

FIRST REPORT
OF THE
PUBLIC REVIEW BOARD

CAW/TCA CANADA

TO THE 3RD CONSTITUTIONAL CONVENTION

**NATIONAL AUTOMOBILE AREOSPACE AND AGRICULTURAL
IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA)**

**SYNDICAT NATIONAL DES TRAVAILLEURS ET TRAVAILLEUSES
DE L'AUTOMOBILE, DE L'AEOSPATIALE ET DE L'OUTILLAGE
AGRICOLE DU CANADA (TCA-CANADA)**

CAW  TCA
CANADA

1985 - 1990

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FOREWORD

Many years ago our former union, under Walter Reuther's leadership, established a Public Review Board where members could appeal certain internal decisions of the union.

When we formed our Canadian union we were determined to have a Public Review Board as part of the internal democracy process. We asked a few outstanding Canadian citizens who have no connection with our union to serve as board members.

This is the first report of the Public Review Board to the membership of our union, and I want to thank Alan Borovoy, chairperson and the other Board members for their commitment to this process.

A handwritten signature in cursive script, appearing to read "Robert White".

*Robert White, President
August 1991*

August 1991

Robert White
President
CAW/TCA Canada
205 Placer Court
Willowdale, Ontario
M2H 3H9

Dear President White:

I am honoured to present to the National Union and its membership the First Report of The Public Review Board, 1985-1990. In addition to introducing our Board and its operations, the Report includes a summary of the four appeals considered by the Board since its inception in 1985.

While to date we have not been overwhelmed with appeals to consider, the members and I have been pleased to serve on the Board. I know my colleagues share my commitment to the institution of The Public Review Board as a noble experiment in union democracy.

I look forward to seeing you and the delegates at the Third Constitutional Convention of the CAW/TCA Canada in September, 1991 at Halifax, Nova Scotia.

Sincerely,



A. Alan Borovoy
Chairperson

**The First Report of The Public Review Board
CAW/TCA Canada to the 3rd Constitutional Convention**

**National Automobile, Aerospace and Agricultural Implement
Workers Union of Canada (CAW-Canada)
Syndicat national des Travailleurs et Travailleuses de l'Automobile,
de l'Aérospatiale et de l'Outillage agricole du Canada (TCA-Canada)**

This report is submitted to the membership pursuant to Article 27, Section 8 of the CAW/TCA Canada's Constitution. The Public Review Board is required to prepare and submit such a report of its activities, including a summary of all appeals it has considered.

INTRODUCTION

The Public Review Board was created by the delegates to the Founding Convention of the CAW/TCA Canada, September, 1985, in Toronto, Ontario. The Board was established "for the purpose of ensuring a continuation of high moral and ethical standards in the administrative practices of the National Union and its subordinate bodies, and to further strengthen the democratic processes and appeal procedures within the Union as they affect the rights and privileges of individual members or subordinate bodies..." (Article 27, Section 1 of the Constitution).

The Board is modelled after the UAW's Public Review Board which was created in 1957 on the urging of UAW President Walter Reuther. The creation of an independent body to monitor the UAW's internal practices was a bold idea at that time. It was still an innovative concept when the delegates to the CAW/TCA Canada's Founding Convention included the autonomous board in the National Union's Constitution.

MEMBERS

The Public Review Board consists of five members, including the Chairperson. Their terms are for the period between National Constitutional Conventions. At the Convention, the National President, with the approval of the National Executive Board, proposes the names of the Chairperson and members for ratification by the delegates.

As of June, 1991 the members of the Public Review Board were: A. Alan Borovoy, Chairperson, Hélène David, Daniel G. Hill, Wilfred List, and Lois Wilson. The following is a brief description of the experience each of the members brings to the Board:

A. Alan Borovoy, Chairperson: General Counsel of the Canadian Civil Liberties Association; Formerly: Associate Secretary, National Committee for Human Rights, Canadian Labour Congress; Secretary, Ontario Labour Committee for Human Rights; Director, Toronto and District Labour Committee for Human Rights.

Hélène David: Adjunct Professor, Sociology Department, University of Montreal; Researcher, Work Organizing Division, Institute of Applied Research on Labour; Formerly: Member, Pay Equity Committee, Quebec Council on the Status of Women; Member, Consulting Group on the Aged, Quebec Ministry of Health and Social Services.

