

**THIRD REPORT**

**of the**

**PUBLIC REVIEW BOARD  
CAW-TCA CANADA**

to the 5<sup>th</sup> Constitutional Convention

**NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND  
GENERAL WORKERS UNION OF CANADA (CAW-CANADA)**



**1994 - 1996**

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## **FOREWARD**

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 invited outstanding Canadian citizens who have no connection with our union to serve as board members.

This is the Third 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 1997



August 1997

Basil "Buzz" Hargrove  
President  
CAW/TCA Canada  
205 Placer Court  
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Dear President Hargrove:

I am pleased to present to the National Union and its membership the Third Report of the Public Review Board, 1994-1996. 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 eleven appeals considered by the Board since the last Union Convention of 1994.

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 in Vancouver.

Sincerely,

A. Alan Borovoy  
Chairperson



**The Third Report of The Public Review Board  
CAW/TCA Canada to the 5<sup>th</sup> Constitutional Convention  
1994 - 1996**

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)/Syndicat national de l'automobile, de l'aérospatiale, du transport et des autres travailleurs et travailleuses du Canada (TCA-Canada).

This report is submitted to the membership pursuant to Article 26 of the CAW/TCA 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 Public Review Board was established "to safeguard the moral and ethical standards and practices within CAW-Canada and strengthen the union's democratic process and appeal procedures". (Article 26, Section 1 of the Constitution).

The Public Review Board is modeled 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, 1997* 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; *Toronto Star* columnist.

Hélène David: Invited Professor, Sociology Department, University of Montréal; Researcher and Research Coordinator at Groupe de recherche sur les aspects sociaux de la santé et de la prévention at University of Montréal. 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, Ontario Black History Society. Formerly: Ombudsman for Ontario; Chairman and first Director, Ontario Human Rights Commission.

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

Lois Wilson: Chancellor, Lakehead University; Member, International Centre for Human Rights and Democratic Development; 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 Stephen L. McCammon, Executive Secretary; Danielle S. McLaughlin, Registrar; Donna Gilmour, Administrative Assistant. Shauna Weinberg was co-Executive Secretary between October, 1994 and December, 1996.

## **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 Public Review 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 have a wide right to appeal actions, decisions, or failures or refusals to act of 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 on appeals concerning the handling of a grievance or other issue involving a collective bargaining agreement, the Public Review Board may decide an appeal on its merits only if 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 Union's decision had no rational basis.

Reference should be made to Article 25 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 25 of the Constitution.

**(c) Procedural Advice**

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

## **STATISTICS**

Between January 1, 1994 and December 31, 1996, the Public Review Board considered eleven appeals. In addition, the Public Review Board has already decided two appeals in 1997. There are currently two appeals pending before the Public Review Board.

## **APPEALS CONSIDERED - 1994-1996**

The following is a summary of each of the appeals considered by the Public Review Board from January 1994 to December 1996. Should the number of appeals decided by the Public Review Board increase in ensuing years, it may be necessary to provide a less detailed description of the cases. However, at this time, the Public Review 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 Public Review Board.)

### **Case No. 11/94**

**Member, CAW Local Union 222 v. National Executive Board, *et al.***

#### **Facts:**

This was an appeal against the decision of the National Union's National Executive Board (hereafter the "NEB") dismissing the appellant's claim that three Union members should be put on trial for "conduct unbecoming" a Union member. The charges stemmed from the involvement of these three members in a Local Union trial. The appellant claimed that one Union member, a national representative, should be put on trial for halting the trial process. He called for similar action against the president of the Local Union because the president was allegedly too restrictive about authorizing payments from the Union treasury for the time that the trial committee members were spending on business connected with the trial. The appellant also charged a third Local Union member for entering his own name as a possible member of the trial committee while he was allegedly acting as counsel to the accuser in connection with the same trial.

#### **Decision:**

After holding a hearing, the Public Review Board (hereafter the "PRB") found that, in order to put someone on trial for "conduct unbecoming" a Union member, the person's behaviour must involve an issue with moral and ethical dimensions. In the first two cases, this was lacking. As far as the national representative was concerned, the appellant had charged only error and incompetence. As far as the Local Union President was concerned, the allegations involved only a complaint about the reasonableness of an exercise of discretion. Since neither of these cases involved allegations of unethical behaviour, the PRB dismissed these claims noting that these were

matters for redress through the Local's political processes rather than issues warranting trials. As for the charge against the third member, the PRB found that, unlike the allegations against the first two, this charge, if proved, might raise issues of ethical significance. This 3rd part of the case was, therefore, remitted to the NEB.

