

**SECOND REPORT
OF THE
PUBLIC REVIEW BOARD
CAW-TCA CANADA**

TO THE 4TH 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)**

**CAW  TCA
CANADA**

1991-1993

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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 Second 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.

*Basil 'Buzz' Hargrove, President
August 1994*

August 1994

Basil "Buzz" Hargrove
President
CAW/TCA Canada
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Dear President Hargrove:

I am pleased to present to the National Union and its membership the Second Report of the Public Review Board, 1991-1994. In addition to short biographies of the Board Members and some introductory remarks about the operations of the Board itself, the Report includes a summary of the six appeals considered by the Board since the last Union Convention of 1991.

I know that I speak for a unanimous Board when I assure you of our 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 on August 24th, 1994 in Quebec City.

Sincerely,

A. Alan Borovoy
Chairperson

**The Second Report of The Public Review Board
CAW/TCA Canada to the 4th Constitutional Convention
1991-1993**

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 and STAFF

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 August, 1994 the members of the Public Review Board are: 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.

The staff of the Public Review Board includes Donna Gilmour, Administrative Assistant; Stephen L. McCammon, Executive Secretary; Danielle S. McLaughlin, Registrar. Catherine S. Gilbert was Executive Secretary between September 1989 and January 1994.

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.

It has been suggested that the Union consider making special assistance available to those members who seek redress from the Public Review Board.

STATISTICS

Between January 1, 1991 and December 31, 1993, the Public Review Board considered six appeals and issued one written clarification regarding the judgments in Case No. 6/92 and Case No. 7/92. There are currently five appeals before the Board.

APPEALS CONSIDERED - 1991-1993

The following is a summary of each of the appeals considered by the Public Review Board from January 1991 to December 1993. 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. 5/92

Member, CAW Local Union 112-Dehavilland v. CAW Local 112 Election Committee and Membership and CAW National Officials (Downsview, Ontario)

Facts:

The appellant was a candidate in an election for the position of full-time committeeperson. The winner of that election was only able to put his name forward for nomination as a result of a recently passed by-law. The by-law provided that "an Alternate Committeeperson who is subsequently removed from his elected or appointed zone must seek re-election in his initial zone unless he resigns his position prior to closing of nominations." The winning candidate was an elected alternate committeeperson in zone 5, the zone in which he was running, but he was working in another zone. Furthermore, in submitting his name for the only position available, that of the full-time committeeperson, the eventual winner incorrectly wrote the words "Alternate Committeeperson" on his nomination paper.

After the election, the appellant filed a grievance protesting the election as being contrary to the collective agreement. The collective agreement provided that "the Company agrees that the Union shall be represented in each of the nine (9) geographical districts of the Plants by a Day Shift District Committeeperson who shall be elected or otherwise appointed from the employees in the geographical district he is to represent." In its response to the grievance, the Company said that it would recognize whichever employee the Union designated and that it would continue to recognize the person elected until the Union directed otherwise.

The appellant appealed to the National Executive Board [hereafter the "NEB"]. He asked the NEB to overturn the election of the committeeperson whose nomination he viewed as flawed and he asked to have himself installed as the committeeperson. He also asked the NEB to review the by-law in order to determine whether it was unconstitutional and whether it was in contravention of the collective agreement. The NEB dismissed his appeal on all counts. The appellant then appealed to the Public Review Board.

Decision:

The Public Review Board determined that the issues for resolution in this appeal were whether the by-law violated the Constitution, whether the winning candidate's nomination papers were fatally flawed, and what affect, if any, the collective agreement had on the issues in this appeal.

The Board examined Article 19, Section 1 of the CAW Constitution which includes the following provisions:

No officer, member, representative or agent of the National Union or of any Local Union or of any subordinate body of the National Union shall have the power or authority to counsel, cause, initiate, participate in or ratify any action which constitutes a breach of any contract entered into by a Local Union or by the National Union or a subordinate body thereof.

The Public Review Board considered the question as to what would constitute a "breach" of the collective agreement in violation of this section of the Constitution. The Board decided that, even if the Union had departed from the terms of the collective agreement, its actions might not necessarily constitute a "breach". The Board noted that in changing the representation arrangements for Committeepersons, the Union acted with the Company's approval and that "once the Company agreed to the new arrangement, it might be said that there was no breach. Such is the case when there is mutual consent of the contracting parties."

