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Report of the Public Review Board

**9th CAW Constitutional
Convention**

August 18 -21, 2009

Quebec City, Quebec

Seventh Report of the Public Review Board

Table of Contents

Forward - Ken Lewenza, President, CAW/TCA

A. Alan Borovoy, Chairperson, Public Review Board

Introduction.....	1
Members and Staff.....	1
Operation.....	2
Statistics.....	3
Appeals Considered, 2006 – 2008.....	3
Conclusion.....	15
Appendix A – Rules of Procedure.....	16
Appendix B – Annual Financial Statements, 2006 – 2008.....	21
Appendix C – Index of Appeals Considered, 2006 – 2008.....	25



FOREWARD

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 apart 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 Seventh 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.

KEN LEWENZA
National President

August 2009

Ken Lewenza
President
CAW/TCA Canada
205 Placer Court
North York, Ontario
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Dear President Lewenza:

I am pleased to present the Seventh 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 ten appeals decided between January 1, 2006 and December 31, 2008. To date, the Board has decided one case since December 31, 2008; it will be included in our eighth report. At the moment, there are two appeals 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 Quebec City.

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

MEMBERS AND STAFF

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

As of August, 2009, Chairperson: A. Alan Borovoy; Members: H  l  ne David, Pradeep Kumar, Marvin Schiff, 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 Emeritus, 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.

H  l  ne David: Invited Researcher, Sociology Department, Universit   de Montr  al; Researcher and Consultant on Aging and Work. Formerly: Researcher at the Institut de recherche appliqu  e sur le travail in Montr  al; Director, Groupe de recherche sur les aspects sociaux de la sant   et de la pr  vention, Universit   de Montr  al.

Pradeep Kumar: Professor Emeritus, School Of Policy Studies, Queen's University; Formerly: Director of the MIR program and acting Director School Of Industrial Relations and Industrial Relations Centre; Has taught graduate and undergraduate courses and conducted research on North American unions, collective bargaining, labour relations , labour market analysis and policy, globalization, and the automobile

industry; Published several books and articles on a variety of issues relating to labour relations and human resource management; Current research focused on union revitalization approaches and strategies; Member of a number of research networks including CRIMT, located at the University of Montreal.

Marvin Schiff: Freelance Writer, Editor, Researcher, and Artist. Formerly: Journalist, Globe & Mail; Freelance Contributor, Middle East and Africa, for the Globe and Mail and the Canadian Broadcasting Corporation; Founding Director, Nova Scotia Human Rights Commission; Associate Professor, School of Journalism, Carleton University; Consultant on Race Relations and Diversity Management; Board member, Canadian Civil Liberties Association.

Lois M. Wilson: Ecumenist in Residence, Toronto School of Theology, University of Toronto. Formerly: President, World Federalist Movement (International); Canada's Special Envoy to the Sudan; Chair, Canada-DPR Korea Association; Board Member, Canadian Civil Liberties Association. 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 Noa Mendelsohn Aviv, Executive Secretary; Graeme Norton, Executive Secretary; Danielle McLaughlin, Registrar; and 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 as included as Appendix A to this Report.

(b) Claims Arising Under the Ethical Practices Code

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, 2006 and December 31, 2008, the Public Review Board decided ten appeals. The Public Review Board has already ruled on one appeal in 2009. There are currently two appeals pending.

APPEALS CONSIDERED - 2006-2008

The following is a summary of each of the appeals considered by the Public Review Board from January 2006 to December 2008. (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 pseudonyms, such as "Mr. X" and "Local 123".) 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. 49/06

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

In March 2005 an election was held for the Presidency of CAW Local 123. The results of this election were very close, with only 8 votes separating the winner from the second place candidate. Following the election a dispute arose regarding the exclusion of 44 votes, which the Election Committee had determined were too late to be included in the final vote tally. These votes had not been postmarked by midnight on March 28, 2005 as required by the rules promulgated for the election. The question of whether they should be included was, however, complicated by the fact that the days from March 25 until March 28 inclusive fell on the Easter weekend. This created a real possibility that anything mailed after *March 24* would not be processed until after the March 28 deadline.

Arguments

The appellant, Mr. X, argued that the 44 excluded ballots should have been included in the final vote tally. He asserted that those members who voted after March 24 could not have reasonably known that their votes might not be postmarked until after midnight on March 28 and thus be excluded. In the appellant's view, it would be unfair under these rather unusual circumstances to deny the 44 relevant Local 123 members the right to participate in the election.