Daniel G. Hill: Race Relations Advisor, Canadian Civil Liberties Association; Member, Canadian Human Rights Commission Tribunal; President Emeritus, Black History Society; Formerly: Ombudsman for Ontario; Chairman and first Director, Ontario Human Rights Commission.

Wilfred List: Award-winning journalist on labour affairs; Instructor on labour journalism; Formerly: Labour reporter for The Globe and Mail for more than 30 years.

Lois Wilson: Member, Environmental Assessment Panel reviewing Nuclear Waste Management and Disposal Concept; Vice-President, Canadian Civil Liberties Association; Formerly: President, World Council of Churches; Moderator of the United Church of Canada.

Until his death in 1987, Bishop Adolphe Proulx was a member of The Public Review Board. Bishop Proulx was active in the social field and the human rights dossiers developed by the Canadian Conference of Catholic Bishops. He was President of the Interchurch Committee on Human Rights in Latin America and a member of the Social Affairs Committee of the Conference. Bishop Proulx was an active member of the Assembly of Quebec Bishops and the President of its Social Affairs Committee.

OPERATION

The Public Review Board (along with the Convention Appeals Committee) is the final body to hear appeals of claims arising under the Constitution's internal remedy procedures. The Board is also the exclusive appellate authority for claims of violations of the Union's Ethical Practices Codes.

(a) Claims Arising Under the Constitution

In general, the internal remedy provisions of the Constitution can encompass a wide variety of claims which arise as a result of the day-to-day operation of the Union. Union members, or subordinate bodies, may appeal any action, decision, or penalty by the National Union, the National Executive Board, any administrative arm of the National Union, a Local Union, or any of its units, committees, officers, Committeepersons or stewards, or any other subordinate body of the National Union. The normal route of appeal, except where the Constitution makes specific provision otherwise, is first to the membership or delegate body immediately responsible, second to the National Executive Board, unless the appeal begins there, and third to the Public Review Board or to the Convention Appeals Committee, whichever is appropriate.

It should be noted that the Public Review Board cannot review the collective bargaining policies of the Union. And, on appeals concerning the handling of a grievance or other issue involving a collective bargaining agreement, the Board may decide an appeal on its merits only if it first determines that the matter was improperly handled because of fraud, discrimination, or collusion with management or that such handling was "devoid of any rational basis".

Reference should be made to Article 28 of the Constitution for detailed information regarding appeals. In addition, reference may be made to the Public Review Board's Rules of Procedure included as Appendix A to this Report.

(b) Claims Arising Under the Ethical Practices Codes

The Ethical Practices Codes were adopted by the Founding Convention of the CAW/TCA Canada in Toronto, Ontario, September, 1985. The Codes are reprinted in the Constitution immediately following the text of the Constitution itself. There are four Ethical Practices Codes: Democratic Practices; Financial Practices; Health, Welfare, and Retirement Funds; and, Business and Financial Activities of Union Officials. Claims involving allegations of violations of the Ethical Practices Codes are processed in much the same manner as claims arising under the Constitution.

For details about complaints involving the Ethical Practices Codes, reference should be made to Article 27 of the Constitution.

(c) Procedural Advice

Members may contact the Public Review Board's staff for information regarding procedures available for relief under the Constitution or the Ethical Practices Codes. The staff will not provide advice, however, with respect to the merits of a member's claim.

STATISTICS

As of December 31, 1990, The Public Review Board had considered four appeals. There are currently no appeals before the Board.

Statements of revenue, expenses, and surplus, breaking down the costs to the Union of operating the Board, are included in this Report as Appendix B.

APPEALS CONSIDERED - 1985 TO 1990

The following is a summary of each of the appeals considered by The Public Review Board from 1985 to December 1990. Should the number of appeals decided by the Board increase in ensuing years, it will be necessary to provide a less detailed description of the cases. However, at this time, the Board believes the members would benefit from a detailed look at its decisions and the concerns raised by their brothers and sisters in the Union. (The full text of these decisions is available upon request without charge. Further, any member of the National Union or any of its Local Unions may request to be placed on the mailing list which will ensure receipt of all published decisions and Reports of the Board.)

Case No. 1/88

**Member, CAW Local Union 222-GM v. CAW Local Union 222-GM
Election Committee (Oshawa, Ontario)**

Facts:

The appellant sought an order from The Public Review Board to overturn the election of a Committeeperson. The appellant was a candidate in the same election, but lost in a run-off vote held two days after the election.

