FOURTH REPORT

of the

PUBLIC REVIEW BOARD
CAW-TCA CANADA

TO THE 6TH CONSTITUTIONAL CONVENTION

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

CAW TCA
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1997 - 2000

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FOREWORD

Many years ago, our former union, under the then UAW's longtime president 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 Fourth 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 hard work and commitment to this process.

BASIL 'BUZZ' HARGROVE
President
August 2001

CAW TCA CANADA

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August 2001

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 Fourth Report of the Public Review Board. 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 twelve appeals decided between January 1, 1997 and December 31, 2000.

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 Quebec City.

Sincerely,

A. Alan Borovoy
Chairperson

The Fourth Report of The Public Review Board
CAW/TCA Canada to the 6th Constitutional Convention
1997 - 2000

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, 2001* Chairperson: A. Alan Borovoy; Members: Hélène David, Pradeep Kumar, Wilfred List, and Lois M. 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 Researcher, Sociology Department, University of Montréal; Researcher and Research Coordinator, Groupe de recherche sur les aspects sociaux de la santé et de la prévention at University of Montréal. Formerly: Researcher at the Institut de recherche appliquée sur le travail in Montréal; Director, Groupe de recherche sur les aspects sociaux de la santé et de la prévention at University of Montréal.

Pradeep Kumar: Professor, Industrial Relations, Queen's University, teaching courses on unions, collective bargaining, and globalization. Research focuses on Canada's unions and labour relations in North American automobile industry; Author of several books and papers on industrial relations in Canada.

Wilfred List: Award-winning journalist on labour affairs; Formerly: Labour reporter for *The Globe and Mail* for more than 30 years; Former Instructor on labour journalism; Former Canadian Pacific Visiting Scholar at the University of Toronto's Centre for Industrial Relations.

Lois M. Wilson: Independent Senator, the Senate of Canada; Vice-President, Canadian Civil Liberties Association; Vice-President, World Federalist Movement; Canada's Special Envoy to the Sudan. Formerly: President, World Council of Churches; Moderator of the United Church of Canada; Chancellor, Lakehead University; Chair of Rights and Democracy.

Retired from the Public Review Board in 1999:

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.

The staff of the Public Review Board includes Stephen L. McCammon, Executive Secretary; Danielle S. McLaughlin, Registrar; Donna Gilmour, Administrative Assistant.

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, failures or refusals to act on the part 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,

part 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 Section 11 of 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, 1997 and December 31, 2000, the Public Review Board decided twelve appeals. (In addition, one appeal was withdrawn after the Board had ordered a hearing, a second one was closed after it was abandoned, while three other files lie dormant.) The Public Review Board has already ruled on three appeals in 2001. There is currently one appeal pending.

APPEALS CONSIDERED - 1997-2000

The following is a summary of each of the appeals considered by the Public Review Board from January 1997 to December 2000. (Please note that, for the purposes of this summary only, the names of parties to these appeals have been deleted. In their place we have substituted "X" and "Y".) 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. Please also note that, while such summaries provide a good impression of the nature of a case, any member consulting such materials in preparation for an actual appeal would be wise to review the full text version. (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. 22/97
Member, CAW Local 2213 v. National Executive Board

Facts: The appellant, Mr. X, charged a fellow Union member, Mr. Y, with offences under the local by-laws including "conduct unbecoming a member of the Union" and "wilful defamation".

The controversy arose in 1994 after the discovery of a one-page note, purportedly signed by Mr.Y. The note, found in a garbage can on the employer's property, contained a number of highly derogatory remarks about three non-union employees. At some point, Mr. X reportedly urged management to address the matter. In any event, by July of 1995, Mr. Y wrote letters of apology to the three individuals named in the letter. However, according to X's charges, Mr. Y originally denied such authorship and accused X of writing the letter and forging Y's signature.

As required by the 1994 CAW Constitution, the Local Union Executive Board vetted the charges and advised the National President that they contained allegations worthy of adjudication. The President, however, dismissed the charges as "frivolous". He also went on to criticize X for complaining to management about a fellow Union member. Mr. X appealed to the PRB stressing his desire to clear his name.

Decision: The PRB disagreed with the National President's characterization of the charges as "frivolous". The PRB held that " to attribute the authorship of a scurrilous letter to someone you know did not write the letter and to accuse such person of forging your name, is anything but a frivolous matter." The PRB also noted that the National President had focused the bulk of his judgment on the issue of the propriety of Mr. X's raising this issue with management. The PRB pointed out that this collateral issue could not effect the validity of the charges in question. The PRB would normally have remitted the case to the National President for a full assessment of the charges against Y. But since Y's July 1995 letters of apology were now a matter of public record, Mr. X's name had been effectively cleared. Accordingly, the PRB denied the appeal for a hearing or further investigation, "not as `frivolous', but as needless."

Case No. 23/97
Member, CAW Local 199 v. National Executive Board

Facts: The appellant, Mr. X, complained to the Union about the loss of ten years of seniority he suffered as a result of amendments to the collective agreement. The amendments meant he could no longer use his years as a production worker for the purpose of safeguarding his position in the skilled trades. Mr. X argued that he and a small group of similarly affected local Union members were being "discriminated" against; the more numerous production workers were taking advantage of their voting strength to prevail over the minority of skilled trades workers. The National Union and Mr. X disagreed as to whether the appellant made these allegations "before" the NEB as required by the CAW Constitution. Eventually, Mr. X's protests made their way to the PRB.