The Union responded by highlighting the importance of respecting the decisions of local union officials. It suggested that since the decision of Local 123's Election Committee did not exceed the bounds of reasonableness it should receive a high level of deference and be allowed to stand.

Decision

The PRB held that there are "certain kinds of exceptional unfairness" that could justify overruling the electoral decisions of local unions. It then went on to find that the "needlessly narrow" interpretation of the election rules applied by Local 123 placed too high a burden on members, as it effectively required them to know that, despite what was stated in the relevant election flyers and notices, it was necessary to mail their ballots *before* March 25. In the Board's view, obtaining such knowledge would have required a level of investigative effort that could not reasonably be expected. Therefore, disqualifying the 44 ballots in question would result significant unfairness. In order to prevent such an outcome, the PRB granted the remedy requested by the appellant and

ordered the contested ballots counted and the final vote tally in the election adjusted accordingly.

Case No. 50/06

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

In January 2005, a general membership meeting of a CAW Local 123 bargaining unit was held over two days. On the first day, a motion to transfer \$65,000 from the Unit to the Local was tabled and voted on by 25 members of the Unit. Following this vote, the motion was rejected. The next day, a second vote was held on the same motion, for which fewer than 25 Unit members were present. On the basis of the *combined* vote of the two meetings, the motion was subsequently carried and the decision was made to transfer the funds, thereby overruling the vote at the first meeting.

Arguments

The central issue in the appeal was the interpretation of a Local Union by-law that established the quorum threshold of 25 for a general meeting. The appellant, Mr. X, argued that the vote at the second meeting, at which *less than 25* members were present, should not have been counted with the vote at the first meeting, which was attended by 25 members. In response, the NEB argued that a quorum is achieved by counting the number of members present during *both* periods. In making this argument, the NEB relied on a Local Union by-law which provided that *due to work schedules, the general meeting shall be held in two periods*.

Decision

After considering the two competing interpretations of the by-laws advanced by the parties, the PRB held that the wording of the relevant provisions favoured the NEB position. In reaching this conclusion, the PRB noted that the by-laws explicitly state that the *Ageneral meeting* is to be held in two *Aperiods*, leading to the conclusion that *both* periods are necessary to constitute *Aa general meeting*. Noting that the quorum set out is for a *Ageneral meeting*, not a single period, the PRB held that the most reasonable conclusion is that the by-laws' intention was to treat *both* periods as constituting the general meeting and to count quorum cumulatively, rather than on the basis of each individual period. As a result of this finding the appeal was dismissed.

Case No. 51/06

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

Following his receipt of the decision in CAW PRB case no. 49/06, the CAW National President wrote to the PRB to request that it reconsider its disposition of that appeal.

The decision in question dealt with whether certain ballots should be counted in an election for the Presidency of CAW Local 123. Following the election a dispute arose regarding the exclusion of 44 votes, which had not been postmarked by midnight on March 28, 2005, as required by the rules promulgated for the election. The question of whether they should be included was, however, complicated by the fact that the days from March 25 until March 28 inclusive fell on the Easter weekend. In its decision in this case, the PRB held that the exclusion of the votes in question stemmed from a “needlessly narrow” interpretation of the relevant election rules. It held that disqualifying the 44 ballots would result significant unfairness and ordered their inclusion in order to prevent such an outcome.

The President’s request that the Board “reconsider” its original decision was unprecedented in the more than 20 year history of the CAW PRB. Its unusual nature raised several questions about both the merits of the reconsideration request and the PRB’s jurisdiction to hear it.

Arguments

The Union argued that the original PRB decision committed “an error” by developing “a new test or policy that permits the PRB to interfere in Local Union discretionary decision making processes”. The specific “error” identified by the Union was the PRB’s determination that it may be appropriate for the PRB to interfere with Local Union decisions when they create the possibility of “exceptional unfairness” for members. In response, the original respondent, Mr. X, argued that the PRB’s original decision should stand.

Decision

The PRB noted that developing new tests is a regular exercise for adjudicators and that such measures may often be necessary to avoid arbitrary decision-making. It then went on to find that the Union had misconceived the original decision, which did not create a “new test” for interfering with the decisions of Local Union’s, but rather simply used “exceptional unfairness” as a vehicle to interpret election rules promulgated by Local 123 itself. The Board noted that the election rules set out by the Local Union were ambiguous and open to different interpretations, some of which were fairer than others. The PRB ultimately decided to uphold its original decision, finding that the Local Union had misconstrued its own election rules by interpreting them in a manner that was particularly unfair.

