

# **FIFTH REPORT**

**OF THE**

## **PUBLIC REVIEW BOARD CAW-TCA CANADA**

**TO THE 7<sup>TH</sup> CONSTITUTIONAL CONVENTION**

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



**2001-2002**

# **FIFTH REPORT OF THE PUBLIC REVIEW BOARD**

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## **FOREWORD**

Many years ago, our former union, under the leadership of the then UAW's long time president Walter Reuther, established a Public Review Board allowing members to 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 outside Canadian citizens who have no connection with our union to serve as board members.

This is the Fifth 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 2003

August 2003

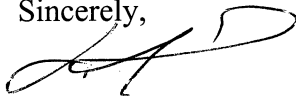
Basil "Buzz" Hargrove  
President  
CAW/TCA Canada  
205 Placer Court  
Willowdale, Ontario  
M2H 3H9

Dear President Hargrove:

I am pleased to present the Fifth Report of the Public Review Board. Along with short biographies of the Board members and some introductory remarks about operations, the Report includes a summary of the five appeals decided between January 1, 2001 and December 31, 2002. Process has begun on two additional appeals, but they have been lying dormant for some time. The Board decided one case after December 31, 2002; this will be included in our sixth report. At the moment, six more cases are pending.

I know that I speak for all of my colleagues in assuring you of the pride we feel in being able to participate in this noble experiment in union democracy. I look forward to seeing you and the delegates in Toronto.

Sincerely,



A. Alan Borovoy  
Chairperson

## INTRODUCTION

This report is submitted to the membership pursuant to Article 25 of the CAW/TCA Constitution. The Public Review Board (PRB) is required to prepare and submit such a report of its activities, including a summary of all appeals it has considered.

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 25, 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, 2003, Chairperson: A. Alan Borovoy; Members: H       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 Consultant on Aging and Work. 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 the 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: Vice-President, World Federalist Movement (International); Canada's Special Envoy to the Sudan; Chair, Canada-DPR Korea Association; Director, Canadian Civil Liberties Association. Formerly: Independent Senator, the Senate of Canada; President, World Council of Churches; Moderator of the United Church of Canada; Chancellor, Lakehead University; Chair of Rights and Democracy.

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 (NEB), 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 has no jurisdiction unless the appellant has alleged before the National Executive Board that the matter was improperly handled because of fraud, discrimination, or collusion with management, or that the Union's decision had no rational basis.

Reference should be made to Article 24 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 24 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, 2001 and December 31, 2002, the Public Review Board decided five appeals. (In addition, two appeal files lie dormant, and staff fielded a number of inquiries.) The Public Review Board has already ruled on one appeal in 2003. There are currently six appeals pending.

## **APPEALS CONSIDERED – 2001-2002**

The following is a summary of each of the appeals considered by the Public Review Board from January 2001 to December 2002. (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. 34/01**

**Member, CAW Local 111 v. CAW Local 111 and The National Executive Board**

**FACTS:**

The appellant, Mr. X, was a losing candidate for the position of local union president in the Local's February 2000 election. Despite CAW constitutional provisions that require a run-off vote between the top two candidates where the first ballot produces no "50% plus one" winner, this election was conducted under a single-ballot plurality system. That is, the candidate with the largest number of votes would be the winner, whether or not the number of votes constituted a majority.

Local 111 was then the recent progeny of a hostile raid by the CAW against the Independent Canadian Transit Union (ICTU). The raid followed a series of failed attempts to negotiate a merger between the two unions. The plurality voting regime, which had been derived from ICTU rules and was to have lapsed some time after the proposed merger, was nonetheless discussed at local meetings prior to the February 2000 elections. Those meetings, organized by the CAW leadership, were attended by the appellant along with other candidates and members. At the PRB hearing, Mr. X acknowledged having expected to be bound by the plurality system.

Shortly after the election results indicated that the victor had won by plurality, Mr. X discovered the CAW's constitutional requirement for a majority vote and demanded a run-off. After the NEB ruled against him, Mr. X appealed to the PRB.