Decision: Due to a shortage of evidence in the Record, it was difficult to determine if the appellant's case had been properly made so as to satisfy the terms of Article 25(10)(c)(ii) of the CAW Constitution. This provision limits the PRB's jurisdiction on appeals concerning the handling of grievances or other issues involving collective agreements. In order for the PRB to hear the case, the member appealing must first have 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". In this case, the PRB ruled that, even if Mr. X had made his allegation of "discrimination" before the NEB, or even if the failure to do so had been the fault of the NEB and not of Mr. X, the PRB was obliged to dismiss the appeal.

The PRB noted that the core of the "discrimination" alleged in this appeal was that "the majority had simply used its political muscle to secure an advantage for itself." In dismissing the appeal, the PRB ruled that "such action could not fit the definition of the term as it is used in the CAW Constitution". The PRB explained that:

> the whole thrust of the CAW's constitutional provision at issue here is that local unions should be generally free to develop their own collective bargaining policies. In the absence of certain gross improprieties, the PRB, as outsiders, should not interfere. We are not suppose to substitute our opinion for that of the local unions.

Noting that, typically, the "gross improprieties mandating PRB intervention...involve seriously immoral behavior", the PRB declared that

> ... discrimination involves grounds for which there is no reasonably arguable justification. If a local union provided, for example, that Blacks, women, Conservative Party members, or opponents of the Union President were not eligible to operate a fork lift or enjoy seniority, the PRB would be mandated by the CAW Constitution to intrude.

In contrast, the PRB noted that there were reasonable arguments in support of and against the different kinds of seniority schemes at issue in this case.

Case No. 24/97
Member, CAW Local 1459 v. National Executive Board

Facts: The appellant, Mr. X, was charged with conduct unbecoming a Union member. The Local President accused him of actively providing the Company with information on how it could save money by reducing the amount of Union representation. After the Local Union Executive Board vetted the charges and advised the National President that they contained allegations worthy of adjudication, the President ordered an investigation. A national representative ("NR") was dispatched to the local. The NR held a meeting with the Local President and Mr. X and then met separately with a number of witnesses. At no time did the parties ever have a meaningful opportunity to question each other, nor did Mr. X get a hearing before either the National President or the NEB. The National President found him guilty and suspended Mr. X's membership rights and privileges for three years. The NEB upheld the suspension. Mr. X appealed both the guilty verdict and the suspension to the PRB.

Decision: While disapproving of the Union's fact finding process, the Public Review Board agreed that Mr. X had engaged in conduct unbecoming a Union member. He had, by his own admission, "engaged in unauthorized, surreptitious discussions with management about the potential contents of their collective agreements". The PRB noted that

> [u]nder their Constitution, CAW members enjoy an open and robust right to question and challenge the negotiating policies and priorities of every part of their Union. But it's one thing for members to discuss these issues readily among themselves; its another thing for such members to discuss these things secretly with management.

Having found him guilty in relation to somewhat less unacceptable behavior than that found by the NEB, and, in light of the month under which he suffered a premature suspension, the PRB reduced his suspension by ten months, just in time to allow him to participate in the next round of collective bargaining. The Public Review Board also ruled that a member facing charges under the CAW Constitution must get a full hearing at least at one level of the fact-finding process.

Case No. 25/98
Member, CAW Local 1285 v. National Executive Board

Facts: Following a 1988 workplace injury, the appellant, Mr. X, was placed on short-term disability benefits by the Workers' Compensation Board (WCB). Nearly two years later, when the WCB pronounced him fit to work, the Company disagreed, refusing to reinstate him in his former job. Initial union-management efforts to place him in another job failed. Almost two and a half years passed before the Company found him a job; they hired him as a fender cover remover. All this while, he had gone without WCB benefits or any other adequate income.

Upon his return to work in November of 1992, Mr. X filed the first of four grievances. Grievance #1 claimed that the Company had failed to pay him certain benefits, particularly

supplemental unemployment insurance benefits (SUB) during his absence from work. The Company denied grievance #1 on the basis that eligibility for SUB required an application for regular unemployment insurance. The Company said that he had not done this.

In December, Mr. X filed grievances #2 and #3. They dealt with aspects of the Company's initial failed efforts to place him in another job. Specifically, he complained that the Company had failed to provide him with an appointment with the Company doctor and the job assessment he had requested. The Company's denials answered that he had been given a "job description" and that, in any case, the requests did not amount to obligations under the collective agreement.

Then, in February 1993, Company downsizing led to Mr. X being laid off. He was brought back to work on June 16 as a gas filler. In August, he bid for a job as an inspector but his application was refused on the basis of his injury-related medical status. A junior employee won the job and Mr. X complained to the Company. His complaint led to a number of exchanges with Company officials, including the Company doctor, as to whether he could handle the considerable amount of driving involved in the inspector position. For example, having produced a requested note from his own doctor, Mr. X was told he would have to undergo a probationary test with a supervisor. While he claimed that he had already done the job under such supervision, the position remained beyond his grasp and he filed his fourth grievance.

In denying this grievance, the Company took the position that, because he had been in the gas filler position for less than three months, he was ineligible to bid for a new position. The Company relied on section 49(h) of the collective agreement:

> Where an employee has medical restrictions imposed on an indefinite or permanent basis, and the employee is placed upon another job under this section, such restrictions shall remain in force for a minimum period of three months. During this period of time the employee shall not be eligible to bid for another job.

Mr. X was unsuccessful in his attempts to persuade the Union to advance his grievances. After his appeal to the NEB was denied, he sought relief from the PRB.

Decision: The PRB's jurisdiction over grievance appeals is limited by Article 25(10)(c)(ii) of the CAW Constitution:

> The Public Review Board does not have jurisdiction to hear an appeal concerning the handling of a grievance ... except where the member appealing has alleged before the National Executive Board that the matter was handled improperly because of fraud, discrimination or collusion with management, or that the decision had no rational basis.