A number of circumstances led the appellant to complain about the election process, including what appeared to be a level of political rivalry between some of his supporters and another group which he believed had control of the Election Committee. The appellant's original votes declined by 25% on the subsequent run-off vote. The Election Committee would not allow one of the appellant's scrutineers to come within about 50 feet of the ballot box. There were periods of hours when the ballot box was removed from the area of voting and kept in the exclusive control of the Election Committee. As well, supporters of the appellant said they obtained signatures from 105 workers in the Zone who attested that they had voted for him on the second ballot. This number was substantially greater than the number of votes counted by the Committee.

The appellant's request for a new vote was dismissed by the Election Committee. He then appealed to the Appeals Committee which convened a hearing and reported to the National Executive Board. The National Executive Board dismissed the appeal and the appellant then brought the matter to The Public Review Board.

Decision:

The Public Review Board held that the evidence in the Record did not provide a sufficient basis for overturning the impugned election. The most serious election irregularity in the Record was the restriction barring the scrutineer from approaching the ballot box during actual voting. While the Board declared that this restriction imposed needless and unfair handicaps on the ability of the scrutineer to perform his duties, it was not prepared to set aside the vote on that basis. In order to do so, the Board would have to believe it likely that a large number of the appellant's supporters were improperly denied ballots and/or a large number of ineligible people were given ballots. On the basis of the evidence, it appeared that this could not have happened.

With respect to the 105 people who were willing to sign statements that they had voted for the appellant, the Board found the signatures less than persuasive. The Board was of the opinion that

Ours is a society in which politeness is often more valued than candor. When people are asked about their voting behaviour, their replies may well be designed to placate their questioners ... In such a context, it is quite conceivable that a significant number of people who did not support [the appellant] could nevertheless declare that they voted for him.

The Board also noted that there was a policy reason against allowing these signatures to overturn an election.

The voters in this local union are entitled to exercise their franchise on the basis of a secret ballot. This practice owes its origin to the belief that electoral secrecy is a prerequisite of procedural integrity. To disclose your vote is to render yourself susceptible to intimidation. For these reasons, it could be destructive of the principles of trade union democracy to allow the results of an open ballot to prevail over the outcome of a secret ballot.

The foregoing statement of the Board was made, not as an irrevocable doctrine, but as a strong predisposition. In order to allow such evidence to overturn a secret ballot, more persuasive circumstances than those that emerged in this case would be required.

The Board also commented on the election practices disclosed in this appeal even though they did not materially affect the Board's decision. Removing scrutineers from the immediate vicinity of the ballot box obviously impedes the fulfilment of the role of scrutineers in democratic elections. While the integrity of the Election Committee's activities was not necessarily being questioned, the Committee was urged to consider adopting more of the recommendations in the CAW/TCA Canada election guide that contains a number of excellent recommendations for promoting fair play in local union elections. In these matters, the appearance of propriety is critical.

Case No. 2/88

Member, CAW Local Union 27-GM v. CAW National Office (London, Ontario)

Facts:

The appellant sought to require the Union to reinstate his grievance for three days of bereavement leave arising from the death of his father. The grievance was made contentious by the fact that the bereavement occurred during the appellant's annual vacation. Thus, he claimed bereavement leave as of the date of his return to work. The relevant section of the collective agreement read as follows: "When death occurs in a seniority employee's immediate family, as defined below, the employee on request, will be excused for any of the first three (3) normally scheduled working days (excluding Saturdays, Sundays and holidays) immediately following the date of death provided he attends the funeral." At step 4 of the grievance procedure, the Union decided that the matter should not proceed to arbitration.

The appellant appealed to the executive of his Local Union and then to the National Executive Board without success. The appellant then brought the matter to The Public Review Board.

Decision:

This was the first case in which The Public Review Board was called upon to determine whether the Union's "disposition or handling of the matter was devoid of any rational basis," (Article 28, Section 4(i)). It raised, therefore, the difficult question regarding the scope of the Board's review power. The Board held that the words "devoid of any rational basis" suggest that, on matters of collective bargaining policy, the Board should not substitute its judgment for that of the Union. At the same time, however, the terminology does create some power for the Board to intervene.

Who wins, for example, if the Board finds that a grievance had a fifty-fifty chance to succeed? Does it make any difference if the odds are more like forty-sixty? Does the kind of case make a difference? Suppose, for example, the Union were to withdraw a discharge grievance? Might that broaden our review powers, beyond what they might be in other cases? Since the CAW chose to adopt the same constitutional language as its American counterpart in this respect, how far should we be guided by the earlier decisions of the U.S. Board on the same language? Since the scope of this power cannot be spelled out in the abstract, perhaps the best we can do is to try to define its contours from case to case.