**DECISION:**

In defending its use of a system welcoming to former ICTU members, the NEB invoked as authority for its action, Section 3 of Article 8 of the 1997 CAW Constitution which provided as follows:

If the National Executive Board decides that a part of this Constitution cannot be applied within a merged union, it may dispense with that part on terms it deems appropriate.

However, Local 111 was the result of a "raid", and not a "merged union". Moreover, the NEB was unable to cite a comparable provision that would allow it to bypass the Constitution in the context of a raid.

Nonetheless, the PRB declined to order a run-off vote. Citing early U.S. UAW Public Review Board decisions that had held that, in order to trigger such a disruptive exercise, the complaining members must generally make their position known *before* the election occurs, the CAW PRB adopted the position that there is something unfair about complaining *after* appearing to accept the election procedures that were used at the time.



In response to the appellant's claim that he simply did not *know* about the run-off vote requirement until after the election was held, the Board held that it would be unwise to let such a claim become a critical factor in authorizing the substantial disruption inherent in upsetting the election results:

One of the most oft-quoted maxims in our legal system is that "ignorance of the law is no excuse". In general society, this maxim applies even to the most complex regulations under which we live. While adherence to this maxim could create unfairness for numbers of people who could not be expected to negotiate their way through society's complex enactments, the *failure* to observe it could create a practical nightmare. If it were ever held that the law applied only to those who knew its terms, this would be a recipe for the most wide-spread, self-inflicted ignorance. People could get away with the commission of many wrongs. The result would be a situation that our society simply could not tolerate.

Noting that Mr. X was an experienced trade unionist within the ICTU; that he had been involved for some two years in trying to facilitate the takeover by the CAW; and that the CAW constitutional provisions providing for run-off votes were straightforward; the Board ruled that it was not prepared to upset the election result based on the appellant's unfamiliarity with the CAW Constitution.

However, the Board simultaneously advised the Union that it had infringed the Constitution and cautioned that if it wished to waive such constitutional requirements in the context of a future union raid, it must first ensure that the Constitution is amended to allow for it:

Indeed, without such an amendment, a timely objection to a future election in similar circumstances could well produce the result requested here. [Note: Section 3 of Article 8 was amended at the 2001 CAW Constitutional Convention.]

#### **Case No. 35/01**

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

#### **FACTS:**

The appellant, Mr. X, a losing health and safety candidate in the 1999 local elections, sought to bring charges against the Local Union President and to disqualify certain ballots relating to the run-off part of the election.

In August of 1999, the Local President unilaterally postponed the deadline for receipt of voters' run-off ballots by nearly three weeks, pushing it off to early September. He justified this action as necessary to ensure that the members at a number of the Local's lodges would have a reasonable opportunity to vote. Apparently, summer vacation schedules were interfering with the completion of balloting.

The Chairperson of Mr. X's lodge objected to this postponement, arguing that it was improper to change "the balloting rules in the middle of an election". He also contended that the lodges knew or should have known that the elections would be conducted during the summer vacation schedules and, therefore, they should have raised this issue earlier.

The Local President refused to rescind the postponement. Noting that at least one lodge had not even started the balloting process, he argued that, without a postponement, every member of that lodge would be denied their right to vote. Mr. X took the case to the Local Executive Board and then to the NEB. Losing at both stages, he appealed to the PRB.

#### **DECISION:**

Following a line of PRB decisions that stand for the proposition that charges require a dimension of ethical impropriety, the Board rejected the remedy of charges in these circumstances:

Even if it were assumed that the Local Union President had no constitutional authority to postpone the date for receiving ballots [...], nothing in the Record contradicts the Local President's claim that the original deadline would have resulted in the effective disenfranchisement of all the members in at least one lodge. At the very least, there is nothing to indicate that ... [the President] ... did not honestly believe this to be the situation. The worst, therefore, that could be attributed to him is an honest mistake. On this basis - whatever political remedies may be available to the membership - there should be no question of *charges* against the Local President.

The Board also rejected the appellant's request that the "late" ballots be disqualified. While the PRB agreed that mid-election rule changes are generally impermissible, the Board held that election results should not be disturbed in such circumstances without some concrete basis to believe that the changes made a difference. No such evidence was tendered.