Case No. 52/07

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

Mr. X, a former president of CAW Local 123, sought to overturn the Local’s most recent presidential election in which he placed third of four candidates. The contested election

was itself a re-run of a previous election in which Mr. X had placed second. The NEB had ordered the second election as a result of some irregularities in the first.

Arguments

Mr. X made several assertions in support of his appeal for a new election. First, he complained that the Election Committee was denied access to certain materials, a position which he alleged was supported by a letter from another Local 123 member that was presented to the PRB. Second, he raised the fact that a member of the Local 123 Election Committee had not participated in the count, which, according to him, triggered questions about its integrity. Finally, Mr. X complained that a secretary in the National office was improperly involved in checking voters against a membership list. He alleged that these factors, taken together, were sufficient to impugn the election in question.

In response, the Union asserted that Mr. X was mistaken about many of the facts that he alleged. First, it noted that the letter upon which one of Mr. X's central arguments relied dealt with a different election than the one that he was seeking to impugn. Second, it pointed out that the Election Committee member that was not involved in the count left the premises on her own accord and that she was in no way prevented from participating. Finally, the union pointed out that the secretary Mr. X alleged was involved in the count was not, as her involvement was simply to verify the ballots as they arrived in the office.

Decision

The PRB held that Mr. X had failed to demonstrate the occurrence of irregularities sufficient to trigger a new election. It noted that the errors and misconceptions identified by the Union together with the appellant's general failure to establish the requisite grounds for a hearing gave the Board no option other than to dismiss the appeal.

Case No. 53/07

Member, CAW Local 123 v. CAW Local 123, CAW Local 123 Election Committee and the National Executive Board

Facts

Mr. X was a trustee on Local 123's Executive Board. At some point after being elected to this position, he was asked to complete a form for the Local which required him to provide some very personal information. Mr. X was advised that he was required to provide this information as a legal prerequisite to several of the Local's members serving as employees of a casino. Although the requirement emanated from the Alcohol and Gaming Commission of Ontario (AGCO), Mr. X was asked to follow the prevailing practice and remit the information directly to the Local Union executive.

As a consequence of certain tensions that had plagued Mr. X's relations with the Local executive, he refused to provide the requested information. He took issue with the "intrusive" nature of the form as well as the requirement that he share such intimate information with persons with whom he had strained relations.

Mr. X's refusal to provide the completed form led the Local to treat him as having "resigned" his position on its Executive Board. When Mr. X appealed this decision to the National Executive Board, his status was reclassified as an "indefinite suspension". He was further advised that, instead of having to provide the requested information to the Local, he could provide it to the National Union's legal department, which would review it and pass it along to the AGCO. Unhappy with this outcome, Mr. X appealed to the PRB.

Arguments

Mr. X argued that he should be permitted to provide the required information directly to the AGCO. He asserted that this would ensure the protection of his privacy without affecting the interests of the Local Union or the National Union in any way. Mr. X further asked the PRB to order a new election for the Local 123 Executive Board. He alleged that, because of his "indefinite suspension" status, he had been disqualified from running in the most recent vote.

In response, the NEB maintained its original position that the information in question should be submitted through the National Union's legal department and that Mr. X should comply with this request.

Decision

The PRB found that there had been several miscommunications between Mr. X and the National Union throughout the appeal. It held that this matter was one that the NEB should not have allowed to go to the PRB, as it could have been easily resolved by letting Mr. X send his material directly to the AGCO. In reaching this conclusion, the PRB effectively held that the NEB's handling of the matter had been unreasonable.

The PRB further held that the NEB's "unreasonableness" stemmed from its failure to adequately observe the priority value at issue in this situation – the privacy and dignity of the appellant. In spite of this finding, however, the PRB declined to order the new election requested by Mr. X. It held that, although some inequities had occurred in this case, there had not been any allegations of electoral misconduct or assertions that the election was designed to prevent Mr. X's candidacy.