The Board also decided that even if the Union's actions could be considered a "breach" of the collective agreement "a proper reading of Article 19 should confine its application to those situations in which someone purports to act on behalf of the Local or National Union." The section's references to "officer, member, representative or agent" indicated that they are the ones who are denied the power or authority to engage in actions which breach the collective agreement. But the section does not forbid the Union itself from exercising such power or authority."

The Board went on to consider what form of membership ratification was required in the circumstances and whether there had been compliance with the proper procedures. The Board looked at Section 3 of Article 19, part of which reads "after negotiations have been concluded with the employer, the proposed contract or supplement shall be submitted to the vote of the Local Union membership...at a meeting called especially for such purpose..." The Board stated that "it might be held that this section contemplates a ratification vote on a total contract, not on a single provision", but, in any case, the Board

decided that "the requisite approval had been obtained by the Local Union at the meeting which dealt with the by-law. There was no point in calling a special meeting to ratify the arrangement after the Company's approval was secured because no subsequent changes were made in the terms of the by-law."

In its decision, the Board was careful to point out that it was not attempting to reach any conclusive judgment as to whether the collective agreement had been violated because the case did not require such a decision and such a decision might be beyond the powers of the Board.

In addressing the appellant's argument that the elected committeeperson's nomination papers were fatally flawed, the Board noted that there was only one position open for nominations and concluded that "it would be unduly harsh to render a person ineligible for office on the basis of the kind of mistake which the appellant himself acknowledged could be described as a 'clerical error.'"

In concluding, the Board upheld the decision of the NEB, left the election results undisturbed, and upheld the by-law "even on the assumption that it [did] conflict with the collective agreement."

Case No. 6/92

Member, CAW Local Union 222-G.M. Unit v. National Executive Board (Oshawa, Ontario)

Facts:

The appellant was defeated in his bid for election as Skilled Trades Chairperson for the G.M. Unit of Local 222. While this appeal concerned only the election for one position, there were 24 other positions up for election on that same day. After the election, the appellant successfully persuaded a membership meeting of the G.M. Unit and a general membership meeting of the Local Union to overturn the Skilled Trades Chairperson election and order a new one. Subsequently, the NEB reversed the membership decision and affirmed the original election result.

At that point, the appellant appealed to the Public Review Board to restore the membership order for a new election.

A number of circumstances led the appellant to complain about the election process. He detailed a litany of election irregularities. The elections were conducted without voters' lists and no adequate record was kept of which members voted. Everyone eligible was entitled to vote at more than twenty polling stations throughout the city of Oshawa. In all, several thousand people were involved in the vote. Before the count, no tally was made of the number of ballots published and used so that they could be compared with the number of votes actually cast.

While the NEB diligently considered the election irregularities, it did not find convincing evidence to demonstrate a case of deliberate fraud nor did it consider the election

irregularities great enough to trigger a new vote given that the appellant lost the election by 184 votes. In its decision not to uphold the membership's decision to overturn the election and hold a new one, the NEB also mentioned the failure of the Local Union to order new elections for all of the contested positions.

Decision:

In its decision, the Public Review Board respectfully differed with the decision of the NEB. At the same time, attention was given to the leadership the NEB had displayed in difficult circumstances.

The Public Review Board examined a number of UAW Public Review Board decisions, which, while not binding on the CAW Public Review Board, "should nevertheless be at least somewhat persuasive to the extent that the CAW chose to live under the same constitution as its American counterpart." While many of the American decisions would not overturn an election unless the irregularities could clearly have affected the outcome, other cases suggested that "substantial fraud" could justify overturning an election. In light of those cases, the Public Review Board asked the question "if 'substantial fraud' will suffice to overturn an election - even if it could not have affected the outcome - why not other substantial improprieties?"