In this case, the appellant claimed that "the first three normally scheduled working days" as provided in the collective agreement referred to his first three normally scheduled working days following the death of his father, that is, following his return to work from vacation. In addition, the Board noted that certain equitable principles favoured the appellant's view.

A vacation is designed to provide an employee with much needed rest and recreation. Such a period of leisure obviously cannot be enjoyed during a time of bereavement. On this basis, there is an argument for granting the employee the additional three days which were likely lost to that precious period of vacation which forms such a vital component of working people's lives.

However, the problem with the appellant's claim was the language of the collective agreement. The agreement specified exactly when the bereavement leave was to occur: "any of the first three (3) normally scheduled working days ... immediately following the date of death." The Board held that the word "immediately" argued against the appellant's claim. In addition, the agreement specifically excluded "Saturdays, Sundays and holidays" from the period of computation. If other non-working days were also intended to be excluded for these purposes, one would expect the agreement to have specified them. In this regard, the Board also found that the collective agreement treated the terms "vacation" and "holiday" separately so that in this case, the word "holidays" could not be construed as including vacations.

The Board was of the view that the Union had strong grounds for withdrawing the appellant's grievance. The provisions of the collective agreement and relevant precedents constituted substantial barriers to his prospects for a successful outcome. While the Board did not express a certain conviction that the result would have been unfavourable; it expressed a strong belief that the prospects were dubious. Thus the Board held that on any reasonable interpretation of the Constitution, the Union's handling of the matter could not be described as "devoid of any rational basis".

Case No. 3/90

**Member, CAW Local Union 1285-Chrysler v. CAW Local Union 1285
Membership (Brampton, Ontario)**

Facts:

The appellant sought reinstatement to his elected position as a Committeeperson for his Zone. The members in his Zone had voted to recall the appellant and, since then, he had not served in that office.

A Committeeperson may be recalled by the membership under Article 43, Section 3 of the Constitution for failure to perform the duties of the office. A petition setting forth the specific complaints shall be signed by members in the Zone and the Committeeperson shall receive notification of the specific complaints. Upon the filing of the petition with the Local Union, a special meeting for recall shall be held. Each Local shall establish in its bylaws, the number of petitioners required for a recall and the quorum necessary to establish a recall meeting. The Constitution further stipulates that a recall vote needs two-thirds support of the members at the meeting.

Petitions to recall the appellant from his office were circulated but they did not set out specific complaints against the appellant. The required number of members signed the recall petition, attended the recall meeting, and voted in favour of the recall. According to the Record of the case, however, approximately ten members were allowed to vote before they heard the appellant's entire defence. Apparently, they had to leave early.

The appellant's subsequent appeals of the recall to the Unit Membership and the Local General Membership were denied. On appeal to the National Executive Board, it was held that the recall procedure was in compliance with the Constitution and the Local's by-laws with one exception: the appellant did not receive the "specific complaints" against him in writing. However, the National Executive Board decided the facts in the case clearly showed the appellant was aware of the complaints against him and, therefore, upheld the recall. The appellant then appealed to The Public Review Board.

Decision:

On his appeal to The Public Review Board, the appellant raised the following issues: the recall petition was invalid because it did not set out specific charges; he was not notified of specific complaints before the recall meeting; the charges were unsubstantiated; he did not receive a full and fair hearing at the recall meeting; and, the parties making the allegations at the meeting were not the signatories on the petition.

The Board is mandated by Article 28 Section 3(f) of the Constitution to "hold a hearing, unless it concludes that the appeal is unsubstantial or that no useful purpose would be served by a hearing. In which event the appeal may be decided or dismissed without a hearing." The Board decided that there would be no useful purpose served by holding a hearing in this case. The Local Union had since held another election for the position at issue which was presumably filled by someone duly elected to it. No one suggested the Board could or should remove the new office-holder and the Board, therefore, felt obliged to dismiss the part of the appeal requesting reinstatement.