**Case No. 12/95**

**Former Member, CAW v. National Executive Board**

**Facts:**

The appellant was discharged by the Company in the wake of his participation in the Union's organizing drive. After the CAW filed an "unfair labour practices" complaint, the Company and the Union purported to reach a settlement concerning the appellant's status. The appellant later objected to the arrangement in a letter to the President of the CAW. The reply to the letter indicated that the Union considered the matter to be resolved.

**Decision:**

The PRB dismissed the appeal without a hearing because the material filed did not meet the threshold that would have justified holding one. The PRB found itself to be without jurisdiction in this matter because of the untimeliness of the appeal. It was noted that Article 28 Section 4(c) of the CAW Constitution provides for a thirty day time limit for these appeals to the PRB. The PRB did not decide how far it has the power to relieve against time limits. It was determined that, in any event, this would not be a case for such relief, because here, the delay was more than three years.

**Case No. 13/95**

**Member, CAW Local 27 v. National Executive Board**

**Facts:**

The appellant was laid off due to a lack of work in his department. Subsequently, he was recalled and seconded to another department. Shortly thereafter, he was laid off for a second time when senior members of the first department were transferred to the second department, displacing the appellant.

The appellant filed a grievance, arguing that seniority should be based on classification rather than department. After the grievance was denied at the second and third steps, the appellant asked the Union to proceed to the fourth step. Despite the appellant's frequent inquiries, no action was taken on the grievance for over a year and a half. The grievance was finally re-opened and advanced to the fourth step, but a CAW National Representative decided to withdraw it in light of the language in the collective agreement. The appellant appealed to the NEB.

In denying his appeal, the NEB acknowledged that the way the Local Union handled the

appellant's grievance had been "less than adequate". However, the NEB was satisfied that the National Representative's decision to withdraw the grievance was supported by the language in the collective agreement; that is, that the agreement specifically provided for layoffs by department and the supplementation of another department by senior members of a department suffering work reduction.

At that point, the appellant appealed to the PRB.

**Decision:**

On matters involving grievances under a collective agreement, the 1991 CAW Constitution contains a provision that limits the PRB's jurisdiction to hear appeals. The PRB does not have jurisdiction unless the appellant has alleged before the NEB that the matter was handled improperly because of fraud, discrimination or collusion with management, or that the handling of the matter was devoid of any rational basis. Thus, the language of the CAW Constitution makes it clear that the role of the PRB in grievance appeals is essentially to ensure that the Union has behaved with integrity and rationality.

After examining the relevant provisions of the collective agreement, the PRB concluded that the language of the collective agreement was capable of supporting the NEB's position. Since the PRB is not supposed to substitute its judgment for that of the Union on such issues, the PRB ruled that the NEB judgment must be sustained and dismissed the appeal. In the absence of a request for a hearing, the PRB dismissed the appeal without one.

**Case No. 14/95**

**Member, CAW Local 102 v. National Executive Board**

**Facts:**

This was an appeal against the NEB's dismissal of the appellant's claim to a 1989 seniority date in the carman helper classification.

The appellant was hired in 1989 in North Vancouver as a coach cleaner but performed a substantial amount of work in the helper classification. In the summer of 1993, he successfully bid on a helper position there. After he received a lay-off notice in September, the Company and the Union agreed to recognize the appellant's 1989 hiring date as his seniority date in the helper classification. On the strength of this arrangement, the appellant and his family then moved several hundred miles away to Quesnel, where he used this seniority date to bump into a helper's position. However, the Union and the Company later reviewed the appellant's seniority status and decided that an error had been made in the earlier arrangement. Accordingly, they determined that the appellant did not begin to accumulate seniority as a helper until he successfully bid on the helper position in the summer of 1993.

Subsequently, the appellant claimed that the NEB judgment injured his reputation by describing

his seniority quest as "highly unethical" and he claimed that the Local Union must provide him with a remedy because he relied, to his detriment, on the Union's agreement to recognize his 1989 seniority date in the helper classification. He appealed to the PRB which held a hearing.