The Public Review Board also referred to the CAW Election Guide which provided that:

A well substantiated showing of fraud, or of extremely loose practices in conducting the election, should be required by the membership before voting to invalidate an election and order a new one. (emphasis added by the Public Review Board)

After stressing the importance of the membership's confidence in election procedures, the Board decided that impugning an election "should not necessarily require proof of fraud or deception" because "if election practices were sufficiently loose, it could become effectively impossible even to detect - let alone to prove - the existence of fraud. In such circumstances, a requirement to prove fraud would become a catch-22." The Board came to the conclusion that "the proper test must concern the extent to which the election irregularities were of such a character and magnitude that they could readily facilitate and conceal a significant level of fraud and deception." While the Board made no finding of fraud in this case, it did conclude that the election irregularities represented "deficiencies of a fundamental character".

Having noted earlier that the Local union's failure to impugn all of the elections may have been "based upon the fact that most of the other defeated candidates chose not to appeal", the Board asked the following question: "why should the Local's reluctance to correct the other injustices operate to deprive the appellant of a remedy to which he was otherwise entitled?" In its decision, the Board concluded that "the failure to overturn all the elections cannot justify the failure to overturn this one."

In the result, the Public Review Board restored the order of the membership meeting that

there be a new election for the position of Skilled Trades Chairperson and set aside, to that extent, the NEB decision.

Case No. 7/92

Member, CAW Local Union 222-G.M. Unit v. National Executive Board (Oshawa, Ontario)

Facts:

This case involved one of several impugned elections at Local 222 in Oshawa during January of 1992. The appellant was one of three candidates for the two positions of Supplementary Unemployment Insurance Benefits (S.U.B.) Representative. The other two candidates were elected, the appellant placing third, 74 votes behind the successful second place candidate.

At a meeting of the G.M. Unit, the appellant persuaded the membership to order a new election for his position. The successful second place candidate appealed this decision and, in the result, the NEB overturned the membership order for a new election. The appellant appealed to the Public Review Board.

Decision:

The Public Review Board's decision was "based solely on an assessment of the allegations concerning improper election practices." In addition to some of the election irregularities that were impugned in the companion Case No. 6/92, other factors emerged at the hearing of this case. After a recount of the vote as between the successful second place candidate and the appellant, the initial vote difference of 74 grew to 240 and the recount revealed some additional 150 ballots. The Board noted that "while there was no proof that these differences were attributable to fraud, it is fair to say that the recount created a reasonable apprehension of wrong-doing." Once again, the Board did not base its decision "upon any finding of fraud, but upon the kind of loose election practices that could readily have allowed and concealed significant fraud." In particular, the Board stated that "we see no reason why, at the very least, there could not have been an accounting of the number who had registered to vote."

The Board held that the "judgment in this case should be read together with the one we rendered in...[Case No. 6/92]. Since the same questionable practices affected both cases, there is no justification for us to reach a different result in this one." Accordingly, the Board granted the appeal and restored the order of the membership meeting that there be a new election and set aside, to that extent, the NEB decision.

Clarification of Judgments in Case No. 6/92, Member, CAW Local Union 222-G.M. Unit v. National Executive Board (Oshawa, Ontario) and Case No. 7/92, Member, CAW Local Union 222-G.M. Unit v. National Executive Board (Oshawa, Ontario) [Feb. 1993]

After receiving letters from the appellants in Cases No. 6/92 and 7/92, as well as a letter from a party to Case No. 7/92, the Public Review Board issued a clarification and advised the parties that it was doing so by way of an explanation, not a revision, of its judgments.

The particular question before the Public Review Board in this clarification was "whether the new election[s]...ordered must be held 'with the candidates originally nominated' or whether nominations would now be open anew."

The Board noted that in both decisions it had used the words "new election". Thus, in its clarification, the Board held that "it was the intention of the Board that these words be read literally. A 'new' election is not merely a re-run of an old election. It means that the old election is overturned and nominations must be opened." The Board did indicate, however, that depending on the circumstances of a particular case, "we do not wish to foreclose on the possibility of being persuaded differently on another occasion."

In answer to arguments contained in the letters in support of a contrary position, this clarification included a set of reasons in support of a literal interpretation of the orders for "new" elections.

The Board indicated that, since the unfair election practices "must have been widely known, it is conceivable that they might have deterred some members from becoming candidates...[Furthermore]...to whatever extent any of the election practices...require a new election, elementary fairness requires that the nominations as well be re-opened."

