAINING RIGHTS

## HOW TO JOIN OR FORM A UNION

***WHAT IS A UNION?***

A union is an organization of employees formed for purposes of regulating the relations of the employees and their employers. It may be a local union, a provincial, national, or international union, or a certified council of unions. It may also be an independent employee union. Before such an organization can bargain on behalf of employees and enter into binding collective agreements, it must prove to the Manitoba Labour Board that it is a "union" within the meaning of **The Labour Relations Act**. It must prove its "status." [Section 1, Rule 7]

***WHAT STEPS CAN EMPLOYEES TAKE IF THEY WANT TO JOIN A UNION?***

Many employees opt to join an existing union, with a pre-established constitution and bylaws. This is usually done by contacting an existing union to determine whether that particular union will meet the needs of the employees. Many unions are listed in the yellow pages of the telephone directory under the heading **LABOUR ORGANIZATIONS.**

***WHAT IF THE EMPLOYEES DO NOT WISH TO JOIN AN EXISTING UNION?***

It is up to the Manitoba Labour Board to decide whether or not an organization qualifies as a union. Persons not wishing to join an existing union should contact the Manitoba Labour Board for further information.

***MUST A UNION PROVE ITS STATUS EVERY TIME IT SEEKS TO BE CERTIFIED?***

No. A union has to prove its status before the Manitoba Labour Board when it files its first application with the Board. However, just because an organization has been recognized as a union in another province or by the Canada Labour Relations Board, does not mean that it will automatically be recognized as a union under the Manitoba **Labour Relations Act.** The first time that it appears in a proceeding before the Manitoba Labour Board, such an organization must prove that it is a union within the meaning of the Act. Either prior to, or at, its first appearance before the Board, every union must file the following information with the Board:

- A statement indicating whether the union is an international, national or provincial organization, and the name and address of the parent organization.
- A copy of its constitution, including a copy of the local branch charter and bylaws.
- If the organization is an association of employees, a copy of the minutes of its originating meeting in addition to its constitution and bylaws.
- A list of the names and addresses of the principal office holders and the offices held by those office holders made on a form specified by the Board. [Rule 7]

***CAN AN EMPLOYER ASSIST EMPLOYEES IN THE FORMATION OF A UNION?***

No. The Act prohibits the Board from certifying any organization where the administration, management or policies of the organization are influenced or dominated by the employer. Furthermore, any agreements entered into between such an organization and the employer shall be deemed not to be a collective agreement for purposes of the Act. [Section 43]

***ARE THERE ANY OTHER IMPORTANT POINTS EMPLOYEES SHOULD KNOW ABOUT WHEN THEY JOIN OR FORM A UNION?***

Yes. A union cannot refuse membership to, expel, suspend or otherwise discriminate against persons or negotiate agreements that would discriminate against persons because of race, nationality, religion, colour, sex, age, marital status, physical or mental handicap, ethnic or national origin, political beliefs or family status. [**Human Rights Code** - Sections 14(6) and 9(2)]

***CAN AN ASSOCIATION BE RECOGNIZED AS A UNION?***

Yes. The test is whether or not the organization meets the criteria established by the Act and applied by the Board, not what it calls itself. For example, groups such as the University of Manitoba Faculty Association, the International Association of Machinists and Aerospace Workers, and the Winnipeg Police Association are recognized as unions. A union may be an independent local organization that is not affiliated with any other union or association. It will still qualify as a union under the Act.

***CAN ONE UNION MERGE WITH ANOTHER UNION?***

Yes.

***WHAT HAPPENS WHEN SUCH A MERGER TAKES PLACE?***

Upon receiving such an application, the Board may declare that the successor union has or has not acquired the rights, privileges and obligations of the predecessor union. If the Board determines that a successor has acquired the rights, privileges and obligations of a previous union, the successor becomes the bargaining agent, is bound by any collective agreement in place at the time the declaration was made, and becomes, or is entitled to become, a party to any other proceedings under the Act or a collective agreement affecting those employees.

***CAN A UNION LOSE ITS STATUS?***

Yes. It is possible for the Board to decide that an organization that was once recognized as a union is no longer a union. This could happen if there have been major changes in the structure or function of the organization. Changes in the internal operation of a union would seldom be sufficient reason for an organization to lose its status as a union as long as these changes were in accordance with the union's constitution. [Sections 142(5); also see Sections 52 and 53]

## EVIDENCE OF UNION MEMBERSHIP

***WHAT MEMBERSHIP EVIDENCE DOES THE UNION HAVE TO SUBMIT TO THE BOARD WHEN SEEKING CERTIFICATION?***

The union must prove to the Board that the person either made an application for membership in the union or was a member of a union prior to the date of application and did not take steps to terminate his or her membership in the union. In addition, the person's membership must not have been terminated or suspended by the union on the date of application. In most cases, a person applies for union membership by signing a card that states he or she wishes to be represented by the union. [Section 45(2)]

The Board requires that the application for membership be signed by the person applying for membership. The signature on the membership card may then be checked by an officer of the Labour Board against a sample signature obtained from the employer.

***IS THE UNION REQUIRED TO PROVIDE THE BOARD WITH ANY OTHER INFORMATION?***

Yes. At the time a union files a certification application, it must also file a list marked "L" which shows in alphabetical order the names, addresses, and classifications of each employee the union claims to represent. [Rule 8(2)] The union's membership evidence must be duly certified by the secretary of the applicant union or another authorized person. [Rule 8(3)]

***CAN THE BOARD DISCLOSE THE UNION'S MEMBERSHIP EVIDENCE TO THE EMPLOYER?***

No. The Act clearly states that no person, except with the consent of the Board, shall disclose to anyone whether another person is or is not a member of a union. [Section 45(6)]

***WHAT HAPPENS TO UNION MEMBERSHIP EVIDENCE OBTAINED BY INTIMIDATION, COERCION OR FRAUD?***

It will not be accepted. If an employee files an objection to the certification application on grounds that the union used intimidation, fraud or coercion, the Board may either dismiss the application or order a representation vote to determine whether the employees in the unit want to be represented by the union. [Sections 47(2) and 45(4)]

***DOES THE UNION OR EMPLOYER KNOW THE NAME OF THE EMPLOYEE(S) WHO OBJECT TO THE APPLICATION?***

Where, in accordance with the Act or the regulations, an objection to an application for certification is filed by an employee or a group of employees, the Board, upon receipt, shall serve a copy of any such objection, in its entirety, with the signature thereon, on the applicant union, the employer and any other interested party. [Rule 9(2)]

***WHAT HAPPENS IF THERE IS A DISPUTE ABOUT WHETHER A PERSON IS AN EMPLOYEE?***

Normally this issue is settled by the Board during the certification proceedings. If, however, during either bargaining or the term of the collective agreement such a question comes up, the Board can be asked to settle it. [Section 142(5)]

***CAN THE BOARD CERTIFY A UNION EVEN IF THERE IS A DISPUTE ABOUT WHETHER OR NOT A PERSON IS AN EMPLOYEE?***

Yes, in some cases. If the Board is satisfied that the union has adequate support for collective bargaining, whether or not the person in dispute is included in the bargaining unit, the Board may grant interim certification to the union pending resolution of the dispute. [Section 39(4)]

# HOW UNIONS GET BARGAINING RIGHTS

***HOW DOES A UNION ACQUIRE THE RIGHT TO REPRESENT EMPLOYEES IN NEGOTIATIONS WITH THEIR EMPLOYER?***

There are two methods. The first, and most common is certification. An application for certification is made to the Manitoba Labour Board, which will issue a Certificate declaring that the union is the exclusive bargaining agent for a defined group of employees the Board considers appropriate for collective bargaining, if all the requirements of the Act are satisfied. [Section 40] The second method is called voluntary recognition. The employer agrees in writing to voluntarily recognize a union as the exclusive bargaining agent for a group of employees which are defined in the agreement. While a union which has been voluntarily recognized enjoys some of the same privileges and has some of the same obligations as a certified union, it does not have all of the same rights or protection in law.

***DOES THE UNION HAVE AN OBLIGATION TO PROVIDE INFORMATION TO AN EMPLOYEE RESPECTING UNION INITIATION FEES AND REGULAR MEMBERSHIP DUES?***

Yes. A union that solicits the support of an employee for an application for certification shall, at the time of solicitation, provide the employee with information respecting the amount payable for any initiation fees and regular membership dues. Proof of compliance with this subsection must be submitted to the Board. [Sections 45(3.1) and 45(3.2)]

***WHAT RIGHTS DOES A UNION HAVE ONCE IT IS CERTIFIED?***

A union obtains five critical rights. First, it becomes the exclusive bargaining agent for all of the employees in the bargaining unit, whether or not they are members of the union. This means that the employer cannot settle wages and working conditions directly with any employee in the bargaining unit, but must negotiate with the union that has been certified. [Section 44]

Second, the representatives of the certified union have the right as agreed to in the access agreement to visit the employer's workplace for the purpose of communicating with employees in the newly certified unit. [Section 22]

Third, upon request the union is entitled to obtain information from the employer about the employees in the bargaining unit. The employer must provide the union with the job title or classification of each employee, the rate of pay in each classification and any other benefits to which the employees are entitled, as well as the cost to the employer of all of the benefits to which the employees in each classification are entitled. Failure on the part of the employer to provide this information constitutes an unfair labour practice. [Sections 66(1) and 27]

Fourth, the union and the employer obtain the right to insist that each party bargain in good faith in order to reach a collective agreement. Both the employer and the union are under a legal obligation to make every reasonable effort to conclude a collective agreement. Unions and employers that do not bargain in good faith are committing an unfair labour practice and will be subject to the remedial powers in the Act. [Sections 26 and 62]

Finally, the union and the employer obtain the right to apply to the Board to have a first collective agreement settled on the parties by the Board if they cannot come to an agreement by themselves. [Section 87]

***WHEN CAN A UNION APPLY FOR CERTIFICATION?***

If a bargaining agent has not been certified under the Act and no collective agreement in respect of the employees in a unit is in force, a union may file an application for certification any time they feel they have sufficient support from employees. [Section 34(2)]

If a group of employees who are covered by a collective agreement wish to change unions, the union seeking to be certified must make application to the Board during what is commonly called the open season. For example, if the collective agreement is for a term of one year only, then an application can only be made during the seventh, eighth and ninth months of the term of the one year agreement. Where the collective agreement is for a period of two years or more, an application can only be made during the three months immediately preceding any anniversary date except that, during the last year of the operation of the agreement, the application must be filed during the seventh, eighth or ninth months of that last year. [Section 35(2)]

If a group of employees are represented by a certified bargaining agent but no collective agreement is in force, they cannot file an application until 12 months after the date on which the bargaining agent was certified or 12 months after the conclusion of any court proceedings arising from the certification of the bargaining agent, whichever is later. [Section 35(1)]

It should be understood that the above are only examples as there are other restrictions which might affect an application. Information dealing with your particular situation can be obtained from the Board offices.