**Decision:**

On the issue of the injury to the appellant's reputation, the NEB's representative acknowledged that the language of its judgment was likely excessive in this regard. As to the Union's promise to grant the appellant the seniority date he had relied on, the PRB ruled that this could be considered an infringement of the Local Union's duty to ensure fairness in the application of its rules and the conduct of its operations, as required by the Ethical Practices Codes of the CAW Constitution. After all, the breaking of promises violates a key component of fairness - all the more so when the breach causes injury.

Since other Local Union members were bound to be affected by any possible seniority award and since they had not been involved in this PRB hearing, the PRB remitted the case to the NEB. In doing so, the PRB instructed the NEB to use its constitutional powers to ensure that the appellant, consistent with fairness to others, would be given a full and fair opportunity - at the Local Union level - to make his case for improved seniority or some other form of compensation. In case there were any "difficulties with the interpretation or implementation of this order", the PRB judgment, dated January 21, 1995, declared that the PRB would retain jurisdiction in this matter until April 1, 1995 "or so long thereafter as ... [needed] ... to address any requests ... made before then."

**Case No. 15/95**

**Member, CAW Local 2213 v. National Executive Board**

**Facts:**

This case involved a litany of charges filed both by and against the appellant, a Local District Chairman, under the 1991 CAW Constitutional provisions.<sup>1</sup>

First, the appellant charged the Local Union President, (hereafter "the President"), with violating a provision of the Local by-laws when she arranged for the election for a sixth position on the Local bargaining committee. Second, he charged the President with "misappropriating funds". According to the appellant, the President requested time-off for the sixth representative during periods when she allegedly knew that there were no valid bargaining duties to perform.

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<sup>1</sup> There were several issues raised and decided in this case that concerned Local Union trial committee procedures. This case summary does not deal with these issues, in part out of an effort to provide a *concise* summary. Moreover, amendments made to the CAW Constitution in 1994, replaced the Local Union trial process with an investigation process conducted through the office of the National President. Anyone interested in reading the full text of the decision, however, is, of course, welcome to obtain a copy through the CAW PRB office.

Around the same time, the appellant was charged with "wilful defamation" and "conduct unbecoming a Union member" by one Local Union member (hereafter "C"), and with "wilful defamation", "conduct unbecoming a Union member", and "violating her right to equality" by another (hereafter "K"). The charges against the President were reviewed by the Local Union Executive Board (hereafter the "LUEB") and dismissed. On the other hand, the LUEB ordered trial committees struck to hear the case of C v. the appellant and K v. the appellant. The appellant protested to the NEB. In all three case, the NEB upheld the LUEB decisions.

At the end of the two trials, the appellant was found guilty of "conduct unbecoming a Union member" (C v. the appellant) and "wilful defamation" and "conduct unbecoming a Union member" (K v. the appellant). In each case he was penalized by the publication of a letter of censure as well as the requirement that he sign a public letter of apology. After the NEB denied his appeal, the appellant turned to the PRB seeking to overturn each of the LUEB decisions and, *inter alia*, the trial verdicts and penalties.

**Decision:**

The PRB convened a two-day hearing on this appeal. The PRB dismissed the appellant's first charge against the President. An adjacent provision in the by-laws clearly provided for adding a sixth representative to the bargaining committee once the number of members in the bargaining unit grew beyond a certain point. Since the size of the unit had grown so as to exceed the required amount, the PRB upheld the decisions of both the LUEB and the NEB in this regard and ruled that this presidential action could not be considered in breach of the by-laws.

In regard to the appellant's second charge against the President, however, the PRB pointed out that the LUEB had usurped the role of a trial committee by attempting to assess whether the charged party was, in fact, guilty. Instead, the LUEB should have confined itself to determining, whether, *if proved*, the allegation would amount to an infringement of the Constitution. The PRB decided that "a president who knowingly sought time off essentially to confer an unwarranted benefit on a friend would be guilty of the kind of impropriety that the Constitution forbids." The PRB made no finding for or against the President. Since the appellant was not requesting a trial, the PRB declined to order one.