The Board also rejected another argument for discounting the "late" ballots: that the presidential postponement was made without constitutional authority:

Such a remedy would penalize a considerable portion of the membership for an alleged wrong committed by the President. Moreover, there is no indication or even suggestion that anyone was disadvantaged by the postponement. If anything, a substantial number of people were apparently enabled to exercise voting rights that otherwise would have been impossible. In view of the importance that this Union rightly accords to the exercise of the ballot by its members, the Public Review Board is reluctant to interfere with an election that resulted from recognizing enfranchisement as the priority value.

In the absence of further input from the parties (no hearing was held or even sought), the Board left for another day the question as to *who* is properly empowered to affect the kind of postponement that occurred in this case. Having reviewed some of the possibilities so that concerned parties might be better prepared to address the matter in an appropriate future case, the Board endorsed the NEB's recommendation that the Local Union enact by-laws dealing with such contingencies.

**Case No. 36/01**

**Member, CAW Local 222 v. CAW Local 222 and The National Executive Board**

**FACTS:**

The appellant, Mr. X, appealed the Local Union's withdrawal of his July 1998 grievance over lost overtime opportunities. Under the 1995-1998 collective agreement, Mr. X had enjoyed many overtime opportunities. However, as of the first of July, he experienced a dramatic reduction in overtime work as a result of a new overtime procedure. Days earlier, the Local membership had ratified the principles of a new collective agreement that included a measure designed to reduce inequalities in the distribution of overtime work. Reducing these inequalities meant improving the lot of weekend workers at the expense of the previously favored weekday crews. The appellant was a weekday worker.

In pursuing his grievance, the appellant argued that the new equalization procedure should not have taken effect until it was formally signed in December of 1998. Alternatively, he contended that the new procedure should have had to await the end of July 1998, when the then existing collective agreement was slated to expire. The NEB rejected his appeal without a hearing.

**DECISION:**

Of necessity, before it could even assess the merits of the grievance, the PRB had to consider the CAW's constitutional provision dealing with grievance appeals before the Public Review Board.<sup>1</sup> It reads as follows:

The Public Review Board does not have jurisdiction to hear an appeal concerning the handling of a grievance or other issue involving a collective bargaining agreement, 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.

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<sup>1</sup>Hereafter, the "grievance appeal provision." See Article 25 (10) (c) (ii) of the 1997 CAW Constitution and Article 24 (10) (c) (ii) of the 2001 CAW Constitution.

Since no hearing actually took place “before the National Executive Board”, the PRB pointed out that, in order to clothe it with the requisite jurisdiction, the appellant would have been obliged to make the necessary allegations *before* the NEB rendered its decision. The closest he came to making such an allegation was when he wrote the NEB that the grievance committee “made a poor decision, they knew there was a major problem, they decided to change the rules of the game”. Noting that it was not necessary to use the exact words - “no rational basis” - the Board ruled that:

The constitutional requirements would be satisfied to whatever extent the appellant *effectively* alleged that the impugned decision was devoid of a rational basis.

Instead of ruling on the sufficiency of the appellant’s allegation, however, the Board found that the Union’s decision was in fact a rational one:

Mr. X bases much of his argument on the proposition that the parties had no right to implement the new equalization procedure until at least after the official expiry date of the then existing collective agreement. We cannot agree with this proposition. In our view, there is no reason why the parties could not amend their 1995-1998 collective agreement at any point during its lifetime. As long as such amendments have the approval of both parties, we see nothing to preclude them from making any amendments at any time they wish. Nor can the Local Union’s position be challenged for failing to obtain the approval of the membership. According to the Record, such approval was forthcoming and nothing in the Record is sufficient to impugn the Local Union’s consultative procedures.

Having noted that the Union had just bargained for the new equalization procedure, the Board added that Union *pursuit* of Mr. X’s grievance might have appeared irrational. Having found the Union’s actions to have been rational, the PRB dismissed the appeal without ruling on the jurisdictional question. Moreover, the Board reached its decision without granting a hearing on the basis that:

There simply is not enough reason to believe that a hearing could produce a tenable argument against the foregoing considerations. Thus we are disinclined to burden the parties with the expense and labour that hearings inevitably require.