Accordingly, the PRB allowed the appeal in part. It ordered the immediate lifting of the indefinite suspension against Mr. X and that his record be rectified so that the suspension he suffered can never be used against him. The PRB further ordered the NEB to ensure that, if Mr. X is again elected to the Local executive, he must be

permitted to file the appropriate forms with either the National Union's legal department or the AGCO directly.

Case No. 54/07

Member, CAW Local 123 v. CAW Local 123, CAW Local 123 Election Committee and the National Executive Board

Facts

Mr. X lost a February 2006 election for President of CAW Local 123 by approximately 500 votes. This election was a "re-run" of an earlier election, which he had also lost by several hundred votes. Mr. X believed that the second election was ordered inappropriately and contested its validity in his appeal to the PRB.

Wishing to clarify certain matters set out in the Record, the PRB decided to order a hearing into Mr. X's appeal. Unfortunately that hearing never occurred. On the morning of the hearing, Mr. X informed the PRB that he was unable to attend and that he was content to have the case resolved on the basis of the written Record.

Arguments

Mr. X argued that the CAW Constitution only authorizes fresh elections, not "re-runs" of old elections in which only the original candidates are on the ballot. In making this argument, he relied on earlier PRB jurisprudence, which he interpreted as supporting his position.

Mr. X further argued that the manner in which the election was carried out was flawed. He asserted that, in a number of cases, the Elections Committee allowed members without photo ID to cast ballots, raising questions about whether all persons that voted were entitled to. Mr. X also claimed that the chair of the Elections Committee disseminated material that improperly blamed him for certain impugned electoral procedures. He also claimed that the current president of the Local improperly used Union funds to advance his electoral interests.

In response, the Union argued that none of the arguments advanced by Mr. X had been proven and that a new election was not warranted. Moreover, when Mr. X failed to attend the scheduled hearing, the Union urged the PRB to dismiss the appeal as a result.

Decision

The PRB noted that the reason that a hearing was scheduled in this case was to obtain a better explanation of the relevant facts than was provided in the parties' written materials. It further noted that the onus was on Mr. X to demonstrate why his appeal should be upheld.

The PRB found that, by failing to appear at the hearing, Mr. X had deprived it of the further clarification it required in this case. The Board went on to hold that, on the basis of the written Record, the arguments advanced by Mr. X had not been sufficiently demonstrated. The PRB was unable to determine whether any of the election practices were flawed, and if so, how many votes would have been affected. Similarly, the Board did not feel that it had enough information to support Mr. X allegations of impropriety by other candidates.

Regarding Mr. X's argument that re-runs of elections were not permitted by the CAW constitution, the PRB found that this assertion was not supported by the jurisprudence that Mr. X had put before the Board. Since the appeal failed to succeed on the basis of written materials, the Board held that there was no need to address the Union's argument that the appeal should be dismissed because of Mr. X's failure to attend the hearing.

Case No. 55/07

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

Mr. X, a member of CAW Local 123, sought to validate a bylaw purportedly enacted by his Local Union. The bylaw required the Local's Bombardier unit to provide relevant members with a copy of any tentative agreement reached with the Company "at least 5 days before a ratification vote is held". When the NEB became aware of the bylaw it advised the Local that it did not approve of it because it viewed the measure as contrary to the National Union's policy of maintaining flexibility in collective bargaining.

Arguments

Mr. X argued that the bylaw was valid because it had not been repealed by the NEB. He relied on Article 13, Section 10 of the CAW Constitution, which states that "the National Executive Board will repeal bylaws of any subordinate body that do not conform to this Constitution". In Mr. X's view, the bylaw did not require NEB approval to come into effect, and since it had been supported by the membership it was valid.

In response, the Union argued that the bylaw was not operative because it had never been approved by the NEB. It asserted that Article 30, Section 2 of the constitution applied, which required that "all local unions must establish bylaws and submit them to the National Executive Board for approval". In the Union's view, since the NEB never approved the bylaw in question, it was not operative. The NEB also argued that the PRB did not have jurisdiction to hear this appeal, because Article 24, Section 10(c)(i) of the constitution precludes it from reviewing official collective bargaining policy of the National Union.

Decision

The PRB held that there was no theory on which Mr. X could have his claim vindicated. It noted that if the NEB must approve Local Union bylaws, it is clear that this did not happen in this case. The Board further noted that the subject matter of the bylaw clearly addressed collective bargaining policy, and that, as a result, it was at least arguable that the PRB lacks the jurisdiction to review the matter. Since Mr. X had not successfully identified a basis for PRB jurisdiction in this case, the appeal was dismissed without a hearing.