In reviewing the case of C's allegations against the appellant, the PRB asked the NEB's representative to identify the appellant's impermissible behavior. The representative pointed to letters the appellant wrote to management in which he impugned C's performance in a temporary quasi-managerial function. In terms of the allegation of defamation, the representative pointed to a passage in a letter in which the appellant spoke of an "alarming" number of complaints against C and the appellant's suggestion that C actually enjoyed mistreating Union members. The PRB ruled that these comments were "the kind of invective that Union people frequently direct at those in managerial positions" and they were not out of line with the role of a Union official. In terms of the charge of "conduct unbecoming", the key issue was the propriety of making these denigrating remarks about a Union member directly to management. Since the appellant was acting in his capacity as a Union official and he was targeting a Union member who was

exercising a quasi-managerial function, the PRB ruled that he had “at least a plausible basis ... for complaining directly to management.” As a result, the PRB dismissed C’s charges against the appellant and nullified the verdicts and penalties.

In reviewing the case of K’s allegations against the appellant, the PRB pointed out that the LUEB had ordered a trial on the basis of a number of accusations, all but one of which failed to disclose an offence under the Constitution. For example, the PRB noted that allegations that the appellant had objected to “affirmative action initiatives” would not, even if proven, sustain a charge worthy of a trial. The PRB observed that the CAW Constitution ensures that members have freedom of speech to question and criticize Union policies. The PRB also spelled out that, while the mistreatment of one Union member by another on the basis of gender would be a serious matter warranting a trial, K’s allegations in this regard failed to specify the precise behavior that would constitute such sexual discrimination.

The PRB noted that the only specific allegation warranting a trial in this case concerned K’s allegation that the appellant had “maliciously” misrepresented the facts about the disappearance of a cash float so as to imply that K had engaged in fraud. While the PRB defined defamation narrowly in order to safeguard Union members’ free speech, the PRB ruled that:

To whatever extent [the appellant] had imputed such impropriety to [K] knowing full well that the cash float had not disappeared as he alleged, the appellant would have defamed [K] within the meaning of an acceptable definition for defamation in this situation. In short, the very least that defamation may mean for purposes of CAW business is the attribution of immoral behaviour, knowing the attribution to be false.

As a result, the PRB ruled that the LUEB had been obliged to order a trial on this specific allegation. The trial conducted pursuant to the LUEB order, however, had been struck to consider all of the allegations, including those that were unspecific and those that could not warrant a trial. Accordingly, the PRB declared the verdicts and penalties arising from the trial nullities, but provided K with sixty days in which to institute a new trial against the appellant for wilful defamation and/or “conduct unbecoming” regarding her allegations concerning the appellant’s statements about the cash float.

#### **Case No. 16/95**

#### **Member, CAW Local 1987 v. National Executive Board**

##### **Facts:**

The appellant, a Plant Chairperson, had refused to attend a meeting between the Company, the Union, and the Ministry of Labour, because he considered it a tactical error for Union representatives to attend. He reportedly attempted to persuade others to do likewise. Pursuant to Article 43, Section 3 of the 1991 CAW Constitution, a number of the appellant’s constituents



circulated a petition to secure his removal from office. At a special membership meeting (hereafter referred to as "the recall meeting"), the membership voted to recall the appellant from office.

The appellant complained that the petition lacked adequate specificity so that he could not know exactly what charges he had to answer; that, in any event, the charges did not disclose a basis for finding a "failure to perform the duties of his office", as required by Article 43, Section 3; that he was not given enough time to prepare a defence (he received a copy of the petition seven days before the recall meeting); and that the recall meeting itself was conducted unfairly.

**Decision:**

After holding a hearing, the PRB dismissed the appeal. On the issue of inadequately specific allegations, the PRB was not persuaded. The PRB found that, while many of the allegations in the petition were vague, the charge regarding the meeting with the Company and the Ministry of Labour was adequately specific. While a combination of vague and specific allegations might be unacceptable in a trial situation, the overriding consideration in a recall situation must be to fulfil the wishes of the membership. Moreover, the appellant was unable to identify any matter he had felt unable to answer at the meeting. Noting that such vagueness might prove fatal to a recall attempt in the future, the PRB held that in the circumstances here, it could not.

The PRB then considered whether, in his attempted boycott of the meeting with management and the Ministry, the appellant had failed to perform the duties of his office by refusing to "carry out all official policies of the Local Union" (Article 37). The PRB held that there is a presumption that the Plant Chairperson is required to regard the determinations of the Local Union President as policy and that while a by-law, entrenched practice, or other weighty consideration might be able to rebut this presumption, no such matters had been drawn to the PRB's attention in this case.