**Case No. 37/02**

**Member, CAW Local 351 v. The National Executive Board *et al***

**FACTS:**

The appellant, Mr. X sought redress from the PRB over the NEB’s decision to withdraw his overtime grievance despite a Local membership decision to pursue it.

For some time, substantial overtime work had been available in the plant and the appellant, a Die Maintenance Worker, had received quite a bit of it. But, at some point in 1999, he found himself suddenly deprived of such opportunities. Apparently, the Company was assigning overtime almost exclusively to Mouldmakers.

Mr. X filed a grievance claiming ownership of the overtime and citing the following passage from the Collective Agreement:

For overtime distribution and equalization purposes, a group will be defined as those employees within the same classification and shift normally performing the work.

According to the appellant, Die Maintenance Workers had normally been performing the work in question for 40 hours a week. It followed, said Mr. X, that they should not have been effectively denied the opportunity to do the same work on an overtime basis during the weekends. As far as the Union was concerned, while the duties of Die Maintenance Workers and Mouldmakers often overlapped, the work in question had always belonged to the Mouldmakers as a skilled trades classification. (Die Maintenance Workers were productions jobs.)

The Union and the appellant also disagreed about the significance of a February 2000 letter of understanding (LOU) between the Company and the Union. This LOU stipulated that the relevant overtime opportunities would be provided, first, to Mouldmakers, second, to Mouldmaker Apprentices, and third, to Die Maintenance Workers. Mr. X claimed that this letter violated the collective agreement. The Union said it merely clarified the agreement. Moreover, the Union argued that its interpretation of these documents was consistent with its long-standing policy of prioritizing and protecting skilled trades work.

In defence of its actions, the Union argued that the PRB's limited jurisdiction over grievance appeals foreclosed it from hearing this case. The constitutional grievance appeal provision limits the PRB's authority to such cases 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.

Since the appellant acknowledged that he had never alleged fraud, discrimination, or collusion with management, the only question was whether he had made an allegation concerning an absence of "rational basis". The appellant took the position that his criticism of the Union's position amounted to such an allegation.

**DECISION:**

Rather than attempt to divine the implications of the allegations made by the appellant, the Board simply held that the decision made by the Union could not legitimately be described as devoid of rationality.

The Record does reveal a long-standing solicitude on the part of the Union for the protection of the skilled trades. And, according to the Record, *both* of the classifications in question have been performing the work in question. This is not necessarily to say that, as between the Union and Mr. X, the Union's interpretation was the better one. It is simply to say, to use an expression the PRB has used before, the Union's interpretation was "within the ballpark of reasonable judgment". As a general matter, the Union Constitution has decreed that the PRB should not be meddling in questions concerning either the handling of grievances or the policies of collective bargaining. The Constitution has limited our interventions to those rather extreme situations involving possible Union breaches of integrity or rationality.

Nor was the Board prepared to find irrationality in the NEB's action in overruling the Local membership.

No rational principle requires that national unions invariably defer to local unions on such questions. This is not to discount the possibility that legitimate political issues might arise over the differences between the NEB and the Local. But generally such political differences must be resolved at the political level within the Union and not at the legal level by the Public Review Board.

Before the PRB, the appellant questioned the Union's compliance with constitutional procedure. Article 25 (4) of the 1997 CAW Constitution provided that, *inter alia*:

Unless otherwise indicated...

(c) The decision of the lower tribunal must be complied with before a higher tribunal can accept the appeal. The decision will remain in effect until reversed or modified. Upon written application and if there are unusual circumstances, the National President may waive part or all requirements of the compliance.

Since there had been no written application for the National President to consider, the appellant argued that the decision of the membership should have been "complied with" before the matter was entertained by the NEB.

From the outset, the CAW took the position that a membership meeting is not a "lower tribunal" for the purpose of this provision. The argument was that such tribunals must be especially elected or appointed; they cannot include the membership itself. According to the appellant, however, the term is used in the context of a provision that deals with appeals from one body to another and one of the bodies in question is the Local Union membership. In context, therefore, Mr. X claimed that the membership must be considered "a tribunal". The PRB was troubled by the implications of such reasoning:

If the Local membership is to be considered a tribunal for these purposes, this might mean that, in general, such grievances would have to actually go to arbitration before a higher tribunal within the Union could consider whether it should go to arbitration. Such an outcome would obviously make no sense.