Moreover, as regards the year that had elapsed since the elections, the Board pointed out that one or more of the original candidates might not be able to run again and that a possible subsequent acclamation would be seriously and obviously unfair. As well, the Board acknowledged that a number of circumstances could have changed significantly as a result of a variety of factors including "layoffs, illness, mortality, and an even greater level of knowledge among the members regarding the issues and the candidates." The Board concluded, therefore, that "since it is not possible to resurrect the status quo ante in other respects, it seemed problematic to attempt to do so in respect of the election only."

As to the possibility that some members might be able to put their names forward for positions in respect of which they would previously have been ineligible, the Board was convinced that any resulting appearances of unfairness could "be rectified by the voters if they wish to do so...[and that this]..approach maximizes the autonomy of the membership."

Case No. 8/92

Member, CAW Local Union 222-G.M. Unit v. National Executive Board (Oshawa, Ontario)

Facts:

The appellant, a member of Local 222, asked the Public Review Board to order a recount of the 1992 election for Plant Chairperson of the G.M. Unit. The appellant, not a candidate himself, intervened in support of the candidacy of the defeated incumbent.

The election precipitated substantial tensions among the members of the Local, including accusations of cheating and fraud. By the time a winner was declared, the police and even the courts had become involved.

The incumbent, who was at first successful in his bid for re-election, subsequently lost by 14 votes when 160 ballots in his favour were removed from the count. These ballots were alleged to have been fraudulently introduced. The National Observers, who had been sent by the NEB to deal with a number of protests over the conduct of the elections, recommended that these ballots be disqualified.

Despite this recommendation, the Local Election Committee included the contentious ballots in the count. However, the incumbent asked the Election Committee to exclude them and declare his opponent the winner. He confirmed this in a letter to the CAW National President and, as a result, a National Representative wrote to the Local Union's Election Committee "advising it that...there was no further need for the kind of security arrangements guarding the ballots that had earlier resulted from the court action." Accordingly, the security arrangements were removed and the Election Committee complied with the incumbent's request and declared his opponent the winner.

This case came to the Public Review Board by way of a motion for a recount endorsed by the membership. That membership resolution was effectively over-ruled by a National Representative who claimed that the incumbent had already conceded the election. The appellant appealed to the NEB who dismissed his appeal, at which point he turned to the Public Review Board.

Decision:

The central issue in this case concerned the incumbent's letter conceding defeat. Despite the appellant's arguments to the contrary, the Board held that not only did the letter clearly indicate the incumbent's desire to concede the election, but there was also a policy reason to rule against the appellant. Because of the letter, the Local Union's Election Committee relaxed the special security arrangements that had been undertaken to protect the integrity of the ballots in an already controversy-ridden election. In dismissing the appeal, the Board expressed this reasoning as follows:

In view of all the tensions surrounding the 1992 elections and security measures that were adopted in its wake, [the incumbent] had a positive obligation to avoid ambiguity. His fellow members were entitled to treat as a concession, that which reasonably looked like a concession. Otherwise, it would be so much more difficult to get beyond the troubled times that they had all experienced.

Case No. 9/93

Member, CAW Local 1524-M.T.D. Unit v. CAW Local 1524 Membership (Kitchener, Ontario)

Facts:

The appellant, a tool and die maker, was bumped twice into lower paying jobs and then laid off for some eleven weeks. He had more seniority in his classification than did a cutter-machinist who had recently transferred into the appellant's classification as an apprentice. The cutter-machinist, however, had more accumulated seniority in the Company's skilled trades service in general. The Union refused to act on the grievance he filed against his lay-off.

According to the appellant's interpretation of the collective agreement, an employee's seniority accumulates within a specific classification from the date of transfer. In appealing the Union's decision at a meeting of his Unit, then at a general membership meeting, and eventually before the NEB, the appellant argued, therefore, that his seniority in the tool and die maker classification should have precluded him from suffering these hardships. At each of these levels, the decision went against him. Before the NEB, a National Union representative argued that the relevant terms of the collective agreement referred "to seniority accumulated by the employee in any of the skilled trades categories in which the tool and die maker's certificate will render a person eligible for employment."