The PRB found that the primary purpose of the Constitutional requirement of "due notification" of the recall meeting is to provide the office-holder with enough notice to prepare a competent response so that there will be adequate and informed membership participation. The PRB found that, in the circumstances, seven days notice was sufficient for these purposes. On the issue of the recall meeting being conducted unfairly, the PRB was not persuaded. It found that, although the appellant may have been heckled and interrupted at the meeting, the Record did not indicate a situation in which the parties were unable to express their positions and receive those of their colleagues.

**Case No. 17/95**  
**Member, CAW Local 222 v. National Executive Board**

**Facts:**

This case arose out of the appellant's previous appeal to the CAW PRB (*Member, CAW Local 222-G.M. Unit v. The National Executive Board, et al.*, CAW PRB Case No. 11/95). In the earlier case, the PRB dismissed all but one of the appellant's charges against a Union member and two Union officials. The remaining charge concerned allegations that the Union member had behaved improperly by attempting to get himself selected for a local union trial committee and acting as counsel to the accuser in connection with the same trial.

In its decision in Case No. 11/95, the PRB said that "in many circumstances ... an attempt to play judge and lawyer could well be seen as ethically improper". Since the NEB judgment that preceded CAW PRB Case No. 11 had not addressed this charge, the PRB remitted this part of the case to the NEB. Subsequently, the NEB dismissed the appellant's charge on the basis that, while the Union member had acted as counsel at the appeal level, he had not done so at trial. Once again, the appellant sought redress from the PRB.

**Decision:**

After discussing some of the complexities in Case No. 11/95, the PRB ruled that, in dismissing the appellant's charge on the grounds that it did, the NEB had misconceived its role. The PRB pointed out that while it typically relies on the NEB's decisions for findings of facts, at this point in this dispute, Article 26, subsection 3(c) of the 1991 CAW Constitution directed *the Union* to engage in a *preliminary review* of the charges, rather than to perform a trial function and make findings of fact. The proper question for the NEB, therefore, was not - was the accused innocent or guilty - but rather - would the charges, *if proved*, raise issues of ethical significance worthy of a trial? On the basis of this alone, the PRB would have remitted the case a second time to the NEB.

However, the PRB found that, though the NEB employed the wrong reasons, it nevertheless had reached the right result. The PRB noted that the relevant constitutional provision might have prohibited Union members from applying to be trial committee members if they had already taken on the role of counsel, but it did not in any way deny a member excluded from a trial list the right to *subsequently* become counsel, as was ultimately alleged here. Moreover, the PRB commented that neither the 1991 Constitution nor past practice made any serious attempt to bar from trial committees those who were not neutral in the dispute at issue. Since the total record demonstrated that the accused had not been accused of doing anything worse than engaging in the kind of partisanship tolerated throughout the Local Union trial process, the PRB concluded that the allegation at issue could not be considered the kind of serious ethical matter that would justify yet another trial.

In dismissing this appeal, the PRB decided to save everyone the burden of another hearing: the appellant had already appeared before the PRB in the earlier and related appeal and, in any case, the Record in this appeal adding nothing significant over and above what was in the original Record.

**Case No. 18/95****Member, CAW Local 275 v. National Executive Board****Facts:**

The appellant complained that he had been denied a fair test of his skills during a competition for a welding position. His grievance was withdrawn by a CAW National Representative as not sufficiently meritorious - a decision upheld by the membership.

The appellant sought redress from the NEB, arguing, *inter alia*, that the decision to withdraw the grievance was motivated by bias since the National Representative's cousin was next in line for the welding position.

The NEB held that there was no evidence to show any bias. The NEB also noted that, in any case, since a ministry inspector assessed the candidates' test performances and seniority determined which qualified candidate would get the job, the National Representative's alleged bias was, at best, irrelevant. Subsequently, the appellant turned to the PRB.

The NEB argued that the PRB lacked jurisdiction to hear the appeal because the appellant had failed, when he was before the NEB, to raise any allegations of fraud, discrimination, collusion with management, or to argue that the decision to withdraw the grievance was devoid of a rational basis. According to the CAW Constitution, at least one of these submissions must be made at the hearing of the NEB. In reply, the appellant argued that his accusation of bias amounted to an allegation of discrimination.