***WHEN CAN A UNION REAPPLY FOR CERTIFICATION IF ITS FIRST APPLICATION IS UNSUCCESSFUL?***

A union must wait six months to reapply unless it obtains special leave from the Board to reapply sooner. A union may not have to wait six months where the Board is satisfied that its first application was rejected or refused because of a technical error. [Rules 8(14) to (16)]

***CAN AN EMPLOYER SUGGEST THAT EMPLOYEES RESIGN THEIR MEMBERSHIP IN THE UNION?***

No.

***CAN AN EMPLOYER SUGGEST THAT EMPLOYEES FILE A STATEMENT INDICATING THAT THE UNION INTIMIDATED, COERCED OR THREATENED PERSONS TO BECOME MEMBERS OF THE UNION?***

No.

***WHAT CAN A UNION DO IF IT HAS EVIDENCE INDICATING THAT A STATEMENT SUBMITTED TO THE BOARD BY OBJECTING EMPLOYEES IS NOT, IN FACT, A VOLUNTARY EXPRESSION OF THE WISHES OF THE SIGNING EMPLOYEES?***

The union should immediately inform the Board, in writing, detailing its allegations and the facts it has uncovered. Then at the hearing, a union representative will be given the opportunity to cross-examine the people who testify on behalf of the statement. The union may also present evidence, through its own witnesses, about the statement of the objecting employees. The union may make an application for the Board to use its discretionary certification power.

## THE CERTIFICATION APPLICATION

***HOW DOES A UNION APPLY FOR CERTIFICATION?***

Normally, a union applies for certification on **Form I – Application for Certification**. The forms can be obtained from the Manitoba Labour Board. Three copies must be filed with the Board. In addition, membership evidence indicating that the union has the required support of the employees in the bargaining unit must be filed with the application. [Rules 8(1) to 11(2)]

***HOW IS AN APPLICATION FILED WITH THE BOARD?***

Any document, including applications, complaints, letters or membership evidence may be filed with the Board either by delivery to the offices of the Board or by registered mail addressed to the Registrar, Manitoba Labour Board.

***WHAT HAPPENS AFTER A UNION FILES ITS APPLICATION FOR CERTIFICATION WITH THE BOARD?***

When it receives the application, the Board immediately stamps a date upon the application, which becomes the important date for purposes of the date of application certification system. The Board then informs both the union and the employer of the date and time of the representation vote planning meeting and date of hearing. A tentative hearing date is usually scheduled four Fridays after the date the application is filed with the Board. A representation vote planning meeting usually takes place within four days after the application is filed with the Board and has been served upon the employer.

***WHAT DOES THE DATE OF APPLICATION CERTIFICATION SYSTEM MEAN?***

The adoption of the date of application system means that even where a majority of employees indicate that they have changed their minds, after the application for certification is filed, in the absence of improprieties related to the organizational campaign, the Board shall satisfy itself as to union membership support as of the date of the application for certification. [Section 40(1)]

***DOES THIS MEAN EMPLOYEES CANNOT CHANGE THEIR MINDS ONCE THEY HAVE SIGNED A UNION MEMBERSHIP APPLICATION?***

No. Every person has the right to terminate his or her membership in the union, prior to the date of application, by taking reasonable steps to do so. These cards will then not count for purposes of the application for certification. [Section 45(2)]

***CAN THE PARTIES WAIVE HEARINGS BEFORE THE BOARD?***

Yes. The Board may dispose of an application, complaint, request or referral without the holding of a hearing. [Rule 5(5)] The Board will advise the parties that since there are no outstanding issues, the hearing has been cancelled. If the parties feel a hearing is necessary, they are to advise the Board immediately. In an application for certification, if there are no outstanding issues between the parties, the Board shall satisfy itself as to union membership support and determine whether certification is granted.

***DOES THE BOARD ALWAYS HOLD AN ORAL HEARING?***

No. The Board may decide not to hold an oral hearing, and instead provide the parties with an opportunity to present their evidence and make their representations in writing. [Section 140(2)]

***ARE THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT NOTIFIED ABOUT THE APPLICATION FOR CERTIFICATION?***

Yes. The Board makes sure that the employer posts **Form III – Notice to Employees of Filing of Application for Certification** and an **Information to Employees** notice. The posting of this material ensures that employees are fully informed about the details of the application. It also provides instructions for employees who wish to make their views known to the Board.

***WHO MAY ATTEND A CERTIFICATION HEARING?***

All Board hearings are open to the public unless the Board decides that an in-camera hearing is necessary. [Section 140(3)]

***ONCE A CERTIFICATION APPLICATION IS FILED, HOW CAN AN EMPLOYER PARTICIPATE AT THE HEARING?***

The employer's right to participate at a certification hearing is limited to providing the Board with information for determining the appropriateness of a bargaining unit or for conducting a representation vote. If the Board asks the employer to provide this information, the employer must provide the information. However, an employer has no input into the Board's determination of whether or not the employees wish to be represented by a union. [Section 47(1)]

***ONCE A CERTIFICATION APPLICATION IS FILED, HOW CAN AN EMPLOYEE PARTICIPATE AT THE HEARING?***

Any employee in the proposed unit has the right to file an objection to the certification application on the basis that the union failed to provide information to the employee respecting any initiation fees and regular membership dues, or used intimidation, fraud, coercion or threatened to impose a penalty when it was soliciting union memberships. [Sections 45(3.1), 45(4), and 47(2)] Employees objecting to a certification application must file a written statement with the Board setting out the reasons for the objection within two working days from the date the notice to employees is posted on the employer's premises. [Rule 9(1)] The Board shall serve a copy of any such objection, in its entirety, with the signature thereon, on the applicant union, the employer, and any other interested party. [Rule 9(2)]

***WHAT IS AN INTERVENOR?***

When an application for certification is received, the Board will notify any other union that appears to already represent any of the affected employees. If any such union feels that the applicant organization is seeking to represent employees for whom it already has bargaining rights, it can file an "intervention". The union would file a **Form V: Notice of Intervention** setting out the grounds upon which the union claims to be interested in the certification proceedings. This will ensure that the intervening union will have an opportunity to protect its interests at the hearing. [Rule 10(1)]

Where an intervening union claims to be entitled to be recognized as the bargaining agent, it may file a cross application for certification in addition to a Notice of Intervention. [Rule 10(2)]

***WHAT HAPPENS AT A CERTIFICATION HEARING?***

A wide variety of matters may be discussed. The two main issues that require determination by the Board are whether the group applied for forms a unit appropriate for collective bargaining and whether the union has sufficient employee membership support. In addition, the Board must be satisfied that the applicant is a union as defined by the Act.

***HOW DOES THE LABOUR BOARD DETERMINE WHETHER EMPLOYEES WISH TO BE REPRESENTED BY A UNION?***

When an application for certification is received, and the Board is satisfied that the employees were not subject to intimidation, fraud, coercion or threat and that their wishes for union representation were expressed freely, the Board will determine the union membership support by confirming the number of membership cards the union submits with its application for certification and comparing the result with the information the employer submits. [Section 40(1)]

***WHAT PERCENTAGE OF THE EMPLOYEES IN THE BARGAINING UNIT MUST BELONG TO THE UNION BEFORE IT CAN APPLY FOR CERTIFICATION?***

The union must have the support of at least 40% of the employees in the proposed bargaining unit.

The Board is required to conduct the representation vote within seven days after the date the application is filed. [Section 48(3) and 48(5)]

However, if the Board is satisfied that exceptional circumstances exist which warrant an extension of time to conduct the vote, it may extend the time for taking the vote. [Section 48(4)]

If the Board is satisfied that, at the time the application was filed, fewer than 40% of the employees wish to have the union represent them, it shall dismiss the application. [Section 40(1)(b)]

Where the Board has not as yet determined the composition of the appropriate bargaining unit, it shall take into account the union's proposed bargaining unit description and any alternate bargaining unit description proposed by the employer when it determines the voting constituency. [Section 40(1.1)]

However, if another union already represents the employees and if that union does not consent to or objects to the certification application, the Board will order a vote provided the union applying for certification has the support of at least 45% of the employees in the unit. [Section 40(2)]

When such a vote is ordered, employees are given the choice of which union they wish to have represent them.

***WHAT IF ANY PARTY ATTEMPTS TO INFLUENCE THE VOTE?***

Where the Board conducts a representation vote, and the union or employer, on the day of the vote, at the place of work or polling place distributes printed material or engages in electioneering for the purpose of influencing the vote, such action may be deemed an unfair labour practice. [Section 48.1(1)]

***WHAT HAPPENS IF THE EMPLOYER HAS COMMITTED AN UNFAIR LABOUR PRACTICE SO THAT EMPLOYEES ARE AFRAID TO JOIN OR VOTE IN FAVOUR OF A UNION?***

If this has happened and the Board is satisfied that the true wishes of the employees are not likely to be ascertained, it may certify the union even though the union has less than 40% of the employees as members, provided the Board finds that the membership support is adequate for purposes of collective bargaining. [Section 41]

# DETERMINING THE APPROPRIATE BARGAINING UNIT

***WHAT IS A BARGAINING UNIT?***

The bargaining unit is the group of employees that a union is certified to represent. The Board has the discretion to determine which unit is appropriate for collective bargaining. [Section 1, 39 and 142(5)(h)]

***HOW IS THE BARGAINING UNIT DETERMINED?***

A union makes an application for certification for a unit it claims to be appropriate. The Board then decides whether the unit of employees applied for is appropriate for collective bargaining.