The appellant conceded that, in his case, the only relevant allegation concerned "no rational basis". Without resolving the issue as to whether or not Mr. X had made such an allegation "before" the NEB, the PRB dismissed his appeal on the basis that the Union's handling of the grievances fell "within the ballpark of reasonable judgment". Specifically, in reference to grievances #1 through #3, the PRB took note of the NEB's position that there was no point in

advancing these grievances:

> By the time the Local Union reviewed them in 1994, the WCB had reconsidered the appellant's claim and provided him with comparable benefits. Thus, it was apparently undisputed that, even if he had won these grievances, he might well not have been awarded any money because he had already obtained, as much as, or more than would be forthcoming. It is very hard, therefore, to fault a local union, in such circumstances, for refusing to process a grievance that is not likely to produce any significant financial benefit for the aggrieved person. At the very least, such a decision could not be considered devoid of "a rational basis".

In dismissing Mr. X's appeal regarding the fourth grievance, the Public Review Board noted that the collective agreement temporarily prevents a medically restricted employee from bidding on any further jobs after he has been placed "upon another job".

> The appellant contends that his time spent on a *number* of jobs should be cumulative for such purposes. The agreement, however, talks not about "other jobs" but rather "another job". Thus despite whatever equitable considerations might be mustered on the appellant's behalf, we are unable to say that the reliance upon the singular form "another job" is devoid of a rationality.

Having dismissed the appeal, the PRB did, however, express its "disquiet" over the way the Union had, for a time, allowed Mr. X's grievances to "fall... between the cracks".

Case No. 26/99
Members, CAW Local 222 v. National Executive Board

Facts: The appellants, Mr. X and Mr. Y, both skilled trades workers, appealed a National Representative's (NR) decision to withdraw "work ownership" grievances they had filed. Local officials had scheduled them for arbitration when the NR settled them for a approximately a quarter of their apparent dollar value, and, more significantly, "without prejudice or precedent". The grievances were filed in response to the Company's contracting out work the appellants believed ought to have been given to them as capable skilled trades members. Both the appellants and local officials felt that the NR's actions had deprived them of a vital opportunity to obtain a precedent-setting ruling from an arbitrator regarding the application of the collective agreement. In their written submissions to the NEB, the appellants explicitly argued that the "decision to withdraw these grievances without precedent has no rational basis". After losing their appeal before the NEB, Mr. X and Mr. Y appealed to the PRB.

Decision: Since the appellants had made one of the allegations required under Article 25(10)(c)(ii) of the CAW Constitution, the PRB ruled that it had jurisdiction to decide the merits of this grievance appeal. In the end, the Public Review Board ordered the Union to reinstate theses grievances since the NEB had failed to indicate any rational basis for the withdrawal. Indeed, in withdrawing these grievances, the Union had contravened one of its own articulated

policies - the one that declared such work ownership to be a priority. The PRB also rejected the National's argument that "these were not policy grievances, but individual grievances seeking financial redress". In the opinion of the PRB, "policy matters are often best adjudicated in the circumstances of a concrete case". Finally, the PRB pointed out that

> Even if there was a rational basis that has not been disclosed, the NEB cannot rely on such a possibility. The very nature of the CAW's constitutional scheme here implies some obligation on the part of the NEB, in a case such as this, to spell out whatever rational grounds might justify the actions under review. Its failure or inability to do so in these circumstances requires the PRB to grant the relief that the appellants have claimed.

Case No. 27/99
Member, CAW Local 1987 v. National Executive Board

Facts: Mr. X appealed the NEB's decision to uphold his Local's withdrawal of a number of his grievances. X had filed several grievances relating to two themes. First, he complained about the loss of income he ultimately suffered as a consequence of the Company's decision to hire a junior employee over a senior employee for a technician's position. The Company's hiring decision precipitated a chain of events that resulted in Mr. X being bumped into a lower paying production job. Mr. X, who had applied for the position, only to withdraw, nonetheless filed his grievance in an effort to both recoup the lost income and pressure the Union into defending the principle of seniority.

This seniority-related controversy centered around Article 13 of the Local collective agreement:

> In filling any posted vacancy under this Article, the employer will select the senior applicant, providing he/she has the skill, ability, and qualifications to perform the required work efficiently. If the job is not filled as a result of the posting because no suitable applications are received, the Employer reserves the right to hire.

Since the Company was of the view that *none* of the job applicants was qualified for the work at issue without retraining, it took the position that Article 13 entitled it to fill the posted job vacancy from outside the current complement of employees. In order to avert such a development, the Local Union agreed to waive the agreement's seniority priority. In the interests of ensuring that an incumbent employee would get the job, the Union agreed that the Company could choose and train the most capable of the contesting applicants regardless of seniority.

In the second set of grievances, Mr. X complained about the Company's failure to provide him with certain opportunities to perform overtime work in the set-up operator's classification; a classification to which he had recall rights. In a number of instances, Mr. X had been asked and he had declined to do overtime work in his current lower-paying production classification. At the same time, the Company had arranged for supervisors to do set-up overtime work. While the Union ultimately elicited the Company's general agreement not to use supervisors for such bargaining unit work, the Union was not prepared to advance Mr. X's claim to the set-up overtime. Indeed, the Union took

the position that his refusal to do the overtime work in his own classification disqualified him from claiming the overtime work in the higher classification.

The Union took this position, not because the collective agreement required it, but out of an appreciation for the cumbersome situation the appellant's demands could produce. As the Public Review Board put it:

> Suppose, for example, the Company required overtime work in a *number* of classifications. On the basis of Mr. X's argument, the Company could be obliged to return several times to the same employees on the same day, no matter how many times they refused such requests.