**Decision:**

After a hearing, the PRB dismissed the appeal on the basis that, even if the appellant's allegation of "bias" could give the PRB jurisdiction, the potential harm from any possible conflict of interest was overcome by the fact that the membership had learned of the critical family relationship *before* it approved the withdrawal of the grievance. The PRB observed that

[t]o take any other position on this matter could risk paralyzing a lot of union activity. Everyone in a decision-making position could well have friends whose interests would be affected by union decisions. For such purposes, it is hard to argue that a first cousin would raise more problems than would a friend. In the circumstances now at issue, we need not decide whether an even closer relationship - spouse, sibling, parent, offspring - should be treated differently. It is enough to decide that, in the case of a first cousin, full disclosure is enough to vitiate the disability.

The PRB also rejected two other grounds for appeal. First, the appellant had argued that the Union's interpretation of the relevant provisions of the collective agreement was devoid of a rational basis. The PRB noted that its role is not to determine whether the Union interpretation was right, but whether its interpretation was within the ballpark of reasonable judgment. The

PRB decided that, in this case, “even if the collective agreement were susceptible to another interpretation, it [was] not possible to hold that the Local Union’s interpretation [was] beyond the pale.” Second, at some point, the appellant had charged the National Representative with violating an unspecified section of the CAW Ethical Practices Code. To the extent that this charge related to the possible conflict of interest, the PRB noted that there was no evidence or even an allegation that the National Representative had actually attempted to conceal the relationship from the membership. In the circumstances, any alleged impropriety was answered in full by the fact that there had been full disclosure.

**Case No. 19/96**

**Member, CAW Local Union 1163 v. National Executive Board**

**Facts:**

This case concerned the appellant’s attempt to impugn the election of a fellow Local member (hereinafter “C”) as fourth vice-president of the Local executive.

The relevant provision of the 1991 CAW Constitution (Article 36, Section 3) reads as follows:

No member shall be eligible for election as an executive officer of the Local Union until s/he has been a member in continuous good standing in the Local Union for one year immediately prior to the nomination, ...

The essence of the appellant’s claim was that, by virtue of a leave of absence to work for another union, C had not paid union dues to Local 1163 for more than three years prior to the election at issue. According to the appellant, C was, therefore, not eligible to run in the election. After the NEB rejected his appeal, the appellant requested that the PRB overturn the election and declare him (the only other candidate) to be the winner by acclamation. In the alternative, the appellant requested that the PRB order a new election.

**Decision:**

After holding a hearing, the PRB sustained the NEB’s decision and denied the appellant’s request. The PRB noted that C had offered to pay the Local dues for the period during which he was absent, and that the Local’s financial secretary advised him that there was no need for him to do so in order to maintain his membership in good standing. The PRB found that the “good standing” required by the Constitution may be satisfied by the making of conscientious efforts to pay. Since C had made conscientious efforts to pay his Union dues during the period in question, the PRB held that he had effectively maintained his status as a “member in continuous good standing”. The PRB also reminded the parties that “the payment of Union dues ... [remains] ... central to the obligations of the members.”

**Case No. 20/96****Member, CAW Local 222 v. National Executive Board****Facts:**

This case concerned a bid to set aside an election for the Employment Equity ("EE") Committee. The appellant objected to the new arrangement adopted by the Local Union membership for choosing the EE Committee members. Previously, this collective agreement-mandated committee had been filled by the appointment of three individuals, at least two of whom had to be women. Under the new arrangement, the membership would elect one general member and two "Women's Advocates" members. Only women candidates would be eligible for the latter positions. Another arrangement, favoured by the appellant but rejected by the Local Election Committee, would have had unrestricted candidacy, but assured that at least two of the EE positions (and possibly all three) went to top vote getting women candidates. Reportedly, the Local membership was 94% male and 6% female.

The appellant, who had been a member of the appointed EE committee for several years, was on a study leave during the election campaign. She arranged for a colleague to file her nomination papers for the position of general member. However, her colleague entered her to run as a candidate for the Women's Advocate positions. She ran last in a field of six candidates, finishing with less than half the votes of the two Women's Advocates winners. It was noted that, as a Women's Advocate candidate, she polled far fewer votes than either of the two candidates who ran for the general member position.