***WHAT CRITERIA DOES THE BOARD USE IN DECIDING WHICH UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING?***

The Board takes into consideration a number of factors including the following:

- The views of the employer and the union.
- The community of interest among employees. This involves taking into account such factors as the nature of the work performed, the conditions of employment, and the skills of the employees.
- The organizational structure of the employer.
- The desire not to split the work force of one employer into too many bargaining units.

***WHAT GEOGRAPHIC LIMITS DOES THE BOARD PLACE ON BARGAINING UNITS?***

If an employer carries on business in only one location in a city or town, the Board will normally limit the unit to the municipality. If business is carried on at more than one location, the Board will often make each place of business a separate bargaining unit. Sometimes, however, the operations at two or more locations are so integrated and the community of interest shared by employees is so complete, that a larger unit covering all locations is desirable.

***WHAT HAPPENS TO STUDENTS AND PART-TIME EMPLOYEES?***

Any employee who works on a regular recurring basis may be included for the purposes of determining the applicant union's support level in the unit regardless of the number of hours worked each week. There are two exceptions to this rule. Term employees who are replacing an employee on vacation or other leave of absence will not be included. Neither will employees who were hired for a period of up to twelve weeks just before the certification application was filed. [Rule 28]

***ONCE A BARGAINING UNIT HAS BEEN DETERMINED, HOW DOES THE BOARD DECIDE WHETHER OR NOT TO CERTIFY THE UNION?***

The Board must satisfy itself that the union has sufficient support among the employees in the bargaining unit to conduct a Representation Vote. The Board then considers the wishes of the majority of the eligible voters who cast a ballot in the Representation Vote.

***WHAT IS THE EMPLOYER'S OBLIGATION ONCE A CERTIFICATION APPLICATION HAS BEEN FILED?***

Once a certification application has been filed, a Board Officer will serve Notice of the application, which includes **Form II: Notice to Employer of Filing of Application for Certification**, on the employer. Every employer must, within two (2) days of receiving notice, file a nominal roll with the Labour Board. A nominal roll is a complete list of all the names, addresses and classification of all employees in the proposed bargaining unit. [Rules 8(9) and (10)] The employer may propose a different bargaining unit, or claim that certain employees should be included in, or excluded from, the bargaining unit. [Rules 8(11) and (12)] The employer would note the changes it seeks when filing the nominal roll. The employer must also file a list of employee classifications with the Board which specifies the number of employees in each classification. [Rule 8(9)] This list is made available to the union, but the nominal roll is not open to inspection. [Rule 8(10)] If both the union and the employer agree on the description of the bargaining unit, it will generally be accepted by the Board. If, however, different units are proposed, the Board makes the final decision. [Section 39(1)]

# REPRESENTATION VOTES

***WHAT IS A REPRESENTATION VOTE?***

A representation vote is a vote conducted by the Board among the employees in a bargaining unit to determine whether they wish to be represented by a union. Representation votes are ordered in certification applications where the Board is satisfied that the employees were not subject to intimidation, fraud, coercion or threat and that their wishes for union representation were expressed freely, and at least 40% of the employees in the unit wish to have the union represent them.

***WHAT PROCEDURE IS USED AFTER THE BOARD ORDERS A REPRESENTATION VOTE?***

Once the Board orders a vote either the Registrar or a Board Officer is designated as the Returning Officer for the purposes of conducting the vote. Usually a meeting is held within three working days with the employer and the union and/or their representatives to establish the voting list and fix the time and place of the vote. [Rule 26(1)]

***HOW IS THE VOTE CONDUCTED?***

The person acting as Returning Officer conducts the vote. Each party is given an opportunity to select one scrutineer for each polling place. [Rule 26(9)] The scrutineers make sure that everyone voting is entitled to do so. Immediately upon the completion of the voting and before the ballot box is opened to count the votes or sealed if there is a dispute, the parties or their representatives must verify in writing to the Returning Officer that they are satisfied that the vote was conducted in a fair and proper manner. The ballots are then usually counted by the Returning Officer in the presence of union and employer representatives. If a party refuses to certify that a fair vote was held, that party must immediately record in writing the grounds of their complaint and deliver this statement to the Returning Officer who must immediately seal the ballot box without counting the ballots. The ballot box is retained in safekeeping pending a decision of the Board on the matter. The ballots will then be counted only after the dispute has been resolved. [Section 48(2), Rules 26(3) and (4)]

***WHAT CHOICES ARE EMPLOYEES GIVEN ON THE BALLOT?***

If the bargaining unit is not represented by another union, the employees have a choice between the applicant union and no union. If, however, there is already a union involved, employees are given a choice between the two unions.

***WHAT HAPPENS TO SPOILED BALLOTS?***

Where a party challenges a ballot that has been cast, the Returning Officer shall rule upon the validity of the ballot. If the parties accept the ruling, the ballot shall be counted or rejected accordingly. If the Returning Officer's ruling is not accepted, the challenged ballot is sealed in an envelope and is placed back in the ballot box with all other ballots. The ballot box is then sealed and a statement is obtained from the parties as to their reasons for challenging the ballot. The matter then goes to the Board for a decision. [Rule 26(5)]

***WHAT CAN THE UNION DO IF IT BELIEVES THE VOTE WILL NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES BECAUSE OF AN EMPLOYER UNFAIR LABOUR PRACTICE?***

It can apply to the Board to be certified without a vote or, in certain circumstances, to be certified even though it has lost the vote. The Board can do this if it finds that the employer has violated the Act and the Board is satisfied that the union has membership support adequate for purposes of collective bargaining and the Board agrees that the true wishes of the employees are not likely to be revealed by a vote. [Section 41]

This could happen where the employer has either threatened employees with the loss of benefits or loss of jobs if the union is successful, or promised them increased benefits or higher wages if the union loses the vote. Even illegal anti-union statements by an employer may be sufficient. The Board is primarily concerned with the effect that the employer's conduct has on the employees' ability to freely choose whether or not they wish to be represented by a union.

## TERMINATION OF BARGAINING RIGHTS

***ONCE A UNION HAS BEEN CERTIFIED, CAN THE EMPLOYEES LATER CHANGE UNIONS OR DECIDE NOT TO BE REPRESENTED BY A UNION AT ALL?***

Yes. The employees can choose to have another union represent them or decide to no longer be represented by a union. In both situations the present union's bargaining rights would be terminated.

***HOW DO EMPLOYEES SWITCH UNIONS?***

The second union applies to the Board for certification. If the present bargaining agent does not consent to or objects to the certification and if the Board is satisfied that 45% or more of the employees support the new union, it will conduct a vote among the employees. Where the vote indicates that the majority of employees who have voted support the new union, it will be certified. Once it is certified, the first union automatically loses its bargaining rights. [Sections 40(2) and (3) and 44]

***WHEN CAN EMPLOYEES SWITCH UNIONS?***

If a group of employees who are covered by a collective agreement wish to change unions, they must make application to the Board during what is commonly called the open season.

For example, if the collective agreement is for a term of one year an application can only be made during the seventh, eighth and ninth months.

Where the collective agreement is for a period of two years an application can only be made during the three months preceding the anniversary date or during the nineteenth, twentieth and twenty-first months of the agreement.

It should be understood that the above are only examples as there are other restrictions which might affect an application. Information dealing with your particular situation can be obtained from the Board offices.

If the agreement is a first contract imposed by the Board, no application can be made by another union during the term of the first contract. [Section 35(4)]

If the employees are on strike or locked out, no other union can apply to the Board until six months have passed from the first day of the strike or lockout. After six months, a certification application by the new union can only be made with the consent of the Board. [Section 35(5)]

***CAN EMPLOYEES APPLY TO TERMINATE A UNION'S BARGAINING RIGHTS WITHOUT SEEKING CERTIFICATION OF A NEW UNION?***

Yes. They can bring an application to terminate the union's bargaining rights by filling out **Form IX – Application for Termination of Bargaining Rights**. Termination of bargaining rights is usually referred to as decertification.

***WHEN CAN A DECERTIFICATION APPLICATION BE MADE?***

Generally, a decertification application can be brought by employees at the same time as a new union would be able to seek certification. In addition, if twelve months have expired since the date of the union's certification and the Board is satisfied that the union has failed to exercise its bargaining rights, the Board can cancel the union's certification. The Board may also declare that the union no longer represents the employees in the bargaining unit if it is proven that the union obtained its certificate by fraud. [Sections 49(1) and (2), 53(1), and 52]

***HOW DO EMPLOYEES APPLY TO TERMINATE THE UNION'S BARGAINING RIGHTS?***

The application is made on **Form VIII – Application for Cancellation of Certification** to cancel a certificate, and **Form IX – Application for Termination of Bargaining Rights** to terminate a union's bargaining rights. The application must be accompanied by a petition signed by 50% or more of the employees in the bargaining unit indicating that they no longer wish to be represented by the union. When the application is received the Board informs both the union and the employer. The employer is asked to give the Board a list of employees in the bargaining unit. If more than 50% of the employees support the termination, and the Board is satisfied that the application has not been instigated by the employer, the Board will conduct a vote, unless the union does not oppose the application to terminate bargaining rights. If more than 50% of those employees voting choose to no longer be represented by the union the Board will cancel the bargaining rights of the union.