Decision: In light of the NEB's concession that Mr. X had *effectively* alleged that the Local's decisions were devoid of a rational basis, the PRB assumed jurisdiction of this appeal under Article 25(10)(c)(ii) and on that ground alone. The PRB also decided that Mr. X 's decision to withdraw his application for the technician position did not preclude its consideration of his seniority-related grievances on the basis that the grievance procedures allowed for a sufficiently broad range of claims. However, the Public Review Board did dismiss all of Mr. X's grievance appeals.

In doing so, the PRB pointed out that it has a limited role in such grievance appeals:

> In these circumstances ... this Board is explicitly admonished not to substitute its opinion for that of the Local Union. The CAW Constitution seeks to ensure that local unions are free to develop their own policies on collective bargaining and the handling of grievances. In the absence of certain major irregularities, the Public Review Board, as outsiders, must not interfere. Our sole function in these circumstances, therefore, is to determine whether the Local Union's decision was within the general ballpark of reasonable judgment.

The Board then assessed whether the Union's decision to give way on seniority had come within that "ballpark":

> The Local Union was afraid that the pursuit of Mr. X's grievance would wind up effectively empowering the Company to give the contested job to an outsider. To some, of course, such a posture might appear unduly lacking in the appropriate militancy. To others, however, the Union might be seen as wisely protecting the interests of its current members. After all, who could be so certain about how an arbitrator would rule? On the basis of this reasoning, a deal to avoid outside hiring was seen as the better part of valour.
>
> It is not necessary to *agree* with such analysis in order to acknowledge that, at the very least, it was reasonable. Indeed, this is just the kind of matter that the Constitution says the Local Union should be free to handle without the intrusion of a body such as ours.

The PRB adopted a similar approach in dismissing Mr. X's overtime grievances:

> Conceivably, some might criticize such apparent Union solicitude for the Company's administrative problems. On the other hand, the Union might believe that the long-term interests of the membership require a more co-operative approach to reducing such managerial headaches.
>
> In any event, it is not for this Board to take sides regarding the merits of such disputes. It is the *Local* that has been entrusted to make decisions of this kind. Suffice it for this Board simply to acknowledge that the Union's position can hardly be described as devoid of a "rational basis".

Case No. 28/00
Member, CAW Local 1459 v. National Executive Board

Facts: In part, this appeal grew out of PRB Case No. 24/97 in which this board had upheld an NEB finding that the appellant was guilty of "conduct unbecoming a Union member". Having ruled that Mr. X's membership rights and privileges were appropriately suspended, the PRB ordered that he "be restored to full membership on January 1, 1999" instead of a later date specified by the NEB.

Thereafter, in the spring of 1999, Mr. X sought to be a candidate in the local union executive elections. Pursuant to Article 35 of the CAW Constitution, eligibility to run for executive office requires that a member be "in continuous good standing" during the year immediately preceding the nominations. Both the Local and the NEB took the position that the appellant's suspension deprived him of the requisite "continuous good standing". The NEB ruled that he had only enjoyed "good standing" for the few months from the end of his suspension until the date of the nominations in April of the same year. Pointing to PRB Case No. 19/96, Mr. X argued that the uninterrupted payment of Union dues is all it takes to fulfill the eligibility criteria. Since he had continuously paid his dues for some number of years, he claimed that the Union ought to have allowed him to run.

Mr. X also alleged that the Local had committed a number of errors in its conduct of the 1999 elections. First, he disputed the voting eligibility of retired members, arguing that Article 49(2)(a) of the Constitution required that the Local enact bylaws in order to enable their participation in executive elections. Secondly, Mr. X challenged the integrity of the executive elections, contending that certain members were given multiple ballots. Thirdly, he complained that the Election Committee had unduly delayed making its post election report to the Local.

Decision: Noting that the CAW Constitution neither defines the words "continuous good standing", nor provides any other signal that their meaning ought to depart from common usage, the PRB ruled against the appellant:

> ... anyone under suspension for misconduct could not enjoy "good" standing. A suspension is an obvious fetter on a person's status as a member. To bar such a member from

participating in the normal privileges of membership[1], is to treat that member's status as anything but "good". This is fortified by the realization that the suspension was a penalty for unacceptable conduct i.e. for conduct viewed as *not* "good".

In distinguishing Mr. X's circumstances from the earlier PRB case he had referred to, the Public Review Board noted that in Case No. 19/96

> the issue was whether the mere failure to pay Union dues would deprive a member of his "good standing" even though he had made a conscientious attempt to pay and the Union had declined to accept. We held that the member should not be penalized for the behaviour of others. In such a situation, his conscientious attempt was enough to satisfy his obligation.
>
> ... while payment of membership dues is generally necessary to maintain "good standing", it may nevertheless not be *sufficient*. This, we believe, was the situation in the case here. It was necessary for Mr. X to maintain the payment of his Union dues but that was not sufficient to earn him the status of "continuous good standing".

As for Mr. X's challenge of retirees' right to vote for the executive, the PRB ruled that he had simply misread the Constitution. The relevant provision of Article 49 deals with the need for bylaws when a local seeks to establish a Retired Workers' Chapter. Article 6(12), on the other hand, expressly grants retirees "all the privileges of membership except for the right to vote in strike votes, ratification of collective agreements, or in elections for workplace representatives". Since the vote at issue did not fall within any of the exceptions, the retirees were clearly eligible to vote as they had.

In reviewing Mr. X's other complaints, the PRB was mindful that since the NEB had not then considered the issues, the PRB might not have the jurisdiction to deal with them. In the end, the parties agreed to remit the multiple ballot and Election Committee report issues to the NEB. Finally, Mr. X withdrew a conflict of interest allegation he had initially leveled at the PRB chair and executive secretary.