In appealing the handling of his grievance to the Public Review Board, the appellant raised an entirely new ground of appeal. Based on information he said he was only able to obtain after his NEB hearing, the appellant alleged a conflict of interest on the part of a committeeperson who had a key responsibility for handling such grievances. The information indicated to the appellant that the committeeperson, having transferred from another classification, had the least seniority in his new classification. On this basis, the appellant claimed that the committeeperson had an interest in ensuring that the appellant's grievance did not succeed, and that the alleged interest suggested an improper and unconstitutional handling of his grievance. For the first time, the appellant also argued that the Union's handling of the matter was devoid of any rational basis.

Decision:

Before addressing any of the appellant's substantive arguments, the Public Review Board had first to determine whether it had jurisdiction under the CAW Constitution. On matters involving grievances under a collective agreement, Article 28, Section 4(i) of the CAW Constitution contains the following provision:

...the Public Review board shall not have jurisdiction unless the appellant has alleged before the National Executive Board that the matter was improperly handled because of fraud, discrimination or collusion with management, or that the disposition or handling of the matter was devoid of any rational basis.

The Board held that the appellant's failure to allege a conflict of interest before the NEB was a serious one since "a plain reading of the Constitution does not reveal any grounds for excusing an appellant's failure to make the requisite allegations. Thus, at the very least, the reasons would have to be particularly compelling."

The appellant argued that he had not alleged "fraud, discrimination or collusion with management" before the NEB as "he was reluctant to engage in 'mud-slinging' because he had to live with the very Union officials whose behaviour was at issue." In response to this argument, the Board answered that "if the idea was to avoid tensions with his Union representatives, there is little difference between complaining to the NEB and complaining to us."

The appellant also claimed that it was difficult for ordinary employees to obtain the kind of information that supported his allegation of conflict of interest and that he did not receive that information until after the NEB hearing. The appellant received this information after asking a foreman for it. The Public Review Board, however, noted that "if the information was available at a later date, presumably it would also have been available earlier..." and concluded that "...in any event, there is no indication that [the appellant] even asked for it earlier."

In the result, the Board did not find either of the appellant's reasons compelling enough to justify his failure to bring his conflict of interest allegation to the attention of the NEB. The Public Review Board did, however, address the merits of the appellant's argument regarding the alleged conflict of interest as well as his argument that the Union's disposition was "devoid of any rational basis".

The Board did not find evidence to substantiate the allegation of a conflict of interest on the part of the committeeperson. The Board observed that the committeeperson had participated in the negotiations for the new collective agreement with the Company and that "he evinced a willingness to change the rules so as to prejudice the very interest he was, [according to the appellant's allegation], supposed to be protecting." The Board went on to ask the following question: "Even if the committeeperson had allowed a conflict of interest to influence him, what about the other members of the grievance committee, the Unit membership, and the Local Union?" And the Board concluded that "there is no indication - or even allegation - that they were labouring under a similar conflict of interest. Thus, the appellant cannot succeed on this branch of the case."

In considering whether the Union's handling of the matter could be found to be "devoid of any rational basis", the Board examined the competing interpretations of the relevant sections of the collective agreement. In the opinion of the Public Review Board, both the appellant's and the Union's interpretations were based on respectable arguments. The Board clarified its role in the proceedings with the following statement:

It is not for us to determine which of these conflicting interpretations is the superior one. Indeed, we are specifically precluded by the CAW Constitution from engaging in such an exercise. Our sole function on this branch of the case is to determine whether the Union's position was "devoid of any rational basis".

The Board held that the Union's "position might be questioned and challenged but it cannot be held to be essentially unreasonable" and, accordingly, the Public Review Board dismissed the appeal.

Case No. 10/93

Retired Members v. National Director, Retired Workers (Toronto, Ontario)

Facts:

The appellants, two retired workers, were seeking to overturn an August 1992 election for the position of sergeant-at-arms on the National Retired Workers Advisory Executive [hereafter the "Executive"]. Executive members are elected by the National Retired Workers Council [hereafter the "Council"] every three years.

The appellants questioned the eligibility of certain people who had voted in the election and asked the Public Review Board to order a new election. In particular, they questioned the eligibility of one member of the Executive [hereafter the "Executive Member"]. Since the election was carried by only one vote, the legality of that one person's vote was critical.