On the basis that the appellant had not demonstrated that the Union's grievance decision was devoid of a rational basis, the Board maintained its decision to dismiss the appeal. The Board did, however, "signal" CAW members that "some hard thinking must be done" as to how the applicable constitutional provision might be interpreted coherently. "Alternatively or additionally, the Union might consider some constitutional amendments."

**Case No. 38/02**

**Member, CAW Local 111 v. CAW Local 111 Executive Board and the National Executive Board**

**FACTS:**

The appellant, Mr. X, was removed from his position as picket line captain during a strike. The union official (Mr. Y) who removed him also withheld his strike pay. To add insult to injury, Mr. Y accused the appellant of having threatened another one of the Local's members.

A CAW national representative stepped in and saw to it that the appellant received his strike pay. And while Mr. X was able to obtain an exonerating letter from the person he was accused of threatening, he believed that, since his reputation had been injured and since he had suffered considerable anguish, his antagonist should not be free of sanctions. Mr. X called upon the Union to remove Mr. Y from the office he occupied and to require that he apologize for what he had done. A not unsympathetic National staff claimed, however, that they lacked the constitutional power to accomplish what was sought.

The frustrated appellant then alleged that the two senior Local officials (the President and Vice-President) had misconducted themselves because of the way they handled his complaints and, further, for their failure to apologize to him on behalf of the Local Union.

In the midst of these developments, certain graffiti expressing hostility to the appellant appeared in the workplace. Mr. X told both the Union and management about it. The Company removed the graffiti before the end of the day. Moreover, on the very next day, the Union widely disseminated material outlining the CAW's policy of "zero tolerance" for such workplace harassment. That same day, Mr. X left for vacation. Upon his return he complained that, during his absence, the Union had done nothing further in regard to the graffiti. Unable to obtain satisfaction from either the Local or the National Union, Mr. X appealed to the PRB.

**DECISION:** In resolving this appeal, the PRB conceded that the appellant was badly mistreated:

Within a short period of time, he was wrongly divested of his position as strike captain, wrongly deprived of strike pay, wrongly accused of threatening someone he had not threatened, and wrongly targeted by some nasty graffiti. The difficulty with his current predicament, however, is that even though he was clearly the victim of wrongdoing, the *Union* is not the wrong-doer.

To begin with, the PRB held that Union officials had had a reasonable basis to believe they were powerless to remove Mr. Y from office and compel an apology from him.

Perhaps Mr. X might have enjoyed greater success if he had filed formal charges rather than attempt informal resolutions? This is not, of course, to find fault with him for taking this route. Indeed, informal resolution is so often more productive of good relations within a Union than is formal discipline. Unfortunately, however, the informal approach might leave the senior officials powerless to rectify the situation according to the aggrieved party's wishes. It is regrettably ironic that, in this regard, Mr. X might be the victim of his own public spiritedness.

As to the appellant's call for the senior Local officials to issue an apology, the Board was sensitive to their reluctance to do so since Mr. X had accused *them* of impropriety. While commenting that it "might have been more gracious for them to issue such an apology," the Board also noted the failure of the parties to show that it had the power to make such a compulsory order in these circumstances.

In considering the graffiti matter, the Board noted that CAW policy calls for a full investigation of such harassment. However, the Union's efforts to investigate were hampered by the appellant's unwillingness to identify those he suspected of creating it.

He says that he declined to provide such information - despite repeated requests for it - because he did not want to precipitate the discharge of a fellow Union member. While this silence might again reflect well on Mr. X's conscientiousness as a Union member, we must also understand that it left the Union substantially devoid of practical steps it could take...

Unable to grant the relief sought by the appellant, the Board expressed its hope that:

the parties will be able to put this controversy behind them. We hope that the Local Union regrets the injustice that has been done to Mr. X and we hope it appreciates his attempts to resolve the matter in a constructive fashion. We hope also that Mr. X, for his part, will appreciate the Union's lack of culpability in the matter.