Case No. 29/00
CAW Local 124 Executive Board *et al* v. National Executive Board *et al*

Facts: Following 1998 executive board elections at Local 124, a number of members complained about procedural irregularities. In submitting their appeal, they left it unsigned. The NEB ordered the election rerun, and, after considerable back and forth, it was. While the same members were elected to the Local Union Executive Board (LUEB) in this second election, they appealed to the PRB in pursuit of an order that the NEB be required to pay the costs of the second contest on the basis that the first had been conducted properly.

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[1] Such normal privileges include attending meetings, voting, and running for leadership positions.

Decision: In dismissing the LUEB's appeal, the PRB zeroed in on one of the half a dozen alleged defects: the lack of a system for identifying voters. The Public Review Board held that, in the circumstances, it alone was "enough to impugn the integrity of the first election". Having upheld the NEB's decision to impugn the first election, the PRB dismissed the LUEB's request for compensation without deciding whether it has the constitutional power to make such an order.

The PRB acknowledged that while fraud was not an issue, "...in the absence of a proper system for identifying eligible voters, the ability to commit fraud is significantly enhanced." Citing PRB Case No. 6/92, the Board reiterated that its test for setting aside elections in such circumstances was "the extent to which the election irregularities were of such a nature and magnitude that they could readily facilitate and conceal a significant level of fraud and deception". Given that several hundred members were eligible to vote, the PRB noted that many would likely not be known to the election officials or each other. Thus a voter identification system was critical.

In its appeal, the LUEB had pointed out that since none of the scrutineers had complained about the lack of voter identification and since most candidates had won by at least 70%, the first result ought to have been left undisturbed. The PRB held that while the silence of such scrutineers might foreclose the protests of the candidates they represented,

> an election practice capable of concealing significant fraud can affect the entire membership of a local. Even if scrutineers do not have the presence of mind to complain, there is a serious risk that such an election would generally be perceived as unfair. This could affect every member's confidence in the outcome and ultimately undermine the ability of the successful candidates to work with the membership.

As to the margin of victory, the PRB observed that only 25% of the members had voted. Since 70% of such a small number is also a very small number, the Board concluded that relatively few fraudulent votes could have disproportionately influenced the outcome. Since there was no way of knowing whether or not such fraud could have slipped by undetected, the apparent margin of victory could not redeem the absence of an identification system.

Finally, the PRB ruled that an unsigned appeal does not bar its consideration. The Public Review Board held that the constitutional provision requiring that appeals be signed

> ... simply means that appeals devoid of signatures are *subject* to dismissal. Without such signatures, neither the Local Union nor the NEB can be *compelled* to consider them. It does not mean, however, that the Local Union and the NEB are *precluded* from dealing with such appeals. After all, the purpose of such a provision is to assure the requisite Union officials that the complaining members are serious. Thus, the officials would be permitted to ignore an unsigned appeal. But this provision would be self- defeating, at least in a situation where the requisite Union officials were barred from considering the appeal even when they were *satisfied* that the members meant business.

Case No. 30/00
Member, CAW Local 222 v. National Executive Board

Facts: Mr. X appealed the Union's declaration that recall petitions he had helped file against three local bargaining representatives were invalid. The petitions, each containing a similar list of complaints, had been signed by the requisite number of members and filed with the Local. Article 42(2) of the CAW Constitution provides, *inter alia*, that "the Local Union or unit *will* notify the representative of the specific complaints and *will* give due notice to the members of a special meeting for recall" (emphasis added). Instead of proceeding to a recall meeting, the Local Union Executive Board (LUEB) asked the National President (NP) for a "constitutional interpretation" and "clarification" of the issues involved. The NP declared the petitions void:

> It is my decision that the complaints as a whole do not provide the specifics required or the identification of specific actions performed, or not performed, that would constitute wrong-doing or a failure to perform duties. Therefore, the items of petition do not meet the constitutional requirements for recall and the Unit cannot conduct recall meetings based on these petitions.

In reaching this decision, the NP effectively stipulated two requirements that must be satisfied before such petitions can validly be put before the membership:

> First, "the failure to perform [the duties of the office] must be of such significance that the actions would injure the interests of the Union and the members."
>
> Second, "there is also a requirement that the complaints be specific and not general in nature ... [so as to] advise the representatives being recalled ... how [they] may properly defend themselves."

Mr. X took his case to the NEB. Having lost there, he appealed to the PRB.

While the National Union stood by the President's actions, Mr. X argued that the President had no business interfering with the membership's consideration of petitions that had raised specific and, in his opinion, serious complaints. He also argued that any lack of specificity had been cured in the briefs he had subsequently provided to each of the threatened representatives. At the same time, the National Union argued that only the Constitutional Convention, and not the PRB, had the jurisdiction to consider Mr. X's appeal. This argument was advanced on the basis of Article 14(5) of the CAW Constitution:

> The National President will rule on all disputes, including constitutional interpretations, except where a specific method is outlined in this Constitution. All her/his decisions are subject to appeal, first to the National Executive Board and then to the Constitutional Convention.

Mr. X countered that this provision explicitly countenanced an exception "where a specific method is outlined in this Constitution". He argued that Article 42(2) contains just such a "specific method"

where recall petitions are concerned and that, upon receiving the requisite signatures, the Local Union is obliged to convene a recall meeting of the membership. Conceding that it might still be open to the Local Union to invalidate the petition and refuse to call such a meeting if it found certain inadequacies in the petition, Mr. X contended that any resulting disputes ought to be handled under the normal appeal processes. On this basis, the PRB would have jurisdiction.