However, even if the Board is satisfied that more than 50% of the employees support an application, the Board may dismiss the application without a vote if the Board is satisfied that the employer has failed to bargain in good faith, thereby frustrating the collective bargaining process. [Sections 49(1), 50(2), (3) and (4), and 51, Rules 12, 13]

***WHAT HAPPENS IF A UNION DECIDES IT DOES NOT WANT TO CONTINUE TO REPRESENT THE EMPLOYEES IN A BARGAINING UNIT?***

Once an application to terminate the bargaining rights of the union, or an application to certify a new union has been filed with the Board, the union can consent to the application and the Board may grant it without holding a vote. [Sections 40(2) and 50(3)]

***CAN AN EMPLOYER APPLY TO HAVE THE BOARD TERMINATE A UNION'S BARGAINING RIGHTS?***

Generally, only employees are allowed to make such an application, and it must be done without any involvement by the employer. However, an employer may request the Board to investigate whether a union has failed to exercise, or has abandoned its bargaining rights. The Board, following investigation, may proceed to cancel the union's certificate on these grounds. [Sections 53(1) and 53(2)]

***ARE THERE ANY OTHER SITUATIONS IN WHICH THE BOARD CAN TERMINATE A UNION'S BARGAINING RIGHTS?***

Yes. If the union was originally certified as a result of fraud, the Board can terminate the union's bargaining rights at any time if fraud is proven. Such action would nullify any collective agreement the union may have negotiated after being certified. The union may also have its bargaining rights terminated where the Board is of the opinion that the administration, management or policy of the union is influenced or dominated by the employer. [Sections 52 and 43]

***WHAT IS THE EFFECT OF CANCELLATION OF A CERTIFICATE OR TERMINATION OF BARGAINING RIGHTS?***

Where the certification of the union is cancelled, or its bargaining rights are terminated by the Board, the employer is not required to bargain with that union and any collective agreement between the parties is terminated. [Section 54]

# PART III: SUCCESSOR RIGHTS

## SALE OF EMPLOYER'S BUSINESS

***WHAT HAPPENS TO A UNION'S BARGAINING RIGHTS WHEN AN EMPLOYER'S BUSINESS IS SOLD?***
When a business including part of a business is sold, leased, transferred or otherwise disposed of, or where businesses are merged or amalgamated, the new employer steps into the shoes of the old employer. The union retains its bargaining rights and the new employer inherits all of the old employer's obligations toward the union. Any existing collective agreement remains in effect. If any proceedings are pending under **The Labour Relations Act,** for example, a certification application, or under the collective agreement, for example, an arbitration proceeding, the new employer becomes a party to these proceedings.

Where a union takes the position that a business transaction has taken place, the employer must introduce evidence of all relevant facts related to the supposed sale of which it has knowledge. The onus is on the employer since the employer is the one most likely to have information relating to the transaction. [Sections 56, 57 and 58]

***WHAT HAPPENS IF THE NEW EMPLOYER ALREADY HAS A BUSINESS WITH UNIONIZED EMPLOYEES?***
Where there is a change in ownership, difficulties can arise about the continuation of bargaining rights. For example, if the buyer already has unionized employees, the Board can be asked to amend the description of the bargaining unit and determine which union should represent the employees. The Board can also give directions to remove any inconsistencies between the two collective agreements which have occurred as a result of the intermingling of the two groups of employees. [Section 56(2)]

***WHAT HAPPENS IF COLLECTIVE BARGAINING OF A BUSINESS HAD BEEN UNDER FEDERAL JURISDICTION BUT AFTER THE BUSINESS IS SOLD, IT COMES UNDER PROVINCIAL JURISDICTION?***
Unless the Board orders otherwise, a business that transfers from federal to provincial jurisdiction, as a result of a sale of the business, will be subject to provincial collective bargaining laws respecting successor rights. Where the Board makes a determination that successor rights apply, a collective agreement that was previously in force would continue to apply to the successor employer and the affected employees. [Section 58.1]

***WHAT HAPPENS IF AN EMPLOYER CARRIES ON RELATED BUSINESSES UNDER MORE THAN ONE NAME OR THROUGH MORE THAN ONE COMPANY?***
A union can apply to the Board for a declaration that the corporation, firm, individual, syndicate, association or any combination of those involved are one employer. The Board may make such an order if the related activities or businesses are carried on under common control and direction. This provision is of greatest relevance where a company without a union is used by those who control it to undermine the bargaining rights the union has with a related company. If this issue is raised in the context of an application for certification, the Board may certify the union as bargaining agent for the employees of all the corporations, firms, individuals, syndicates, associations or any combination of them involved provided it enjoys the requisite overall support. Where such an application is made, the businesses in question must introduce evidence before the Board of all relevant facts of which they have knowledge. [Section 59]

# PART IV: COLLECTIVE BARGAINING & COLLECTIVE AGREEMENTS

## WHO CAN PARTICIPATE IN COLLECTIVE BARGAINING?

### *WHAT IS COLLECTIVE BARGAINING?*

Collective bargaining means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof. Unions negotiate and reach agreements with employers on wages and working conditions for the group of employees that they represent. Unions also act on behalf of those employees to protect their rights under the terms of the collective agreements. **The Labour Relations Act** recognizes the right of employees to join unions and the right of employers to join employer associations and to participate in their lawful activities. The preamble to the Act expressly recognizes that it is in the public interest of the Province of Manitoba to further harmonious relations between employers and employees by encouraging collective bargaining.

### *DOES THE LABOUR RELATIONS ACT APPLY TO EVERYONE?*

No. Some groups of employees are covered by their own special legislation; other groups are excluded from the Act altogether. The first question you must decide is whether the Act applies to you. Some groups are covered by other statutes.

# NEGOTIATING A COLLECTIVE AGREEMENT

***HOW ARE NEGOTIATIONS FOR A COLLECTIVE AGREEMENT BEGUN?***

If a union has just been certified, it will usually give the employer written notice of its desire to bargain. If the employer and the union are already bound by a collective agreement, then the union may give notice to bargain between thirty and ninety days before the agreement is due to expire. The employer may also give notice to commence collective bargaining. In either case, the union and the employer must meet within ten days or such further time as the parties may agree, and begin to bargain in good faith and make every reasonable effort to conclude a collective agreement. [Sections 60, 61(1) and 62]

***MUST THE EMPLOYER PROVIDE THE UNION WITH ANY INFORMATION?***

The union can request the employer to supply it with certain information, including the job title or classification of each employee, their rate of pay, and the cost of other benefits they receive. The employer must provide this information within twenty-one days of the request, unless within this time, the employer applies to the Board and is granted an extension of time in which to provide the information. An employer's failure to provide the information is an unfair labour practice. [Sections 66(1), (3) and 27]

***WHAT CAN ONE SIDE DO IF THE OTHER SIDE REFUSES TO NEGOTIATE, OR APPEARS NOT TO BE NEGOTIATING IN GOOD FAITH?***

Failure to bargain in good faith is an unfair labour practice, and a party can apply to the Board for relief. Where the Board finds a violation of the duty to bargain in good faith, the Board may make an order directing the offending party (employer or union) to bargain in good faith. The Board may also award damages against the offending party, or issue other remedial orders. [Sections 26 and 31(4)]

***WHAT HAPPENS IF, DURING NEGOTIATIONS, THE EMPLOYER AND THE UNION CANNOT AGREE ON THE TERMS OF A COLLECTIVE AGREEMENT?***

During negotiations, either the employer or the union may request the Minister of Labour, in writing, to appoint a Conciliation Officer. The written request must include a statement of the difficulties that have been encountered in the course of collective bargaining. A Conciliation Officer may also be appointed where, although the parties have not made a request, the Minister is of the opinion that it is advisable. [Section 67(1)] This officer will then confer with the parties and try to assist them in reaching an agreement. [Section 67(2)]

***IS THERE AN OBLIGATION TO MEET WITH A CONCILIATION OFFICER?***

Each party must attend meetings called by the Conciliation Officer and make known its respective terms and conditions which are acceptable to the party as provisions of a collective agreement. [Section 67(3)] The failure of either party to co-operate with a Conciliation Officer may be construed as an unfair labour practice. [Section 28]

***WHAT HAPPENS AFTER A MEETING WITH A CONCILIATION OFFICER?***

A Conciliation Officer must report to the Minister within 30 days, or such longer period as may be agreed upon by the parties or allowed by the Minister. The report sets out any matters on which the parties cannot agree and recommendations as to what, if any, further proceedings might be taken to facilitate a settlement. [Section 68(1)]

### *WHAT IF THE PARTIES CANNOT REACH AGREEMENT EVEN WITH THE HELP OF CONCILIATION OR MEDIATION?*

Where the appointment of a Conciliation Officer is in respect of a first collective agreement and, after conferring with the parties, the Conciliation Officer is satisfied that the parties have made reasonable efforts to conclude a collective agreement but are not likely to conclude a collective agreement, the Conciliation Officer may, after the expiry of 90 days and before the expiry of 120 days from the day of the appointment, notify the Manitoba Labour Board and the parties, in writing, that the parties, after making reasonable efforts, have not been able to conclude a first collective agreement. [Section 68(3.1)]

Once the Board has been notified by the Conciliation Officer that the parties were not able to conclude a first collective agreement, or if more than 120 days have passed since the appointment of the Conciliation Officer, either the employer or union can request the Board to settle the provisions of a first collective agreement between the parties. [Section 87(1)]

In all other cases, where a Conciliation Officer fails to bring about agreement between the parties or where the Minister feels it is advisable to do so, a Conciliation Board may be appointed. Such boards are, however, seldom appointed. [Section 97(1)]

In addition, where both parties jointly request the Minister to do so, or where the Minister feels it is advisable to do so, a Mediator may be appointed to endeavour to bring about agreement between the parties. [Section 95] For more information on the appointment of a Conciliation Board or a Mediator, see Part VI of this Guide.

### *IS THERE A CHARGE FOR CONCILIATION SERVICES?*

There is no cost for the Conciliation Officer's services.