The appellants argued that the Executive Member, who, in the third year of his Executive term, had lost a June 1992 bid for re-election as a delegate to the Council, had thereby lost his right to vote in the impugned election. In rejecting this argument, the NEB based its decision on the following Council by-law:

3. (a) 5. Members elected to the Executive of the National Retired Workers Council shall have full delegate rights at Council meetings.

In the opinion of the NEB, "full delegate rights" must include the right to vote in elections for the members of the successor Executive.

In view of the fact that Executive members are elected to a three year term and delegates to the Council are elected annually, the appellants argued that the by-law sought to protect "the Executive members' right to vote at Council meetings - without having to be annually re-elected as delegates - until their [Executive] terms expire." From the appellants' perspective, then, Executive members who lose their status as elected delegates to the Council, Executive members in positions comparable to this particular Executive Member, lose the right to vote at Council meetings including those meetings at which new Executive members are to be elected. The appellants argued, therefore, that the Executive Member in question had lost his right to vote in the impugned election at some point in the third year of his Executive term.

Furthermore, they went on to assert that the by-law was unconstitutional. In making that argument, they pointed to Section 3(b) of Article 51 of the Constitution, which sets out the elements of representation to the Council. They contended that since the Constitution did not even mention representation or participation by Executive members, the by-law should be viewed as an unconstitutional attempt to expand on the participation that the Constitution authorized.

Decision:

The legality of the Executive Member's vote turned on a careful reading of the Council by-law and Sections 3(b) and 4(b) of Article 51 of the CAW Constitution. While the Public Review Board agreed that "a by-law that increases such participation is not simply fleshing out the constitutional provisions...arguably at least, it is contravening them", the Board went on to examine the by-law in light of section 4(b) of the Constitution.

Section 4(b) provides for the representation to the National Retired Workers Advisory Executive and mandates that it meet quarterly. Since the Constitution is silent as to how often the Council must meet and the Council by-laws require it to meet at least once a year, the Board noted that "such provisions strongly suggest that the smaller Executive is designed to be the operational body on behalf of the larger Council." The Board then pointed out that "it would appear incongruent for the Constitution to be read as irrevocably denying Executive members the right of effective participation at meetings of the very Council in respect of which they exercise such power." In denying the appeal, the Board held that "when Sections 3 and 4 of Article 51 are read together, they should be seen as at least authorizing the enactment of by-laws that would permit Executive voting at Council meetings."

The appellants raised several auxiliary arguments. They suggested that even if the Executive Member's "full delegate rights" had not vanished when he was defeated for re-election as a delegate to the Council, then they vanished when the impugned election was called. The Public Review Board held, however, that "to read the by-law as either of the appellants would have us do is to create a power vacuum during which properly-elected Executive members would suddenly be denuded of important rights. In the absence of explicit provisions to the contrary, constitutions should not be interpreted so as to create periods of legal paralysis."

The appellants also challenged the eligibility of those office workers, instructors, and presidents or their designates who were in attendance at the conference, but who had neither been elected as delegates nor explicitly granted the right to vote by the Constitution. Paragraph 3(b)(4) of Article 51 adequately rebutted that part of the appellants' argument regarding presidents or their designates in providing that "each Local Union shall be entitled to one (1) delegate to be designated by the President of the Local Union". In addressing the question as to the eligibility of office workers and instructors, the Public Review Board indicated that there had been no attempt to identify any of these people prior to the Public Review Board hearing. The Board was, therefore, effectively barred from dealing with this issue since the Constitution does not permit it "to exercise the kind of original jurisdiction that would be required...to entertain this claim at

this stage." By way of an explication the Board added that

one of the reasons the CAW Constitution has limited our jurisdiction in this way is that it has not given us the kind of investigative machinery that is available to the NEB. With few exceptions, the Public Review Board is bound by the findings of fact that have been made by the NEB."