Upon her return, the appellant successfully persuaded the membership to set aside the EE Committee election and order a new election on the apparent strength of her argument that, *inter alia*, "the separation of the two positions or categories denies women the right to run in both". However, the three victorious EE candidates appealed to the NEB which upheld their appeal, reversed the Local, and determined that the election procedure had been consistent with the collective agreement, the CAW Constitution, and the CAW Guide to Elections. The appellant then sought relief from the PRB.

**Decision:**

As she had all along, the appellant argued that the new arrangements represented unwarranted gender discrimination. According to the appellant, by virtue of the split voting system, only men would be eligible to run for the general member EE position.

After a hearing, the PRB dismissed the appeal on the basis that there was "no evidence or indication that such a restriction was ever adopted". The PRB also rejected her argument that much of the Local membership, particularly its women members, were likely to have *perceived* that the general member EE position had been restricted to male candidates. The appellant based her argument on the wording of the election notice which described the positions in the following terms:

1. Employment Equity Representative
2. Employment Equity Female Advocates

The PRB pointed to the CAW history and constitutional commitment to fighting discrimination. In light of this, the PRB hypothesized that, if any CAW local had been seen as having discriminated against women, there would have been a major protest. Since the election notice did not explicitly bar women candidates and there was no evidence of the kind of protest such discrimination would likely provoke, the PRB ruled it could not order a new election on the "mere possibility of such a mis-perception". Moreover, the PRB noted that, "in fairness", both the election procedure favoured by the appellant and the one used during the election were "unavoidably imperfect measures... Both arrangements try to strike a delicate balance between ensuring majority rule and protecting minority rights. ... Unless the proposed plan is significantly more fair than the one being impugned, the PRB will be disinclined to interfere with an election otherwise devoid of irregularities." The PRB cautioned the Union to make sure that future election notices were clear and explicit.

#### **Case No. 21/96**

#### **Member, CAW Local 100 v. National Executive Board**

##### **Facts:**

The appellant began working for the Company in the Great Lakes Region. He subsequently transferred voluntarily to the Mountain Region. Later, when he received a notice of job loss, the Union refused to act on the grievance he filed.

The main issue in this appeal concerned the parties differing interpretations of "consolidated seniority". The appellant's position was that consolidated seniority allowed him to exercise seniority, based on the first date he entered the Company's employ, to displace a junior employee in the same classification at his home terminal. The Union contended that the calculation of consolidated seniority was confined to length of service in the region and that it only enabled an employee to displace someone in a lower classification.

##### **Decision:**

The PRB held no hearing in this case, in part, because the appellant specifically requested that there not be one. The PRB first noted that its jurisdiction over appeals concerning the processing of grievances depended upon the appellant's having "alleged before the NEB that the matter was handled improperly because of fraud, discrimination, or collusion with management, or that the decision had no rational basis" (1994 CAW Constitution, Article 25 Section 10(c)(ii)). The appellant purported to have made a case before the NEB on all these grounds.

The PRB found that the Union's evidence of past practice, the express rejection of Company-wide seniority in a related arbitration award, and a literal reading of the agreement's provisions required the conclusion that the Union's decision regarding the appellant's grievance was, at the very least, a rational one.

As to the allegation of Union collusion with management, the appellant had alleged that the Union and the Company came to an agreement about his particular situation without actually agreeing on the overall interpretation of the agreement. The PRB ruled that

[t]he 'collusion' which would justify a PRB intervention must entail some level of nefarious dealing between Company and Union behind the backs of the Union members. Mere cooperation would not suffice. After all, Company-Union cooperation is an express objective of both parties.

In the circumstances, the PRB was unable to find the dimension of impropriety which the Constitution would require to justify intervention on this basis.

The PRB noted that, in order to interfere on the ground of discrimination, there would have to be a finding that the Union improperly played favourites. The appellant had only alleged that the Union's interpretation of the agreement is more beneficial to one group of employees than it is to another. But, declared the PRB, most interpretations are vulnerable to such a description. Finally, the PRB was unable to find that the matter was handled improperly because of fraud. In the Board's view, a finding of fraud would require an element of dishonesty which was not present here.

## **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 #402 - 229 Yonge Street, Toronto, Ontario M5B 1N9, Telephone and Fax: 416-861-1291.

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 (hereafter the "PRB"), pursuant to the authority contained in Article 26 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. The Public Review Board is empowered to amend these rules, but its practice is to advise parties to appeals of the rules in effect at the time that their cases are being processed. 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 & Fax: (416) 861-1291.