## **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](mailto:cawprb@web.net).

Respectfully submitted,

THE PUBLIC REVIEW BOARD  
CAW/TCA CANADA

A. Alan Borovoy  
Chairperson

## **APPENDIX A**

### **RULES OF PROCEDURE**

The following rules are promulgated by the Public Review Board (hereafter the "PRB"), pursuant to the authority contained in Article 25 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 202 - 394 Bloor Street West, Toronto, Ontario, M5S 1X4; telephone & fax: (416) 861-1291; e-mail [cawprb@web.net](mailto: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 should be accompanied by a Statement of Reasons for Appeal (Article 24, 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 24 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 OPERATIONS AND CHANGES IN NET ASSETS**

<b>Year ended December 31</b>	<b>2001</b>	<b>2000</b>
<b>Revenue</b>		
Grant from The Canadian Autoworkers	<b>\$ 87,000</b>	<b>\$ 50,000</b>
Interest	<b>249</b>	<b>671</b>
	<b>87,249</b>	<b>50,671</b>
<b>Expenditure</b>		
Rent	<b>14,752</b>	<b>-</b>
Travel	<b>11,131</b>	<b>3,492</b>
Meeting fees	<b>10,650</b>	<b>6,200</b>
Counsel fees	<b>7,215</b>	<b>10,368</b>
Hearing fees	<b>4,850</b>	<b>20,150</b>
Office and miscellaneous	<b>4,401</b>	<b>5,517</b>
Directors' fees	<b>4,200</b>	<b>3,500</b>
Administrative and secretarial	<b>2,941</b>	<b>6,274</b>
Telephone	<b>2,508</b>	<b>1,776</b>
Computer services	<b>2,477</b>	<b>1,790</b>
Moving expense	<b>1,915</b>	<b>-</b>
Audit	<b>1,471</b>	<b>1,150</b>
Meeting and transportation costs	<b>143</b>	<b>2,064</b>
	<b>68,654</b>	<b>62,281</b>
<b>Excess of revenue over expenditure (expenditure over revenue)</b>	<b>18,595</b>	<b>(11,610)</b>
<b>Under accrual of previous year's audit fees</b>	<b>(322)</b>	<b>(188)</b>
<b>Net excess of revenue over expenditure (expenditure over revenue)</b>	<b>18,273</b>	<b>(11,798)</b>
<b>Surplus, beginning of year</b>	<b>3,554</b>	<b>15,352</b>
<b>Surplus, end of year</b>	<b>\$ 21,827</b>	<b>\$ 3,554</b>

*The accompanying notes are an integral part of the financial statements*

**THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2002**

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**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 of The Canadian Autoworkers Public Review Board have been prepared in accordance with Canadian generally accepted accounting principles.

The preparation of financial statements in accordance 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 statement of financial position date and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

The following paragraph describes the Board's significant accounting policies:

**Cash and cash equivalents**

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

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

<b>Year ended December 31</b>	<b>2002</b>	<b>2001</b>
<b>Revenue</b>		
Grant from The Canadian Autoworkers	\$ 50,000	\$ 87,000
Interest	110	249
	<b>50,110</b>	<b>87,249</b>
<b>Expenditure</b>		
Rent	16,093	14,752
Hearing fees	12,000	4,850
Travel	8,100	11,131
Counsel fees	7,090	7,215
Directors' fees	4,200	4,200
Administrative and secretarial	3,694	2,941
Meeting fees	3,000	10,650
Office and miscellaneous	2,068	4,401
Audit	1,551	1,471
Telephone	1,414	2,508
Computer services	385	2,477
Moving expense	-	1,915
Meeting and transportation costs	-	143
	<b>59,595</b>	<b>68,654</b>
<b>Excess of revenue over expenditure (expenditure over revenue)</b>	<b>(9,485)</b>	<b>18,595</b>
<b>Under accrual of previous year's audit fees</b>	<b>(80)</b>	<b>(322)</b>
<b>Net excess of revenue over expenditure (expenditure over revenue)</b>	<b>(9,565)</b>	<b>18,273</b>
<b>Surplus, beginning of year</b>	<b>21,827</b>	<b>3,554</b>
<b>Surplus, end of year</b>	<b>\$ 12,262</b>	<b>\$ 21,827</b>

*The accompanying notes are an integral part of the financial statements*



## **APPENDIX C**

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