The Board decided that the most useful function it could serve was to comment on some of the equities between the parties as they emerged in the Record. The key issue affecting the legality of the recall vote was whether the originating petition gave the appellant adequate notice in writing of the specific complaints against him. The written notice is a requirement of the Constitution and serves the important purpose of enabling impugned officers to prepare a competent response so that they might attempt to dissuade the members from supporting the recall petition. The requirement represents the most fundamental component of fair play and the Board regarded as improper any failure to fulfil such requirements. In the circumstances of the case, it was not necessary for the Board to decide whether the appellant was, in fact, aware of the complaints against him. Even if the Board were persuaded by the argument that knowledge of the complaints would be sufficient for these purposes, it would have to be satisfied from the Record that the appellant knew all, not just some, of the complaints well enough in advance of the recall meeting to prepare an adequate defence for himself. "At the very least, those who seek to avoid their constitutional obligations should face a demanding onus to demonstrate that the appellants have timely knowledge of everything the Constitution entitles them to know."

As to the conduct of the recall meeting at which the vote was held, the Board felt that the appellant raised a valid issue. It is not acceptable to let people vote before they hear the entire discussion. But the Board deferred to another case any decision as to whether the National Executive Board was entitled, in any event, to sustain the proceedings despite such an impropriety. From the number of votes cast against the appellant, it appears that those who left the meeting prematurely could not possibly have affected the outcome.

As to the appellant's claim that the charges against him were unsubstantiated, this is not a matter for the review functions of the Board. The Board's role in a case of this kind is essentially limited to determining whether the procedures of the Constitution have been followed. It is for the Zone members, not the Board, to rule on the merits of the petitioners' allegations. The Board also considered irrelevant the issue of whether the parties making the allegations at the meeting were the signatories on the petition.

The Board did express concern about the amount of time that had been taken to process this case. Had matters moved more quickly, the Board might have been in a better position to consider the appellant's major request for reinstatement. Nevertheless, an examination of the Record disclosed few delays on the part of the Union. "It is appropriate, however, to state for the benefit of all parties that, in cases that could be rendered moot by delay, there is an obligation on everyone to accelerate the usual processes. Hereafter, therefore, this Board will scrutinize the Record in order to be satisfied that the parties have accepted the affirmative burden to act with exceptional speed." The Board did rule as unacceptable the failure by the Union to file its Answer to the appeal by the relevant deadline because the Union representative was on vacation. However, the Board also expressed its appreciation to the Union representative for having so candidly acknowledged the facts. In addition, the Board noted the appellant's willingness to delay matters by requesting that all members of the Zone, some 200 people, be notified of the appeal in case they wanted to be added as parties. On the merits, the Board declined to rule in favour of the appellant's request. This appeal was not unknown to the members. If any of them had wished to be added as parties, they could have requested it. Since they didn't, no useful purpose would have been served by opening this opportunity to them at this point. In any event, such cases are essentially between the Union whose decision is being appealed and the appellant appealing it.

The Board also ruled against an additional motion filed by the appellant. When the Union failed to request a timely extension of the deadline for filing its Answer, the appellant asked the Board to exercise its discretion and grant him judgment on the merits of the entire appeal. Since the appellant was prepared to incur the risk of delaying these proceedings for a great deal longer by insisting that all the members of his Zone be sent material as potential parties, he could not claim that he was being significantly damaged over the two weeks or so that the Union was over time. That being the case, the Board decided to allow the Union to file its Answer late. At the same time, however, the Union was advised to be on notice that the Board could well respond less leniently to unwarranted delays in other circumstances.

Case No.4/90

Member, CAW Local Union 222-GM v. CAW Local Union 222-GM Unit Executive (Oshawa, Ontario)

Facts:

The appellant asked The Public Review Board for an order requiring a fellow local member to be put on trial for conduct unbecoming a Union member. This would require the Board to reverse a decision by the National Executive Board that effectively rejected the appellant's appeal of the Local Union's refusal to

order a trial. In addition, the appellant sought declarations with respect to certain procedural matters.

The case arose from events during an election campaign within the local. The appellant claimed that another candidate circulated material which was defamatory of his reputation and as a result launched a lawsuit for damages against the other candidate. The appellant also petitioned the Local for a Union trial of his complaint. The Local refused to convene such a trial, holding that the charges were not proper for such purposes. Despite its disagreement with the Local as to the propriety of the charges, on appeal, the National Executive Board declined to order that the appellant be put on trial because, according to its interpretation of Article 28, Section 5 of the Constitution, a Union member has an "obligation to exhaust internal Union remedies before going to a civil court or governmental agency for redress". The National Executive Board took the position that "the GM Unit is not to set up a trial ... until [the appellant] withdraws his court action..."