## RATIFICATION VOTES

***WHEN THE EMPLOYER AND THE UNION NEGOTIATE AN AGREEMENT, DO THE EMPLOYEES HAVE TO APPROVE IT?***

Yes. Where, as a result of collective bargaining, the employer and union reach an agreement on the renewal or revision of the collective agreement, or the provisions of a first or new collective agreement, the union shall, within 30 days of reaching the agreement, hold a secret ballot vote of the employees in the unit to determine whether the majority of those voting accept or reject the proposed collective agreement. [Section 69(1)] The union must give the employees who are eligible to vote reasonable notice of the vote and a reasonable opportunity to cast a ballot in the vote. [Section 69(2)]

***IS THERE AN AVENUE OPEN TO EMPLOYEES WHO HAVE A COMPLAINT REGARDING A RATIFICATION VOTE?***

Yes. Any employee who is eligible to vote pursuant to Section 69(1) may make a complaint to the Board alleging a failure to comply with a requirement of Section 69. [Section 70(1)] If the Board finds that the complaint is justified, it may make any order it considers appropriate to ensure compliance with Section 69, including an order directing that a vote, or a new vote, take place. [Section 70(2)] If no complaint is filed with the Board within 15 days after a vote has been held, the vote shall be deemed to have been carried out in accordance with the requirements of Section 69. [Section 70(4)]

***WHAT HAPPENS IF A MAJORITY OF EMPLOYEES PARTICIPATING IN THE VOTE REJECT THE AGREEMENT?***

Where a vote rejects a proposed collective agreement, the agreement is not binding on the parties or on any employee in the unit. [Section 71]

***WHAT HAPPENS IF A MAJORITY OF EMPLOYEES PARTICIPATING IN THE VOTE ACCEPT THE AGREEMENT?***

Where a vote accepts a proposed collective agreement, the agreement becomes a collective agreement which is binding upon the union and every employee in the unit to which the collective agreement applies, and the employer who entered into the collective agreement. [Section 72(1)] The collective agreement is then committed to writing, executed by each party, and filed with the Board. [Section 72(2)]

# FINAL OFFER VOTES

***WHAT IS A 'FINAL OFFER VOTE'?***

If at any time before or after the commencement of a strike or lockout the Minister is of the opinion that it is in the public interest for employees in the affected unit to be given an opportunity to accept or reject the employer's last offer, the Minister may order that a vote be held immediately. [Section 72.1(2)]

***WHO CONDUCTS THE VOTE?***

The Board is responsible for conducting the vote in accordance with the terms and conditions given by the Minister and determining the results of such a vote. [Section 72.1(3) and (4)]

***WHAT HAPPENS IF A MAJORITY OF EMPLOYEES PARTICIPATING IN THE VOTE ACCEPT THE EMPLOYER'S LAST OFFER?***

If a majority of the employees participating in the vote accept the employer's last offer, the proposed agreement becomes binding upon the union and every employee in the unit to which the agreement applies, and the employer who has entered into the collective agreement. [Section 72.1(5) and Section 72]

# FIRST COLLECTIVE AGREEMENTS

***WHAT HAPPENS WHEN A UNION IS CERTIFIED, BUT THE PARTIES FAIL TO NEGOTIATE A FIRST COLLECTIVE AGREEMENT?***

In that case either the employer or the union can request the Board to settle the provisions of a first collective agreement between the parties. The party seeking the settlement of a first collective agreement must complete **Form XII – Application for Settlement of a First Collective Agreement**. The Board will then notify the other party that the application has been made. These provisions are generally referred to as "first contract" provisions.

***WHAT DO THE PARTIES HAVE TO DO BEFORE THE BOARD WILL ACCEPT AN APPLICATION FOR FIRST CONTRACT?***

The parties cannot apply for a first contract to be settled until (a) notice to bargain has been given, (b) a conciliation officer appointed under subsection 67(1) has notified the Board and the parties under subsection 68(3.1), or 120 days have expired since the appointment, and (c) a period of 90 days after the certification of the bargaining agent, and any period of extension ordered under subsection 10(3), have expired. [Sections 68(3.1) and 87(1)]

***WHAT PROCEDURE DOES THE BOARD FOLLOW IN SETTLING A FIRST COLLECTIVE AGREEMENT?***

Unless the parties settle the terms and conditions of a first collective agreement within sixty days after the application is made, the Board must proceed to settle the provisions of a first collective agreement between the parties. The Board will accept any provisions that have been agreed to in writing by the parties and may also take into account the terms contained in collective agreements for employees performing similar functions. The goal of the Board is to settle an agreement which will be fair and reasonable in the circumstances. [Sections 87(3), (6)]

***WHAT HAPPENS IF AN APPLICATION IS MADE DURING A STRIKE OR LOCKOUT?***

The strike or lockout must immediately be terminated. The employees must return to work as soon as possible, either on the basis of a reinstatement agreement between the union and the employer or on a seniority basis. [Section 87(5)]

***WHAT IS THE TERM OF A FIRST COLLECTIVE AGREEMENT SETTLED BY THE LABOUR BOARD?***

A first collective agreement settled by the Board is binding on the parties for one year. However, the parties may subsequently agree to amend the agreement in writing during its term. No applications for certification or decertification of the bargaining unit will be accepted by the Board during the one year term. [Sections 87(7) and 35(4)]

# TERMS OF A COLLECTIVE AGREEMENT

***WHAT MUST BE CONTAINED IN A COLLECTIVE AGREEMENT?***

**The Labour Relations Act** requires every collective agreement to include four clauses. They are compulsory checkoff [Sections 76(1) and (2)], final settlement without work stoppage [Section 78(1)], just cause for discipline and dismissal [Section 79] and management fairness. [Section 80] In addition, on the written request of either party, the Act requires a fifth clause to be inserted to deal with ongoing consultation during the term of the collective agreement. [Section 81]

***WHAT HAPPENS IF THE PARTIES NEGLECT TO PUT ONE OF THESE CLAUSES IN A COLLECTIVE AGREEMENT?***

Each of the above five sections contains a specific clause which will deem it to be included in the collective agreement, should the parties fail to discharge their obligation to expressly include the required provisions in their collective agreement. Whether in the agreement expressly or through the deeming provisions, each of these clauses legally bind the parties and can be enforced through the grievance arbitration process.

***HOW LONG DOES A COLLECTIVE AGREEMENT LAST?***

The term is something that the union and the employer must agree upon when negotiating the agreement. The law only requires that a collective agreement have a minimum term of one year. [Section 74]

***CAN A COLLECTIVE AGREEMENT BE CHANGED OR AMENDED?***

The union and employer can agree to change any of the provisions in the agreement during its term. [Section 75]

***WHAT RIGHTS DO EMPLOYEES HAVE AFTER A COLLECTIVE AGREEMENTS HAS EXPIRED?***

There are several ways in which the collective agreement can continue after its expiration date. Where a collective agreement provides that it will continue in effect after a specific period or for successive periods, notice to bargain will not terminate the collective agreement. However, when notice to bargain is given, the parties are in a legal strike or lockout position. If a strike or lockout occurs, the collective agreement will be terminated. [Sections 63(2) and (3)]

The parties can agree to extend the collective agreement for an open-ended period of under one year usually while they continue negotiations. Forty-eight hours notice to terminate the agreement must be given before the parties will be in a legal strike or lockout position. [Section 74(2)]

Where a collective agreement has terminated, the employer cannot change the wages or conditions of employment without the consent of the union for a period of twelve months, unless the union loses its bargaining rights or there is a strike or lockout. [Section 10(4)]

***ARE COLLECTIVE AGREEMENTS OPEN TO PUBLIC INSPECTION?***

Yes. Every collective agreement must be committed to writing and filed with the Board. Every agreement filed with the Board is open to public inspection, unless a party applies to the Board and can show that there will be prejudice to the party if public inspection of the agreement is not restricted. [Sections 72(2) and 73]

## SETTLEMENT OF SUBSEQUENT AGREEMENTS

***WHERE A COLLECTIVE AGREEMENT HAS EXPIRED AND A STRIKE OR LOCKOUT HAS COMMENCED, CAN THE EMPLOYER OR UNION APPLY TO THE BOARD TO SETTLE THE PROVISIONS OF A SUBSEQUENT COLLECTIVE AGREEMENT?***

Yes. The employer or union may apply to the Board in writing to settle the provisions of a subsequent collective agreement if:

a) at least 60 days have elapsed since the strike or lockout commenced;
b) the parties have attempted to conclude a new collective agreement with the assistance of a conciliation officer or mediator for at least 30 days during the period of the strike or lockout; and
c) the parties have not concluded a new collective agreement.

[Section 87.1(1)]

***WHAT MUST THE BOARD DETERMINE?***

On receiving the application, the Board shall inquire into the negotiations between the parties and determine:

a) whether or not they are bargaining in good faith in accordance with subsection 63(1), and
b) whether or not they are likely to conclude a collective agreement within 30 days if they continue bargaining.

[Section 87.1(3)]

***WHEN MUST THE BOARD MAKE ITS DETERMINATION?***

The Board shall make its determination within 21 days after it has notified the parties of the application, even if an unfair labour practice complaint has been filed alleging a failure to bargain in good faith under subsection 63(1). The Board may delay making this determination until it is satisfied that the party making the application has bargained sufficiently and seriously with respect to those provisions of the collective agreement that are in dispute between the parties.

[Section 87.1(3), (3.1) and (4)]

***WHAT IF THE BOARD FINDS THE PARTIES ARE BARGAINING IN GOOD FAITH?***

If the Board finds that the parties are bargaining in good faith and are likely to conclude a collective agreement within 30 days if they continue bargaining, it shall decline to settle the provisions of a collective agreement between the parties and they shall be duly notified of that fact. The Board may, however, appoint a Board Representative, or request the Minister to appoint a Conciliation Officer, to confer with the parties to assist them in settling the provisions of a collective agreement. [Section 87.2(1)]

***WHAT IF THE PARTIES ARE NOT SUCCESSFUL IN CONCLUDING A COLLECTIVE AGREEMENT WITHIN 30 DAYS?***

If the parties have failed to conclude a collective agreement, either party may make a new application to the Board. [Section 87.2(2)]

***WHAT IF THE BOARD FINDS THE PARTIES ARE NOT LIKELY TO CONCLUDE A COLLECTIVE AGREEMENT OR BARGAIN IN GOOD FAITH?***

If the Board determines that the party making an application under subsection 87.1(1) is bargaining in good faith but that a new collective agreement is unlikely to be concluded within 30 days if the parties continue to bargain:

a) the employees shall immediately terminate any strike;
a.1) the employer shall immediately terminate any lockout;
b) the employer shall reinstate the employees as provided for in subsection 87(5); and
c) the provisions of a collective agreement between the parties shall be settled
(i) by an arbitrator, if the parties serve notice of their wish for arbitration under subsection (2), or
(ii) by the Board within 90 days of its finding, in any other case.