**1. Appeals**

(1) 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 25, 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**

(1) 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.

(2) 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

(1) 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.

(2) 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, the additional Answer 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.

(3) The failure of the National Union to file its Answer in a timely fashion 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

(1) 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.

(2) 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

(1) 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.

(2) 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 25, Subparagraph 4(f), and Article 25, Section 4 of the Constitution.

(3) 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 may 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 DEFICIT**  
**Year ended December 31**

	<b>1994</b>	<b>1993</b>
<b>Revenue</b>		
Grant from The Canadian Autoworkers	\$ 25,000	\$ 50,000
Interest	<u>309</u>	<u>181</u>
	<u>25,309</u>	<u>50,181</u>
<b>Expenditure</b>		
Counsel fees	12,671	10,516
Administrative and secretarial	4,805	4,756
Hearing fees	4,500	24,000
Directors' fees	3,500	3,500
Meeting and transportation costs	2,759	6,955
Meeting fees	2,750	3,750
Office and miscellaneous	2,639	2,749
Audit	1,100	1,000
Telephone	780	881
Office and communication equipment	<u>--</u>	<u>669</u>
	<u>35,505</u>	<u>58,776</u>
Excess of expenditure over revenue before the undernoted	(10,196)	( 8,595)
Over (under) accrual of previous year's audit fees	<u>65</u>	<u>( 371)</u>
Net excess of expenditure over revenue	(10,261)	( 8,224)
Surplus, beginning of year	<u>8,098</u>	<u>16,322</u>
(Deficit) surplus, end of year	<b><u>\$( 2,163)</u></b>	<b><u>\$ 8,098</u></b>

**THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD**  
**STATEMENT OF REVENUE AND EXPENDITURE AND SURPLUS**  
**Year ended December 31**

	<b>1995</b>	<b>1994</b>
<b>Revenue</b>		
Grant from The Canadian Autoworkers	\$ 75,000	\$ 25,000
Interest	<u>366</u>	<u>309</u>
	<u>75,366</u>	<u>25,309</u>
<b>Expenditure</b>		
Hearing fees	24,000	4,500
Counsel fees	17,116	12,672
Administrative and secretarial	6,752	4,805
Meeting and transportation costs	5,712	2,759
Office and miscellaneous	4,324	2,639
Translation costs	3,506	--
Directors' fees	3,500	3,500
Meeting fees	2,500	2,750
Telephone	1,358	780
Audit	<u>1,100</u>	<u>1,100</u>
	<u>69,868</u>	<u>35,505</u>
Excess of revenue over expenditure (expenditure over revenue) before the undernoted	5,498	(10,196)
Over accrual of previous year's audit fees	<u>35</u>	<u>(65)</u>
Net excess of revenue over expenditure (expenditure over revenue)	5,533	(10,261)
(Deficit) surplus, beginning of year	<u>(2,163)</u>	<u>8,098</u>
Surplus (deficit), end of year	<u>\$ 3,370</u>	<u>\$ (2,163)</u>

**THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD  
STATEMENT OF REVENUE AND EXPENDITURE AND SURPLUS**

<b>Year ended December 31</b>	<b>1996</b>	<b>1995</b>
<b>Revenue</b>		
Grant from The Canadian Autoworkers	\$ 50,000	\$ 75,000
Interest	<u>275</u>	<u>366</u>
	<u>50,275</u>	<u>75,366</u>
<b>Expenditure</b>		
Counsel fees	13,116	17,116
Hearing fees	9,000	24,000
Administrative and secretarial	4,126	6,752
Directors' fees	3,500	3,500
Office and miscellaneous	3,295	4,324
Meeting fees	3,000	2,500
Translation costs	2,945	3,506
Meeting and transportation costs	1,607	5,712
Audit	1,100	1,100
Telephone	<u>791</u>	<u>1,358</u>
	<u>42,480</u>	<u>69,868</u>
Excess of revenue over expenditure before the undernoted	7,795	5,498
Under accrual of previous year's audit fees	<u>(24)</u>	<u>35</u>
Net excess of revenue over expenditure	7,771	5,533
Surplus (deficit), beginning of year	<u>3,370</u>	<u>(2,163)</u>
Surplus, end of year	<b><u>\$ 11,141</u></b>	<b><u>\$ 3,370</u></b>

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