Decision:

The major issue for resolution in this appeal was whether the appellant's court action prevented him from pursuing remedies available to him as a union member under the Constitution, since he had not fully exhausted those remedies before going to court. The constitutional section in question, Article 28, Section 5, provides: "It shall be the duty of any individual or body, if aggrieved by any action, decision or penalty imposed, to exhaust fully the individual or body's remedy and all appeals under this Constitution and the rules of the Union before going to a civil court or governmental agency for redress."

The Public Review Board considered whether the statements of one Union member that have allegedly defamed another Union member could be included in the meaning of the key words of that section, "if aggrieved by any action, decision or penalty imposed". The Board decided that the words in question referred only to any action, decision or penalty imposed by the Union itself, not to inter-member conflicts. In this regard, the Board noted that the section appears in an article dealing with appeals from decisions of the Union. This interpretation was further fuelled by the word "imposed". "Such a word entails an element of authority and official formality; it is not the kind of word that is normally associated with the informal relationships of relative equals."

In addition, considerations of equity led the Board to adopt this narrow interpretation of the section. If the words could apply to inter-member disputes, Union membership would become a significant disability. For instance, in this case, the appellant would be unable to launch his lawsuit for damages until after he underwent all of the Union's constitutional processes

for having his antagonist put on trial. If such processes were allowed to run their course, the limitation periods for initiating legal actions could well have expired. "Why should Union members be required, in this way, to surrender their civil rights as citizens?" In the opinion of the Board, constitutional provisions of the kind at issue in this case should be construed, where possible, to avoid such inequities. Since it was demonstrated that the language can sustain a more benign interpretation, the Board held that such an approach would be most consonant with the very principles that the trade union movement itself attempts to promote.

Since the Board found that, in the circumstances, the appellant was not obliged to exhaust his Union remedies before going to court, the Board reversed the decision of the National Executive Board and directed it to take whatever steps were necessary to ensure that the trial was held. The National Executive Board has since directed the Local Union to hold a trial.

CONCLUSION

Copies of the complete text of any of the appeals discussed in the foregoing are available on request to The Public Review Board at 229 Yonge Street, Suite 402, Toronto, Ontario M5B 1N9.

Respectfully submitted,

**THE PUBLIC REVIEW BOARD
CAW/TCA CANADA**

A. Alan Borovoy
Chairperson

APPENDIX A

RULES OF PROCEDURE

Effective August 7, 1990

The following rules are promulgated by the Public Review Board, hereinafter "PRB", pursuant to the authority contained in Article 27, Section 6, and Article 28, Section 3(f), of the Constitution of the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada). Their purpose is to make the services of the PRB available to those within its jurisdiction in a fashion which is orderly, as prompt as justice will permit, and fair to all. Any questions concerning these rules are cordially invited, by letter, telephone, or in person, at PRB headquarters, located at 229 Yonge Street, Suite 402, Toronto, Ontario, M5B 1N9, Telephone: (416)861-1291.

1. Appeals

Every notice of Appeal to the PRB shall be signed by the member or members appealing, shall be filed with the National President at 205 Placer Court, North York, Ontario, M2H 3H9, and shall be accompanied by a Statement of Reasons for Appeal (Article 28, Section 4(a) of the Constitution) which shall include a specific and detailed summary of the following:

- (a) The factual circumstances out of which the appeal has arisen;
- (b) The decision of the National Executive Board; and,
- (c) The arguments upon which reliance will be placed in opposition to the National Executive Board's decision.

2. Notification of Pending Appeal

Upon receipt of the Notice and Statement of Reasons for Appeal in a particular case, the PRB will promptly forward a Notification of Pending Appeal and a copy of these Rules to all parties. Copies of the Notice and Statement of Reasons for Appeal will be forwarded with the Notification to all parties who have not previously received them.

Where it appears that the interests of other parties may be involved, the Local corresponding secretary will be requested to furnish to those parties copies of the Notification of Pending Appeal and Statement of Reasons so they may be aware of, and, if they wish, participate in, the appeal proceedings.

3. Answer to Statement of Reasons for Appeal

An Answer to the Statement of Reasons for Appeal shall be filed by the National Union and may be filed by any other party. The Answer must be responsive to each argument advanced by the party or appellant in his or her Statement of Reasons for Appeal; provided however, where objection is to be made to PRB jurisdiction to consider the appeal, a Special Answer may be filed limited to a discussion of the jurisdictional issue; and provided further, upon the decision of the PRB to assume jurisdiction, or at its specific request in lieu of such a decision, an Answer responsive to the arguments raised in the Statement of Reasons for Appeal shall be filed.