[Section 87.3(1)]

If the Board determines that the party making an application is not bargaining in good faith, that party may at any time after the determination is made make a new application under subsection 87.1(1) for the Board to settle the provisions of a collective agreement.
[Section 87.3(1.1)]

***WHAT IF THE PARTIES CHOSE TO HAVE THE COLLECTIVE AGREEMENT SETTLED BY ARBITRATION?***

The employer and union may, within 10 days after a determination by the Board that the applicant party is bargaining in good faith but that a new collective agreement is unlikely to be concluded through further bargaining, serve notice on the Board stating they wish to have the collective agreement settled by arbitration. The notice must name the person who has agreed to act as arbitrator. [Section 87.3(2)]

***HOW LONG DOES AN ARBITRATOR HAVE TO SETTLE THE PROVISIONS OF A COLLECTIVE AGREEMENT?***

The arbitrator shall settle the provisions of a collective agreement within 60 days after notice is served on the Board. [Section 87.3(3)]

***WHAT IS THE TERM OF A COLLECTIVE AGREEMENT BY AN ARBITRATOR OR THE BOARD?***

A collective agreement settled by an arbitrator or the Board is effective for a period of one year following the expiry date of the previous collective agreement, or for any longer period the parties agreed to. However, a collective agreement settled by an arbitrator or the Board more than six months following the expiry date of the previous collective agreement shall remain in effect for six months following the date of settlement. [Section 87.3(5) and (5.1)]

***IS SUCH A COLLECTIVE AGREEMENT BINDING ON THE PARTIES?***

Yes, a collective agreement settled by an arbitrator or the Board is binding on the parties and on the employees in the unit as though it were a collective agreement they voluntarily entered into. The parties may amend its provisions by a subsequent written agreement. [Section 87.3(6)]

# UNION SECURITY (DUES AND MEMBERSHIP)

***WHO IS COVERED BY A COLLECTIVE AGREEMENT?***

All employees in the bargaining unit as described in the recognition clause of the collective agreement.

***CAN AN EMPLOYEE COVERED BY A COLLECTIVE AGREEMENT BE OBLIGED TO PAY DUES TO THE UNION?***

Once a collective agreement is signed, all employees in the bargaining unit will be required to pay union dues. These dues will be deducted from the wages of each employee. A failure by the employer to remit these dues to the union is an unfair labour practice. [Sections 76(1) and 29]

***CAN AN EMPLOYEE COVERED BY A COLLECTIVE AGREEMENT BE OBLIGED TO JOIN THE UNION?***

The fact that a union becomes certified does not, by itself, mean that all employees in the bargaining unit must join the union. The employer and the union may agree to include union membership requirements in a collective agreement. This is generally known as a "union security clause".

***WHAT HAPPENS TO EMPLOYEES WHO DO NOT JOIN THE UNION WHEN IT IS A CONDITION OF EMPLOYMENT UNDER THE COLLECTIVE AGREEMENT?***

The union could ask the employer to discharge them. If the employer failed to do so the union could file a grievance. Employees are protected, however, if union membership has been denied them, if they have been expelled from the union for reasons other than a failure to pay dues or if they were discriminated against by the application of the union's membership rules. [Section 19]

***WHAT IF AN EMPLOYEE DOES NOT WANT TO JOIN A UNION OR PAY DUES FOR RELIGIOUS REASONS?***

In certain situations, the employee may be exempted from union membership and the payment of union dues. The employee must apply to the Board for a determination that he or she is a member of a religious group that believes that members of the group cannot join or financially support a union. The employee must demonstrate a personal belief in these articles of faith.

Where the Board makes a determination that an employee is indeed a religious objector, the union is not obligated to represent that employee. The amount deducted from the employee's wages as union dues will be given to a charity designated by the union and the employee. If they cannot agree the Board will designate the charity. If the collective agreement provides that employees must be members of a union, the employer may still continue to employ a religious objector without requiring that the employee be a union member. [Sections 76(3) and 77]

# PART V: LOCKOUTS & STRIKES

## STRIKES AND LOCKOUTS

***WHEN IS A STRIKE OR LOCKOUT LEGAL?***
A strike or lockout is not legal during the term of a collective agreement. In addition strikes for union recognition are not permitted. When no agreement is in operation a strike or lockout is legal beginning ninety days after certification of the union. [Section 89]

***MUST THERE BE A STRIKE VOTE BEFORE A STRIKE CAN TAKE PLACE?***
Yes. A union cannot declare a strike unless it conducts a strike vote and the majority of the employees in the bargaining unit who vote are in favour of a strike. However, a vote in favour of a strike does not oblige a bargaining agent to declare a strike. Every strike vote must be taken by secret ballot. The employees must be given a reasonable opportunity to vote and can complain to the Labour Board if they feel the vote was not conducted properly. [Section 93]

***WHAT ACTIONS ARE PROHIBITED DURING A STRIKE?***
Employers or anyone acting on their behalf are not allowed to hire permanent replacement workers [Section 11] or professional strike breakers [Sections 14 (1), (2) and 1], or deny any pension benefits or benefits under a group insurance scheme to employees in the unit if the union is willing to assume payment of employer contributions for these benefits. [Section 18]

In addition, employers or anyone acting on their behalf or any other person, including unions or anyone acting on their behalf, are not allowed to engage in strike-related misconduct. [Sections 14(1), (2), and 14.1] Acts of incitement, intimidation, coercion, provocation, infiltration or surveillance that are intended to interfere with a legal strike or lockout are included in the term "strike-related" misconduct. [Section 1]

Any person who engages in any of these activities will be committing an unfair labour practice and will be subject to the remedies for unfair labour practices.

***CAN ANOTHER UNION APPLY TO BE CERTIFIED FOR EMPLOYEES WHO ARE ON STRIKE OR LOCKOUT?***
Not until six months after the strike or lockout began, and then, only with the consent of the Board. [Section 35(5)]

***ARE STRIKERS STILL EMPLOYEES?***
Yes. It is illegal for them to be terminated only because they are on strike. [Section 2(1)]

***WHEN DOES A STRIKE COME TO AN END?***
In almost all cases a strike comes to an end when the employer and the union sign a collective agreement, and the striking employees return to work. If the parties cannot reach an agreement, a strike or lockout will end when the union or employer indicates in writing that it is over. [Section 13(2)]

***DO EMPLOYEES HAVE THE RIGHT TO GET THEIR JOBS BACK AFTER THEY HAVE GONE ON A LAWFUL STRIKE?***

Yes. Where a strike or lockout ends with a collective agreement being concluded, striking workers are entitled to displace any replacement worker that was hired during the strike. The employer must reinstate the employees in accordance with the provisions of the collective agreement or any other agreement between the employer and the union. Where no collective agreement is concluded, striking workers will still be entitled to reinstatement, either in accordance with an agreement concluded between the employer and the union respecting reinstatement, or as work becomes available. Available work includes work performed by replacement workers hired during the strike. [Sections 12(1) to (3) and 13(1)]

***CAN UNIONIZED EMPLOYEES TAKE ACTION TO SUPPORT EMPLOYEES ON LEGAL STRIKE OR LOCKOUT IN OTHER WORKPLACES?***

An employee under a collective agreement can refuse to perform work which would directly facilitate the operations of another employer whose employees are locked out or on legal strike. Such a refusal will not be a breach of the collective agreement, and the employee cannot be subject to discipline for it. However, the employer is not required to pay wages to employees for any period during which they refuse to perform work. [Section 15]. An employer who discharges, disciplines or threatens action against an employee for this reason, commits an unfair labour practice.

# ILLEGAL STRIKES AND LOCKOUTS

***WHAT IS AN ILLEGAL STRIKE?***

In general, an illegal strike is one that occurs before a union gains bargaining rights through certification, or less than ninety days after the date on which the union was certified, or during the term of a collective agreement. [Sections 89(1) and (2), 90, and 92]

***WHAT CAN EMPLOYERS DO IF THEIR EMPLOYEES ENGAGE IN AN ILLEGAL STRIKE?***

An employer can seek a declaration from the Board that the strike is unlawful. An employer can also request the consent of the Manitoba Labour Board to permit the prosecution of the union for an offence under **The Labour Relations Act.**

When considering such application for Consent to Prosecute, the Board does not require the applicant to actually prove its case. The Board does, however, require the presentation of evidence that might be found by a Provincial Court Judge to establish a violation of the Act. Even if the Board decides that a breach of the Act has taken place, it may still refuse to grant its consent to prosecute if no useful purpose would be served by giving its consent. Every union that declares or authorizes an unlawful strike is liable to receive a fine of up to $1,000.00 for each day that the strike continues. Every officer or representative of the union could receive a fine of up to $500.00, and every employee who participates in the strike may receive a fine of up to $500.00. [Sections 88(3) to (5)]

***WHEN IS A LOCKOUT UNLAWFUL?***

A lockout is unlawful if it occurs during the term of a collective agreement or less than ninety days after the date on which the union was certified or any extension the Board may have granted. [Sections 10(3), 89 and 91]

***WHAT CAN THE EMPLOYEES DO IF THEY BELIEVE THEY ARE BEING UNLAWFULLY LOCKED OUT?***

They or their union can apply to the Board for a declaration that the lockout is unlawful. An employer may be liable for a fine of up to $1,000.00 for each day that the lockout continues, and every person who declares or causes a lockout may be liable for a fine of up to $500.00. [Section 88(1) and (2)] A union can also request the consent of the Manitoba Labour Board to permit the prosecution of the employer for an offence under **The Labour Relations Act**. When considering such application for Consent to Prosecute, the Board does not require the applicant to actually prove its case. The Board does, however, require the presentation of evidence that might be found by a Provincial Court Judge to establish a violation of the Act. Even if the Board decides that a breach of the Act has taken place, it may still refuse to grant its consent to prosecute if no useful purpose would be served by giving its consent.

# PART VI: MEDIATION, CONCILIATION BOARDS AND INDUSTRIAL INQUIRY COMMISSIONS

## MEDIATION, CONCILIATION BOARDS AND INDUSTRIAL INQUIRY COMMISSIONS

***WHAT IS AVAILABLE TO THE PARTIES WHEN THEY CANNOT AGREE TO THE TERMS OF A COLLECTIVE AGREEMENT?***

Procedures under the Act may involve a conciliation officer, a mediator, a conciliation board, or an industrial inquiry commission.