The appellants raised one final auxiliary argument. They alleged that the credentials committee had failed to adequately assess the eligibility of those wishing to vote in the election. The Board suggested that the time to complain of a defective credentials process was early at the conference so that the matter might be rectified. Since the Record indicated that the conference heard no such complaints until the proceedings were almost at an end, the Board stated that it was "generally loath to...[set aside an election]...where the delegates themselves - including the appellants - accepted the impugned irregularities during virtually the entire life of the conference at issue." The Board left open for another case the question as to whether Article 28 of the Constitution deprives the Public Review Board of jurisdiction to deal with a credentials appeal.

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 I 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 EXPENDITURE AND SURPLUS
 FOR THE YEAR ENDED DECEMBER 31, 1991

	1991	1990
Revenue		
Grant from The Canadian Autoworkers	\$27,005	\$18,600
Interest	<u>1,040</u>	<u>1,371</u>
	<u>28,045</u>	<u>19,971</u>
Expenditure		
Director's fees	3,500	3,000
Audit	1,951	1,200
Office and communications equipment	1,363	1,693
Administrative and secretarial	1,110	2,235
Counsel fees	1,044	3,120
Telephone	671	742
Office and miscellaneous	543	1,186
Hearing fees	-	4,500
Meeting fees	<u>-</u>	<u>5,550</u>
	<u>10,182</u>	<u>23,226</u>
Excess of revenue over expenditure before the undernoted	17,863	(3,255)
Underaccrual of previous years' audit fees	<u>-</u>	<u>(900)</u>
Net excess of revenue over expenditure	17,863	(4,155)
Surplus (deficit), beginning of year	<u>(2,005)</u>	<u>2,150</u>
Surplus (deficit), end of year	<u>\$15,858</u>	<u>\$(2,005)</u>

APPENDIX B

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF REVENUE AND EXPENDITURE AND SURPLUS
FOR THE YEAR ENDED DECEMBER 31, 1992

	1992	1991
Revenue		
Grant from The Canadian Autoworkers	\$25,000	\$27,005
Interest	<u>535</u>	<u>1,040</u>
	<u>25,535</u>	<u>28,045</u>
Expenditure		
Administrative and secretarial	5,614	1,110
Hearing fees	4,500	-
Counsel fees	3,572	1,044
Directors' fees	3,500	3,500
Meeting fees	3,000	-
Meeting and transportation costs	1,699	-
Office and miscellaneous	1,695	543
Audit	1,200	1,951
Telephone	628	671
Office and communications equipment	<u>-</u>	<u>1,363</u>
	<u>25,408</u>	<u>10,182</u>
Excess of revenue over expenditure before the undernoted	127	17,863
Overaccrual of previous year's audit fees	<u>337</u>	<u>-</u>
Net excess of revenue over expenditure	464	17,863
Surplus (deficit), beginning of year	<u>15,858</u>	<u>(2,005)</u>
Surplus, end of year	<u>\$16,322</u>	<u>\$15,858</u>

APPENDIX B

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
 STATEMENT OF REVENUE AND EXPENDITURE AND SURPLUS
 FOR THE YEAR ENDED DECEMBER 31, 1993

	1993	1992
Revenue		
Grant from The Canadian Autoworkers	\$50,000	\$25,000
Interest	<u>181</u>	<u>535</u>
	<u>50,181</u>	<u>25,535</u>
Expenditure		
Hearing fees	24,000	4,500
Counsel fees	10,516	3,572
Meeting and transportation costs	6,955	1,699
Administrative and secretarial	4,756	5,614
Meeting fees	3,750	3,000
Directors' fees	3,500	3,500
Office and miscellaneous	2,749	1,695
Audit	1,000	1,200
Telephone	881	628
Office and communications equipment	<u>669</u>	<u>-</u>
	<u>58,776</u>	<u>25,408</u>
Excess of (expenditure over revenue) revenue over expenditure before the undernoted	(8,595)	127
Over (under) accrual of previous year's audit fees	<u>(371)</u>	<u>337</u>
Net excess of (expenditure over revenue) revenue over expenditure	(8,224)	464
Surplus, beginning of year	<u>16,322</u>	<u>15,858</u>
Surplus, end of year	<u>\$ 8,098</u>	<u>\$16,322</u>

APPENDIX C

INDEX OF APPEALS CONSIDERED - 1991-1993

Case No.	Name	Page
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