All Answers shall be filed with the PRB within 15 days after receipt of the Notification of Pending Appeal. Where an additional Answer may be required following the submission of a Special Answer this shall be filed within 15 days after receipt of PRB request. These time limits may be extended upon written request submitted prior to the deadline for filing.

The failure of the National Union timely to file its Answer may provide grounds for the granting of judgment in favour of the appellant, if, in the opinion of the PRB, the interests of justice so require.

4. The Record

At the time the National Union files its Answer it shall forward to the PRB its complete written record in the case, including all correspondence, briefs, or written arguments, minutes, transcripts, and exhibits submitted in connection with the local union and National Union proceedings. A copy of the Record will be supplied by the PRB to each party. It shall be the duty of each party receiving the Record to notify the PRB in writing within ten days after receipt of any deficiency in the Record supplied and, when possible, to supply the missing documents.

5. Correspondence

In order that the parties may be fully informed as to developments concerning an appeal pending before the PRB, copies of any correspondence which pertains to matters of substance or procedure will be mailed by the PRB to all parties to the appeal who have not previously received it.

6. Change or Error of Address

During the pendency of the case, it shall be the responsibility of each party notified of a pending proceeding under Rule 1 to inform the PRB immediately in writing of any change or error in address.

7. Time, Place and Notice of Oral Argument

- (a) Any party may request oral argument before the PRB. Such request should be made by not later than ten days after receipt of the Record. It shall be within the PRB's discretion, in light of the circumstances to grant or deny the request.
- (b) The Chair of the PRB shall designate the time and place of hearing of any matter meriting a hearing under the standards set forth in Article 27, Section 6, and Article 28, Section 4(h) of the Constitution.
- (c) Written notice of such time and place shall be transmitted to all parties at least ten days in advance of the hearing, except where such notice is waived by the parties.

8. Designation of Public Review Board Panel

The Chair of the PRB shall designate a panel of PRB members to consider each case, numbering from three members to the full PRB, and shall designate a chair of the panel.

9. Decision of Public Review Board Panel

The decision of the PRB panel in a particular case shall be by majority vote of the members thereof and shall constitute the decision of the PRB. The decision shall be reduced to writing and copies sent to all parties. In addition, copies will be sent to various colleges and universities, libraries, news media, private publishing services, and individual subscribers to the decisions of the PRB unless prior objection is received from any party.

10. Motions

Any party during the pendency of the appeal before the PRB may file a motion to require a specified action. Copies shall be transmitted to the other parties who may, but shall not be required to, file a response. Motions shall be decided by the Board without oral argument, unless otherwise indicated.

11. Additional Evidence

1. Additional evidence - that is, evidence in addition to that in the Record transmitted to the PRB - may be presented only in the following situations:
 - (a) Where authorized by the Chair of the panel of the PRB or offered and received without objection by any other party on the basis of a written request filed with the PRB within 20 days after the transmittal of the Answer submitted by the National Union. The request to present additional evidence shall set forth:
 - (i) Persuasive reasons for presenting such evidence and for not having presented it at prior hearings in the case;
 - (ii) The names of all witnesses whose testimony is desired to be presented;
 - (iii) The relevance of the anticipated testimony of each of these witnesses to the issues before the PRB; and,
 - (iv) A description of any documentary evidence to be offered.
 - (b) Where required by the PRB in order to inform itself adequately to reach a just decision.
2. Whenever such presentation of evidence is authorized, it may be received by the PRB in the form of a record made before a PRB-appointed hearing officer, or otherwise, upon such terms as are prescribed for the particular case and are consistent with the principles of notice, confrontation, cross-examination and opportunity for rebuttal.

12. Rules to be Liberally Construed and May be Modified

These rules shall be liberally construed to effectuate the purposes of the PRB and, in any event, the PRB may in its discretion modify, waive, or supplement any of these rules in any particular case, but only to the extent necessary to accomplish the purposes for which the PRB was established.