Decision: In assuming jurisdiction, the PRB agreed with Mr. X that since a specific method for dealing with recall petitions is outlined in Article 42(2), the National President did not have a special constitutional power to "rule on" these petitions. Noting that the Local Union would still be free to request the *advice* of the National President concerning the adequacy of such petitions, the Public Review Board nonetheless held that, regardless of any such advice, local unions must either convene a recall meeting in the manner prescribed or determine that the petitions are fatally defective. In either case, disaffected members would enjoy further rights of appeal to the NEB and, from there, to the PRB under the general appeal provisions found in Article 25 of the CAW Constitution.

The PRB was alert to a second reason as to why the action of the National President could not oust its jurisdiction. The request for presidential intervention emanated from only one source: the LUEB. There was no indication that the *petitioners* had ever agreed to such a procedure. The PRB then cited a number of UAW PRB cases that indicated that such involvement by the NP can only remove the jurisdiction of the Public Review Board in situations where the parties requesting PRB adjudication had consented to a request that the President resolve the matter:

> In such situations, the parties are deemed to have decided to use the special procedure of presidential determination and therefore to have waived their rights of appeal to the Public Review Board. Significantly, the U.S. Public Review Board adopted this approach at least as far back as 1961 when what is now the Canadian Auto Workers were part of the international United Auto Workers.

Having considered the U.S. approach, the PRB noted that

> there are [further] compelling reasons for us to follow this American jurisprudence. Without some such restraints on the use of this provision, unilateral recourse to the President could become a method for effectively vitiating the appeal rights that the Constitution was designed to provide. In view of the importance that successive leaderships of this Union on both sides of the border have attached to the independent function performed by the Public Review Board, we cannot believe that they intended to remove this Board so readily from the panoply of appeals available to the members. Thus, it follows that, in general, no party can be denied the normal jurisdiction of the PRB under Section 5 of Article 14 unless *that party* had referred or consented to refer the dispute in question to the National President.

The Public Review Board was particularly careful about clarifying that it was not saying that presidential *involvement* necessarily requires the consent of *all* parties:

> Rather, we are saying that, in such circumstances, the jurisdiction of the Public Review Board cannot be ousted unless the party wishing to invoke the Public Review Board had

previously consented to have the dispute resolved by the president.

In upholding the validity of most of the complaints found in the recall petitions, the PRB reviewed some of its own jurisprudence and rejected the first stipulation of the NP's two part test - that is that "the failure to perform [the duties of the office] must be of such significance that the actions would injure the interests of the Union and the members". In contrast to the disciplinary context, where no allegation could lead to a hearing unless the charges would, if proved, amount to disciplinable misconduct, the PRB recalled that the standards required to justify a recall vote need not be so exacting:

> The outcome of a misconduct proceeding could deprive a person of all the benefits of Union membership. But the outcome of a recall vote would deprive such a person only of a particular position within the Union. Thus, we have held that, in the latter situation, the overriding consideration must be the wishes of the Union members themselves. For this reason, it is our view that the President and NEB erred in rejecting the petitions on the basis that the alleged conduct of the impugned representatives could not "injure ... the Union or its members". [While a petition would be fatally defective if it purported to precipitate a recall vote on grounds such as race, creed, gender, or sexual orientation, no such issue arose in this case. Accordingly, in a case such as the one here] ..., the *members* should be allowed to determine whether their best interests are being jeopardized.

In the final analysis, the PRB ordered the NEB and the Local to convene a recall meeting at which the members would have an opportunity to consider all but two of the petition complaints. These were rejected on the basis of the second and appropriate stipulation offered by the NP - that complaints provide the requisite specificity to enable the impugned representatives to properly defend themselves. The PRB held that these complaints failed to "disclose sufficient particulars of time, place, and context for the impugned actions to be identified, let alone for a competent defence to be mounted." The Public Review Board ordered that the recall meeting be scheduled within 45 days of the date of the judgment. As well, the Board decided to remain seized of the case for 15 days following the meeting and for so long thereafter might be required to deal with any relevant fall-out from its judgment as drawn to the PRB's attention by the end of that 15th day.

Case No. 31/00
Member, CAW Local 1459 v. National Executive Board *et al*

Facts: Some 4 or 5 months after the fact, the appellant, Mr. X, instigated misconduct proceedings against three local union officials for their having agreed to the Company's one-time request that they perform certain work typically handled by management. Mr. X argued that such an agreement violated both the CAW Constitution and the collective agreement. Pursuant to Article 24(2) of the CAW Constitution, both the LUEB and the NEB dismissed the charges as "improper" on the basis that they were untimely, did not amount to a violation of the Constitution, and instead, involved a question "that should be decided at a membership meeting". Mr. X appealed to the PRB.

Decision: In dismissing his appeal, the PRB first focused its attention on the question as to whether such an agreement could constitute a disciplinable offense:

> Some time ago, the Public Review Board held, that, before a CAW member could attract this kind of Union discipline, the conduct of the member must involve a transgression that contained a "moral ... dimension". [PRB Case No. 11/94] We are unable to perceive any such issue of moral dimension in the impugned behaviour of the three accused Union representatives. In accusing them of breaching the Collective Agreement in these circumstances, Mr. X, at most, is attacking their judgment. Nothing in the evidence contained in the Record indicates that these three men had acted in bad faith.

The Public Review Board also dismissed Mr. X's suggestion that these union officials' actions amounted to collaboration with the Company:

> For such an allegation to stick, mere co-operation with an employer would not suffice. Culpable collaboration would involve the intentional serving of Company interests to the detriment of Union members. Nothing in the Record can justify such an accusation here.

Finally, the PRB indicated that Union officials acting honestly ought not to face misconduct proceedings over alleged infringements of collective agreements. While such conduct might be fair game for the criticisms and challenges of the membership, they ought to be entitled to make mistakes without fear of formal charges under the Constitution.