***CAN THE PARTIES APPOINT A MEDIATOR OF THEIR CHOICE TO ASSIST IN CONCLUDING A COLLECTIVE AGREEMENT?***

Yes. Where collective bargaining has commenced, the parties may jointly request the Minister of Labour to appoint a mediator to assist the parties in concluding a collective agreement. Where the request names a mediator that the parties have selected jointly, the Minister shall appoint that person. [Section 95(1)]

***CAN THE MINISTER APPOINT A MEDIATOR WITHOUT THE PARTIES' JOINT REQUEST?***

Where collective bargaining has commenced, either party may request the Minister to appoint a mediator. The Minister may appoint a mediator to endeavour to bring about an agreement between them if the Minister considers it advisable to do so. [Section 95(1.1)]

Where, in the opinion of the Minister, it is advisable to do so, even if no joint request has been made by the parties, the Minister may appoint a mediator to assist in concluding a collective agreement. [Sections 95(1.1) and 95(2)]

***WHEN WILL A CONCILIATION BOARD BE APPOINTED?***

Where a Conciliation Officer fails to bring about agreement between parties engaged in collective bargaining, or where, in the opinion of the Minister, a conciliation board should be appointed to endeavour to bring about agreement between the parties, the Minister may appoint a conciliation board for that purpose. [Section 97(1)]

***WHO SITS ON A CONCILIATION BOARD?***

A conciliation board consists of three members. Both the employer and the union are required, within seven days of receiving notice to do so by the Minister, to nominate one individual to be a member of the conciliation board. The Minister then appoints these individuals to be members of the conciliation board. [Section 98(1)] If either party fails to nominate an individual within seven days, the Minister shall appoint as a member of the conciliation board an individual the Minister deems fit for the purpose, and that member shall be deemed to be appointed on the recommendation of that party. [Section 98(3)]

Within five days after being appointed to the conciliation board, the two members must nominate a third individual, who is willing and ready to act, to be the third member of the conciliation board. The Minister shall appoint that individual, and that individual shall serve as the chairperson of the conciliation board. [Section 98(4)] Where the two members fail to nominate a third member within five days of their appointment, the Minister shall appoint an individual whom the Minister deems fit for that purpose. [Section 98(5)]

***IS THERE AN OBLIGATION TO MEET WITH A MEDIATOR OR CONCILIATION BOARD?***

Where a mediator or conciliation board is appointed by the Minister, each party must attend meetings called by the mediator or conciliation board and make known the terms and conditions which are acceptable to the party as provisions of a collective agreement. [Section 102] The failure of either party to co-operate with a mediator or conciliation board may be construed as an unfair labour practice. [Section 28]

***WHAT HAPPENS AFTER A MEETING WITH A MEDIATOR OR CONCILIATION BOARD?***

A mediator or conciliation board must report to the Minister within 30 days after being appointed, or such longer period as may be agreed upon by the parties or allowed by the Minister. The report sets out any matters on which the parties cannot agree and recommendations as to what, if any, further proceedings might be taken to facilitate a settlement. [Section 103(1)] A copy of the report is also sent to each of the parties. [Section 104]

***IS THE REPORT OF A MEDIATOR OR CONCILIATION BOARD BINDING ON THE PARTIES?***

If, at any time before or after the report of a mediator or conciliation board is made, the parties agree in writing to be bound by the recommendations of the mediator or conciliation board, the recommendations are binding and the parties must give effect to them. [Section 106]

***WHO PAYS FOR THE MEDIATOR OR CONCILIATION BOARD?***

Where the Minister is of the opinion that it is advisable to appoint a mediator, even without a joint request by the parties, the full amount of the mediator will be paid out of the Consolidated Fund with moneys authorized by an Act of the Legislature. [Section 111(2)] Where a mediator is appointed pursuant to the request of one or both parties, one-third of the remuneration and expenses of the mediator will be paid out of the Consolidated Fund and the remainder will be paid in equal shares by the parties. [Section 111(4)] The full amount of a conciliation board will be paid out of the Consolidated Fund. [Section 111(2)]

***WHO MAINTAINS THE LIST OF MEDIATORS?***

The Minister may establish and maintain a list of persons who have, in the Minister's opinion, qualities and experience which make them suitable to act as mediators in collective bargaining or disputes and who have indicated to the Minister their willingness to act in all or any of those capacities. The Minister may make this list available to parties to collective bargaining or disputes. [Section 112].

***WHEN IS AN INDUSTRIAL INQUIRY COMMISSION APPOINTED?***

The Minister may make, or cause to be made, any inquiries regarding industrial matters, and may take steps to maintain or secure industrial peace and promote conditions favourable to settlement of disputes. For any of these purposes, or where a dispute or difference between employers and employees exists, the Minister may refer the matter to an industrial inquiry commission for investigation or mediation or both as the Minister deems expedient. The Minister will provide the commission with a statement of the matters for inquiry and will advise any persons or parties involved of the appointment of the commission. [Sections 113(1) and 113(2)]

***WHAT IS THE ROLE OF AN INDUSTRIAL INQUIRY COMMISSION?***

Once appointed, the commission will inquire into the matters referred to it by the Minister. The commission may determine its own procedure but shall give full opportunity to all parties to present evidence and make representations. [Section 113(5)] In the case of a dispute or difference in which a settlement has not been effected, the commission will report the result of its inquiries, including any recommendations, to the Minister within 30 days of its appointment, or within such longer period as may be allowed by the Minister. [Section 113(3)] The report of the commission will be provided to the parties involved and may be published in such manner as the Minister sees fit. [Section 113(4)]

***WHO SITS ON AN INDUSTRIAL INQUIRY COMMISSION?***

A commission will consist of one or more members appointed by the Minister. [Section 113(5)]

For more information respecting the appointment of a conciliation board or an industrial inquiry commission, please contact the Conciliation and Mediation and Pay Equity Services Branch.

# PART VII: GRIEVANCE ARBITRATION

## GRIEVANCE ARBITRATION

***WHAT HAPPENS IF AN EMPLOYEE OR A UNION FEELS THAT THE EMPLOYER IS NOT FOLLOWING THE TERMS OF THE COLLECTIVE AGREEMENT, OR IF THERE IS A DISAGREEMENT ABOUT THE MEANING OF PART OF THE COLLECTIVE AGREEMENT?***

In such a situation, the employee or the union may file a "grievance". The grievance procedure is set out in the collective agreement itself. Normally, it involves three or four steps. At each step more senior people from both the union and the employer try to settle the grievance. The collective agreement will often provide for a time limit within which the grievance must be commenced (usually a certain number of days after the event giving rise to the grievance). If the employee or union does not file the grievance within this period, it may be dismissed. An arbitrator has the power to extend the time limits.

***CAN THE EMPLOYER FILE A "GRIEVANCE" IF THE UNION IS NOT COMPLYING WITH THE AGREEMENT?***

Yes. Such grievances are processed in the same general way that union or employee grievances are.

***DOES EVERY COLLECTIVE AGREEMENT HAVE TO PROVIDE FOR A GRIEVANCE PROCEDURE?***

Every collective agreement must contain a provision for settling disagreements without a work stoppage. If the collective agreement does not contain such a clause, the Act will deem such a clause is included in the agreement. [Sections 78(1) and (2)]

***HOW CAN A UNION AND EMPLOYER RECEIVE ASSISTANCE IN SETTLING A DISAGREEMENT REGARDING A COLLECTIVE AGREEMENT?***

The parties can jointly request that the Minister of Labour appoint a grievance mediator to assist them in settling the dispute. They can also name their own particular grievance mediator in their collective agreement, in which case the government will pay one-third of the cost of grievance mediation. [Sections 129(1), (2)]

***WHAT IF THE UNION AND THE EMPLOYER CANNOT SETTLE A GRIEVANCE?***

The grievance may then be referred to arbitration. The method for doing this should also be set out in the collective agreement. Either a single arbitrator or a three person arbitration board will hear the dispute. Where a collective agreement provides for an arbitration board, the union and employer each select a "nominee" and the nominees then select a chairperson.

***WHAT IF EITHER THE UNION OR EMPLOYER FAILS TO APPOINT A REPRESENTATIVE TO AN ARBITRATION BOARD, OR AN AGREEMENT CANNOT BE REACHED ON THE SELECTION OF A CHAIRPERSON?***

The Labour Board will appoint arbitrators, nominees and chairpersons of arbitration boards where the parties themselves fail to do so. [Sections 114, 115(5) and 115(6)]

***ARE ARBITRATION HEARINGS OPEN TO THE PUBLIC?***

Yes, unless there are compelling reasons for proceeding otherwise, such as confidentiality. [Section 122]

***WHAT TYPES OF POWERS AND REMEDIES DOES AN ARBITRATOR OR ARBITRATION BOARD HAVE?***

Arbitrators and arbitration boards have broad powers including the power to summon and enforce the attendance of witnesses, require the production of documents, or grant adjournments [Section 120]. They have broad powers to remedy any contravention of the collective agreement by ordering damages, including interest, the reinstatement of any employee unjustly dismissed, or substituting any unreasonable penalty for one that is just and reasonable. [Section 121]

***HOW LONG DOES IT TAKE FOR AN ARBITRATOR OR ARBITRATION BOARD TO ISSUE A DECISION?***

After hearing the matter, a single arbitrator must issue a decision within thirty days. An arbitration board must issue its decision within sixty days after the hearing. [Sections 125(1) and (2)] However, the failure of an arbitrator or arbitration board to issue a decision within these time frames does not affect the jurisdiction of the arbitrator or arbitration board to continue with and complete the arbitration proceedings and issue a final decision. [Section 125(3)]

***WHAT CAN BE DONE IF AN ARBITRATOR OR ARBITRATION BOARD FAILS TO ISSUE A FINAL DECISION WITHIN THESE TIME FRAMES?***

Either party can apply to the Labour Board which will investigate and issue a directive to ensure a decision is issued without further delay, or it can appoint a new arbitrator to hear the matter over again. [Sections 125(4) and (5)]

***IS A DECISION OF AN ARBITRATOR OR ARBITRATION BOARD FINAL AND BINDING?***

Yes. An arbitrator's decision will be reviewed by the courts only in very limited circumstances. If an arbitrator's decision is not obeyed, the decision can be filed with the Manitoba Court of Queen's Bench and enforced as a decision of that Court. Failure to abide by an arbitration decision can be contempt of court. [Sections 128(1), 127]

***DOES THE MANITOBA LABOUR BOARD EVER HEAR ARBITRATIONS?***

No. However, every arbitration decision must be filed with the Labour Board within ten days of being issued. All arbitration decisions are available for public inspection. [Section 126]

***WHAT CAN AN EMPLOYEE DO IF HE OR SHE FEELS THE UNION DID NOT HANDLE THE GRIEVANCE PROPERLY?***

As the exclusive bargaining agent for the employees in the unit, the union has the right to settle all grievances, to decide whether a grievance should go to arbitration, and to decide how a grievance should be presented at arbitration. The union need not take every grievance through to arbitration simply because an aggrieved employee requests that this be done, but the union must honestly consider the matter and not act in a manner that is arbitrary, discriminatory or in bad faith. [Section 20]

If an employee is unhappy with the way the union has handled the grievance he or she might be able to appeal the union's decision internally if the union's rules or constitution allow such an appeal. Some union constitutions state that if the union decides not to take an employee's grievance to arbitration, the employee may appeal to the membership of the union local. Then a vote of the membership determines whether or not the grievance should go to arbitration. Apart from any such internal union appeal an employee has no general right to appeal a union's decision. If an employee believes that the manner in which the union has handled the grievance constitutes an unfair labour practice contrary to section 20 of the Act, he/she may file an application with the Board.