APPENDIX B

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD

STATEMENT OF REVENUE AND EXPENSES AND SURPLUS

FROM INCEPTION (OCTOBER 20, 1986) TO DECEMBER 31, 1986

Revenue

Grant from The Canadian Autoworkers	\$ 25,000	
Interest Earned	<u>213</u>	\$ 25,213

Expenses

Travel	1,241	
Case reports	254	
Administrative and secretarial	212	
Audit fees	160	
Office and miscellaneous	<u>28</u>	<u>1,895</u>

Excess of Revenue Over Expenses and Surplus \$ 23,318

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF REVENUE AND EXPENSES AND SURPLUS
FOR THE YEAR ENDED DECEMBER 31, 1987

	1987	1986
Revenue		
Grant from The Canadian Autoworkers	\$ -	\$ 25,000
Interest earned	<u>1,691</u>	<u>213</u>
	<u>1,691</u>	<u>25,213</u>
 Expenses		
Telephone	757	-
Administrative and secretarial	249	212
Audit fees	160	160
Office and miscellaneous	65	28
Travel	-	1,241
Case reports	<u>-</u>	<u>254</u>
	<u>1,231</u>	<u>1,895</u>
Excess of revenue over expenses	460	23,318
Surplus, beginning of year	<u>23,318</u>	<u>-</u>
Surplus, end of year	<u>\$ 23,778</u>	<u>\$ 23,318</u>

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF REVENUE AND EXPENSES AND SURPLUS
FOR THE YEAR ENDED DECEMBER 31, 1988

	1988	1987
Revenue		
Interest earned	<u>\$ 1,945</u>	<u>\$ 1,691</u>
Expenses		
Director's fees	2,800	-
Meeting fees	1,200	-
Office and miscellaneous	1,170	65
Counsel fees	825	-
Telephone	701	757
Administrative and secretarial	351	249
Audit fees	200	160
Travel	<u>90</u>	<u>-</u>
	<u>7,337</u>	<u>1,231</u>
Excess of expenses over revenue	(5,392)	460
Surplus, beginning of year	<u>23,778</u>	<u>23,318</u>
Surplus, end of year	<u>\$ 18,386</u>	<u>\$ 23,778</u>

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF REVENUE AND EXPENSES AND SURPLUS
FOR THE YEAR ENDED DECEMBER 31, 1989

	1989	1988
Revenue		
Interest earned	<u>\$ 1,048</u>	<u>\$ 1,945</u>
Expenses		
Director's fees	6,800	2,800
Hearing fees	4,800	-
Administrative and secretarial	1,200	351
Audit fees	1,200	900
Travel fees	843	90
Telephone	648	701
Office and miscellaneous	125	1,170
Counsel fees	118	825
Meeting fees	<u>-</u>	<u>1,200</u>
	<u>15,734</u>	<u>8,037</u>
Excess of expenses over revenue before the undernoted	(14,686)	(6,092)
Underaccrual of previous audit fees, adjusted 1989		
1988	(700)	700
Prior to 1988	<u>(850)</u>	<u>-</u>
	<u>(1,550)</u>	<u>700</u>
	(16,236)	(5,392)
Surplus, beginning of year	<u>18,386</u>	<u>23,778</u>
Surplus, end of year	<u>\$ 2,150</u>	<u>\$ 18,386</u>

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF REVENUE AND EXPENDITURES AND DEFICIT
FOR THE YEAR ENDED DECEMBER 31, 1990

	1990	1989
Revenue		
Grant from The Canadian Autoworkers	\$ 18,600	\$ -
Interest	<u>1,371</u>	<u>1,048</u>
	<u>19,971</u>	<u>1,048</u>
 Expenditures		
Meeting fees	5,550	-
Hearing fees	4,500	4,800
Counsel fees	3,120	118
Director's fees	3,000	6,800
Administrative and secretarial	2,235	1,200
Communications equipment	1,693	-
Audit	1,200	1,200
Office and miscellaneous	1,186	968
Telephone	<u>742</u>	<u>648</u>
	<u>23,226</u>	<u>15,734</u>
Excess of expenditure of revenue before the undernoted	(3,255)	(14,686)
Underaccrual of previous years' audit fees	<u>(900)</u>	<u>(1,550)</u>
Net excess of expenditure over revenue	(4,155)	(16,236)
Surplus, beginning of year	<u>2,150</u>	<u>18,386</u>
Deficit, end of year	<u>\$(2,005)</u>	<u>\$ 2,150</u>

APPENDIX C

INDEX OF APPEALS CONSIDERED - 1985-1990

Case No.	Name	Page
1.	Appeal of Member, CAW Local Union 222-GM v. CAW Local Union 222	
2.	Appeal of Member, CAW Local Union 27-GM v. CAW National Office	
3.	Appeal of Member, CAW Local Union 1285-Chrysler v. CAW Local Union 1285 Membership	
4.	Appeal of Member, CAW Local Union 222-GM v. CAW Local Union 222-GM Unit Executive	



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