Case No. 32/00
Member, CAW Local 252 v. National Executive Board *et al*

Facts: Mr. X appealed the Union's swift withdrawal of the grievance he filed upon suffering a three day suspension and final warning. In a sense, this punishment was the culmination of a series of events spread over his ten year work history. The events, all of which he acknowledged, included a previous history of complaints by female co-workers; a kissing gesture he directed at a female co-worker on the line, his knowledge that the intended recipient of the gesture complained about it, the Company warning that he should avoid further dealings with the complainant, and, despite this warning, his subsequent comments to her in the Company parking lot to the effect: "Does your husband know you flirt with other guys at work?".

After the comment came to light, Mr. X met with Union and Company officials. Apparently a two-week transfer emerged, at first, as a sufficient way to deal with the matter, but the Company opted for the suspension and final warning. While Mr. X's grievance did not seem to squarely face the significance of his encounter with her in the parking lot, his view seemed to be that, if the kissing gesture incident had been dealt with differently, it would have been possible to reach a more satisfactory resolution of the entire controversy.

Moreover, the appellant argued that the Union's swift withdrawal of the grievance suggested that it had been instrumental in pushing the Company to impose the discipline it did. The assertion was

that such Union action would represent a breach of the duty that it owes its members. In Mr. X's view, the Local Union should have kept the grievance alive until at least a later stage of the process, with the likely result that the parties might have found a less harsh way to resolve the issue. In the absence of any evidence to support his claim that the Union had played such a role, the appellant sought all the relevant documents in its possession. The Union resisted and Mr. X requested that the PRB order both the release of these materials and the Union's reinstatement of his grievance.

Decision: In dismissing Mr. X's appeal, the PRB pointed to the constitutional hurdles standing between him and success. Under Article 25(10)(c) of the CAW Constitution, the PRB must generally not interfere with the Union on matters of policy concerning collective bargaining and grievances. In particular, the Public Review Board held that

> Since local unions are mandated to protect the interests of *all* members, this would include not only those who are accused of harassment, but also those who make the accusations. As a general matter, it is for the Union - not this Board - to strike the balance between these two interests. The Union has a legitimate interest in - and, indeed, a long-standing policy on - promoting a harassment-free workplace. *By itself*, therefore, a Union attempt to secure a greater penalty would not suffice to warrant interference by this Board.

The PRB therefore concluded that even if the documents revealed what was alleged, the PRB would be in no position to rule that the Union may not support - or even seek - a harsh penalty for what it viewed as unacceptable harassment. Having made this finding, the Public Review Board noted that it could hardly be said that the Union could be called to account on any of the relevant grounds in Article 25(10)(c)(ii). Even on the assumption - disputed by the Union as it was - that the Local had pushed management for a harsher penalty, such a position would not have amounted to either fraud or collusion with management, nor could it have been said to be devoid of a rational basis (discrimination was never alleged). The PRB did not determine whether any of these exceptional grounds were actually alleged before the NEB - a constitutional prerequisite for PRB jurisdiction. The PRB simply held that, even if any such grounds had been alleged, none were ultimately demonstrated and the appellant would have to lose on the merits.

Case No. 33/00
Member, CAW Local 222 v. National Executive Board *et al*

Facts: Mr. X complained to the PRB about the way his Local Union purported to implement the PRB's judgment in his earlier case - Case No. 30/00. In that case, having ordered that a recall meeting be convened within 45 days of this June 13th judgment, the PRB had also decided to "remain seized of the case for 15 days following the meeting and for so long thereafter as might be required to deal with any relevant fall-out brought to the Board's attention by the end of that 15th day".

Within these time limits, Mr. X alerted the Public Review Board to what he considered improper measures adopted by the Local Union. On June 26th, the Local Union announced that the recall meeting would take place on June 29th. According to Mr. X, three days' notice could not satisfy the requirement in Article 42(2)(b) of the CAW Constitution for "due notice to the members". This

problem was exacerbated by the fact that the day in question was the last day before the Canada Day weekend. Moreover, the flyer announcing the meeting failed to name the impugned representatives whose recall was sought. In Mr. X's view, therefore, it was not surprising that well under 100 of the eligible members showed up for the meeting - a far cry from the Local's quorum requirement of 25% (in this case, a total of about 500 members). The failure to obtain a quorum for the recall meeting meant that the impugned representatives could remain in office without having to respond to the complaints that were filed.

While Mr. X initially requested a PRB order requiring that the Local Union convene another recall meeting with more appropriate notice, he took a different position at the PRB hearing. Skeptical about whether the Local leadership would act with good faith, he also noted that, by the time a second recall meeting could be arranged, a new election would be imminent. Instead, he sought a "sternly worded condemnation" of those Union officials whom he accused of attempting to circumvent the PRB ruling.

Decision: In denying Mr. X the remedy he ultimately sought, the PRB noted that while it did not necessarily approve of the way the Union officials had handled the convening of the recall meeting, there was insufficient evidence to warrant the attribution of skullduggery to those who made the requisite decisions. Furthermore, the Public Review Board held that

> even if we were to find that the Local had misconceived its constitutional obligations, this, *by itself*, could not justify the harsh rebuke sought by Mr. X. In our view, at least some degree of subversive intent would be required before a "sternly worded condemnation" would be appropriate in circumstances such as these. For such purposes, the evidence is, as we have noted, inadequate.

The PRB did, however, make certain recommendations. Noting that the CAW *Guide For Local Union Elections* "strongly" recommends "at least 7 days notice" in the case of elections for "workplace representatives", the Board remarked that it could see no reason in principle why such elections and recall meetings should be treated so differently.

And while the PRB was cognizant that exceptional circumstances might warrant a shorter notice period, the PRB also recommended that "if it becomes difficult to arrange a meeting so as to both provide proper notice and to fulfill our time limits, the parties should ask us for an extension."