***CAN EMPLOYEES FORCE AN EMPLOYER TO LIVE UP TO THE TERMS OF THE COLLECTIVE AGREEMENT BY GOING ON STRIKE?***

No. It is illegal to strike during the term of the collective agreement. Such a strike would mean that the employees themselves are not living up to the terms of the agreement which must contain a no strike clause. Instead, employees should make use of the grievance arbitration procedure contained in the agreement. [Sections 78(1) and 89(2)]

# EXPEDITED ARBITRATION

***CAN THE ARBITRATION PROCESS BE EXPEDITED?***

Yes. The party who initiated the grievance may refer it to the Manitoba Labour Board to be dealt with through the expedited arbitration procedure. The union may make the referral only in cases where an employee or the union has initiated the grievance. The employer may make the referral only in cases where the employer has initiated the grievance.

On the other hand, a grievance may not be referred to the Board if the time provided for in the collective agreement for referring the grievance to arbitration has expired. Likewise, the grievance may not be referred to the Board if the party that initiated the grievance has referred the grievance to arbitration under the collective agreement. [Sections 130(4)]

***ARE THERE SPECIAL FORMS ON WHICH TO MAKE THE REFERRAL TO THE LABOUR BOARD?***

Yes. A referral must be made on **Form XV – Referral of Grievance Under Section 130 of the Act**.

***WHEN CAN A MATTER BE REFERRED TO EXPEDITED ARBITRATION?***

The earliest a grievance can be referred to the Board is after the grievance procedure under the collective agreement has been exhausted or, for grievances dealing with dismissal or suspension of more than 30 days, until fourteen days have elapsed since the grievance was first brought to the other party's attention, whichever occurs first; for grievances dealing with other matters, until 30 days have elapsed since the grievance was first brought to the other party's attention, whichever occurs first. [Section 130(3) and 130(3.1)]

***IF ONE PARTY APPLIES FOR EXPEDITED ARBITRATION, CAN THE OTHER PARTY REFUSE TO PROCEED IN THIS MANNER ON THE GROUND THAT THE EXPEDITED ARBITRATION PROCEDURES DIFFER FROM THOSE IN THE COLLECTIVE AGREEMENT?***

No. The Act states that the union or the employer, whoever initiates the grievance, may refer the grievance, including any question about its arbitrability, to the Board. [Sections 130(1) and (2)] The parties cannot opt out of the expedited procedures by negotiating clauses to that effect in their agreement.

***WHAT HAPPENS ONCE AN APPLICATION FOR EXPEDITED ARBITRATION IS ACCEPTED BY THE BOARD?***

The Board shall enquire whether the parties wish to have a grievance mediator appointed to help settle the dispute. If the grievance mediator is appointed and is not able to help the parties resolve the matter, the case must proceed to arbitration and be heard within 28 days from the date on which the matter was first referred to the Board. A single arbitrator will be appointed by the Board to hear the case. [Section 130(5)]

***HOW IS AN ARBITRATOR SELECTED?***

The Board shall appoint an arbitrator to hear and determine the matter arising out of the grievance. The Board has established a list of persons who have qualities and experience which make them suitable persons to act as arbitrators. The Board will select an arbitrator from this list not only for expedited arbitration, but also for any appointments that it must make in relation to the regular arbitration process. [Section 117(2)]

***WHO IS RESPONSIBLE FOR PAYING THE COST OF THE ARBITRATOR APPOINTED UNDER THE EXPEDITED ARBITRATION PROCEDURE?***

Each party is responsible for paying one half of the remuneration and expenses of the arbitrator. [Section 119]

***IS THE HEARING CONDUCTED IN A DIFFERENT WAY?***

No. It is the same as any other single arbitrator hearing.

***WHAT POWERS AND REMEDIES DOES AN ARBITRATOR APPOINTED UNDER THE EXPEDITED PROCESS HAVE?***

All of the same powers and remedies as regular arbitrators have under the Act. [Sections 130(12) and (14), 120 and 121]

***HOW SOON WILL THE ARBITRATOR ISSUE A DECISION?***

A decision must be issued within fourteen days after the conclusion of the hearing for grievances dealing with dismissal or suspension for more than 30 days and within 28 days after the conclusion of the hearing in any other case. [Section 130(10)] In each case, the arbitrator shall issue a decision within 90 days after being appointed unless the Board, on application, extends the period. [Section 130(10.1)] Where there is a joint request for an oral decision, the arbitrator must issue it within one day of the conclusion of the hearing and shall issue written reasons within the time described in Sections 130(10) and 130(10.1).

# GRIEVANCE MEDIATION

***WHAT IS GRIEVANCE MEDIATION?***

Grievance mediation is an informal process where representatives of the union and the employer meet with a grievance mediator to attempt to resolve a grievance on a without prejudice basis prior to arbitration. Grievance mediation has proven useful in not only solving grievances but also in identifying and resolving situations that produce grievances.

***WHAT IS THE ROLE OF A GRIEVANCE MEDIATOR?***

Grievance mediators do not make decisions. They will offer alternatives and suggest areas of settlement based on the input of both the employer and the union. They will draw the parties' attention to relevant arbitration precedents. However, the parties will decide upon the actual "terms of settlement" which will be reached only by the mutual agreement of both parties. Therefore, it is very important for the parties to ensure that the representatives they have in attendance, have full authority to settle the grievance.

***WHAT IS THE ROLE OF THE PARTIES IN GRIEVANCE MEDIATION?***

In grievance mediation the parties directly involved in the dispute make the final decision as to how the grievance is going to be resolved. They are also responsible for enforcing the settlement that is reached. If no settlement is reached, both parties are free to proceed to arbitration as set out in their collective agreement or as provided for under expedited arbitration.

***HOW CAN A GRIEVANCE MEDIATOR BE APPOINTED?***

A grievance mediator can be appointed in one of three ways. Firstly, the parties can make a joint application in writing to the Minister of Labour requesting that a grievance mediator be appointed to assist them in resolving their grievance. [Section 129(1)] Secondly, the parties may wish to name a grievance mediator in their collective agreement. If the parties use a grievance mediator named in the collective agreement, the government will pay one-third of the cost incurred by using the person named as the grievance mediator in the collective agreement. [Section 129(2)] Thirdly, if the parties apply to the Board for expedited arbitration, the Board may request the Minister of Labour to appoint a grievance mediator. [Section 130(8)]

***IF THE PARTIES DO NOT WISH TO PROCEED TO EXPEDITED ARBITRATION, WHAT MUST THEY DO TO HAVE A GRIEVANCE MEDIATOR APPOINTED?***

If the parties have not provided for a grievance mediator in their collective agreement, they can make a joint application in writing to the Minister of Labour. The application must be accompanied by a copy of the collective agreement, a copy of the grievance and any written replies, the names, addresses and telephone numbers of the employer and union involved including contact persons, and any other relevant information.

***WHO PAYS FOR THE GRIEVANCE MEDIATOR?***

There is no charge for the services of a grievance mediator appointed by the Minister either on the joint request of the parties or upon the request of the Board under the expedited arbitration procedure.

***DOES THE GRIEVANCE MEDIATOR FILE A REPORT TO THE ARBITRATOR?***

No. The mediator has no contact with the arbitrator. All discussions the grievance mediator has with the parties are held in strict confidence.

# PART VII.1: DISCLOSURE OF INFORMATION BY UNIONS

## FINANCIAL DISCLOSURE

***WHAT IS FINANCIAL DISCLOSURE?***

Effective October 18, 2000, **The Labour Relations Act** requires all unions, upon the request of a member, to provide the member, at no charge, a copy of a financial statement of the union's affairs to the end of its last fiscal year. The statement must be certified to be a true copy by the union's treasurer or other officer responsible for handling and administering its funds. [Section 132.1(1)]

***WHAT MUST THE FINANCIAL STATEMENT INCLUDE?***

The financial statement of a union shall set out the union's income and expenditures for the fiscal year in sufficient detail to disclose accurately the financial condition and operation of the union and the nature of its income and expenditures. [Section 132.1(2)]

***WHAT IF THE MEMBER WISHES TO SEE FURTHER INFORMATION?***

If a member of the union complains to the Board that the union's financial statement is inadequate, the Board may order the union to prepare another financial statement in a form, and containing the information, that the Board considers appropriate. [Section 132.1(5)]

***WHAT IF THE UNION FAILS TO PROVIDE A FINANCIAL STATEMENT TO THE MEMBER?***

If the union fails to give a member of the union a financial statement as per Section 132.1(1), the member may file a complaint with the Board. The Board may direct the union to file with the Board, within the time the Board determines, a copy of the financial statement of the union affairs to the end of its last fiscal year. The statement must be verified by its treasurer or another officer responsible for handling and administering its funds. The Board may also direct the union to provide a copy of the statement, to its members, that the Board in its discretion may direct. [Section 132.1(3)] The Union must comply with the Board's direction. [Section 132.1(4)]