Finally, since Mr. X opted for a "sternly worded condemnation", the PRB decided not to speculate about what it might have done if he had requested a second recall meeting. "Suffice it," concluded the Board, "... to recommend a course for the hereafter."

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 #202 - 394 Bloor Street West, Toronto, Ontario M5S 1X4 Telephone and Fax: 416-861-1291, e-mail: cawprb@web.net.

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 394 Bloor Street West, Suite 202, Toronto, Ontario, M5S 1X4, Telephone & Fax: (416) 861-1291, e-mail cawprb@web.net.

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 I 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 SURPLUS (DEFICIT)

Year ended December 31	**1997**	1996
Revenue		
Grant from The Canadian Autoworkers	**$ 25,000**	$ 50,000
Interest	**222**	275
	25,222	50,275
Expenditure		
Hearing fees	**9,700**	9,000
Counsel fees	**6,428**	13,116
Administrative and secretarial	**4,871**	4,126
Meeting and transportation costs	**4,441**	1,607
Directors' fees	**3,500**	3,500
Meeting fees	**3,000**	3,000
Office and miscellaneous	**2,667**	3,295
Audit	**1,100**	1,100
Translation costs	**-**	2,945
Telephone	**889**	791
	36,596	42,480
Excess of revenue over expenditure (expenditure over revenue) before the undernoted	**(11,374)**	7,795
Under accrual of previous year's audit fees	**(24)**	(24)
Net excess of revenue over expenditure (expenditure over revenue)	**(11,398)**	7,771
Surplus, beginning of year	**11,141**	3,370
Surplus (deficit), end of year	**$ (257)**	$ 11,141

See accompanying note

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

Year ended December 31	**1998**	1997
Revenue		
Grant from The Canadian Autoworkers	**$ 50,000**	$ 25,000
Interest	**424**	222
	50,424	25,222
Expenditure		
Hearing fees	**4,500**	9,700
Counsel fees	**4,256**	6,428
Directors' fees	**3,500**	3,500
Administrative and secretarial	**2,286**	4,871
Office and miscellaneous	**2,266**	2,667
Meeting and transportation costs	**2,185**	4,441
Meeting fees	**1,750**	3,000
Telephone	**1,365**	889
Computer services	**1,309**	-
Audit	**1,100**	1,100
	24,517	36,596
Excess of revenue over expenditure (expenditure over revenue) before the undernoted	**25,907**	(11,374)
Under accrual of previous year's audit fees	**(50)**	(24)
Net excess of revenue over expenditure (expenditure over revenue)	**25,857**	(11,398)
Surplus (deficit), beginning of year	**(257)**	11,141
Surplus (deficit), end of year	**$ 25,600**	$ (257)

See accompanying note

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF OPERATIONS AND CHANGES IN NET ASSETS

Year ended December 31	**1999**	1998
Revenue		
Grant from The Canadian Autoworkers	**$ 35,000**	$ 50,000
Interest	**326**	424
	35,326	50,424
Expenditure		
Hearing fees	**9,700**	4,500
Counsel fees	**8,543**	4,256
Office and miscellaneous	**5,624**	2,266
Telephone	**5,433**	1,365
Administrative and secretarial	**5,298**	2,286
Directors' fees	**3,500**	3,500
Computer services	**2,536**	1,309
Meeting and transportation costs	**2,465**	2,185
Meeting fees	**1,250**	1,750
Audit	**1,150**	1,100
	45,499	24,517
Excess of revenue over expenditure (expenditure over revenue) before the undernoted	**(10,173)**	25,907
Under accrual of previous year's audit fees	**(75)**	(50)
Net excess of revenue over expenditure (expenditure over revenue)	**(10,248)**	25,857
Surplus (deficit), beginning of year	**25,600**	(257)
Surplus, end of year	**$ 15,352**	$ 25,600

The accompanying notes are an integral part of the financial statements

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF OPERATIONS AND CHANGES IN NET ASSETS

Year ended December 31	**2000**	1999
Revenue		
Grant from The Canadian Autoworkers	**$ 50,000**	$ 35,000
Interest	**671**	326
	50,671	35,326
Expenditure		
Hearing fees	**20,150**	9,700
Counsel fees	**10,368**	8,543
Administrative and secretarial	**6,274**	5,298
Meeting fees	**6,200**	1,250
Office and miscellaneous	**5,517**	5,624
Directors' fees	**3,500**	3,500
Travel	**3,492**	-
Meeting and transportation costs	**2,064**	2,465
Computer services	**1,790**	2,536
Telephone	**1,776**	5,433
Audit	**1,150**	1,150
	62,281	45,499
Excess of expenditure over revenue	**(11,610)**	(10,173)
Under accrual of previous year's audit fees	**(188)**	(75)
Net excess of expenditure over revenue	**(11,798)**	(10,248)
Surplus, beginning of year	**15,352**	25,600
Surplus, end of year	**$ 3,554**	$ 15,352

The accompanying notes are an integral part of the financial statements

1. Description of organization and income tax status

The Canadian Autoworkers Public Review Board is a non-profit organization. The organization is exempt from income tax under the Income Tax Act. Registration remains valid so long as the organization continues to fulfil the requirements of the act and regulations in respect of registered charities.

2. Significant accounting policies

The financial statements are prepared on the basis of Canadian generally accepted accounting principles, the most significant of which are described below:

Use of estimates

The preparation of the financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the year. Actual results could differ from those estimates.

Cash and cash equivalents

Investments in highly liquid securities with original maturities of 90 days or less are included in cash and cash equivalents.

INDEX OF APPEALS CONSIDERED 1997-2000