Case No. 56/08

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

Mr. X was discharged by his employer in early 2004 as a result of allegations that he had acted inappropriately at a Company meeting. He was subsequently reinstated in May 2005 pursuant to the terms of a "last chance agreement". The agreement mandated that if Mr. X breached its terms within five years of his return to work he would be automatically discharged. The parties further agreed that, if such a discharge did occur, the only issue that could be grieved would be whether or not the conduct resulting in the discharge took place. If any impermissible conduct was found to have occurred, the Union was prohibited from arguing for a penalty less than termination.

In November 2005, Mr. X was again discharged for behaviour that the Company considered "inappropriate and abusive in the presence of management". On this occasion, however, Mr. X told the Company that he had been suffering from a substance abuse disability which presumably had caused his impugned misconduct. On this basis, he filed a grievance seeking reinstatement. His stated plan was to complete an addiction treatment program.

In spite of Mr. X's substance abuse problems, the Company was unwilling to reinstate him. Mr. X asked his Local Union to advance a grievance to arbitration on his behalf; however, the Local declined to do so. It took the position that, because of the "last chance agreement", there was little chance of victory at arbitration. Mr. X appealed to the National Executive Board, which upheld the decision of the Local Union. Mr. X then appealed to the Public Review Board.

Arguments

Mr. X took issue with the process used by the Local Union in coming to the conclusion not to pursue his grievance. In particular, he felt that the Local should have given greater weight to his substance abuse problems and consulted legal counsel about his case. He asked the PRB to order the Union to advance a grievance to arbitration on his behalf.

The Union responded by arguing that the PRB lacked the constitutional jurisdiction to hear Mr. X's appeal. It referenced Article 24, Section 10(c)(ii) of the CAW constitution in support of this argument. This provision states that:

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 of the Local Union or National Representative had no rational basis.

The Union further argued that, even if the PRB did have jurisdiction to deal with this appeal, there was no basis for overturning the Local Union's decision.

Decision

The PRB dealt first with the question of jurisdiction. It noted that, in his submissions to the NEB, Mr. X had disputed "the process ... that was used in coming to the conclusion" not to pursue his grievance and, in particular the Local's failure to consult legal counsel. In the PRB's view, these assertions were tantamount to an argument that the Local's decision "had no rational basis". On this basis, the PRB was satisfied that it had the requisite jurisdiction to deal with this appeal.

The PRB then turned to the question of whether the Local's decision did indeed lack a "rational basis". In its analysis of this question, the PRB focused extensively on certain legal texts and arbitral jurisprudence that the Union had filed in support of its argument that Mr. X's grievance was likely to lose at arbitration.

The PRB noted that several of the cases provided by the Union were less than helpful to its position. It also pointed out that the Union's own materials indicated that "last chance agreements with disabled employees [can be] problematic and will not be enforced if they are found to derogate from an employer's obligations under human rights legislation and in particular its duty to accommodate". Finally, the PRB noted that the Union's materials indicated the position of most arbitrators "seems to be that regardless of what the parties have agreed, they must determine that the employer has met its statutory duty of doing everything it could reasonably do to accommodate the needs of the disabled".

In the PRB's view, the evidence before it indicated that the Union had neglected to consider several relevant arbitration cases. Moreover, some of the Union's material even suggested that the grievance might have been upheld had it gone to arbitration. In the PRB's view, these factors were sufficient to lead to the conclusion that the Union's decision lacked a rational basis.

The PRB made no attempt to substitute its judgment for that of the Union, instead deciding to remit the case back to the Union with instructions that it revisit the matter. It gave the Union several options as to how it could satisfy its obligation to articulate a rational basis for its opinions and actions, including:

- providing a further explanation of why the facts of this case would propel most arbitrators to enforce the last chance agreement, despite Mr. X's reported disability;
- undertaking additional research, including an examination of previously neglected jurisprudence;
- securing an independent legal opinion; or
- advancing the grievance to arbitration.

The question as to which of these methods should be pursued was left in the Union's hands. The PRB remained seized of the case in order to ensure that the Union adequately complied with the judgment.

Case No. 57/08

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

Mr. X was laid-off by his employer in January 2002. At that time he expressed an interest in bumping into the tool design department; however, he claims that his Union representatives persuaded him to bump into the maintenance data department instead. He did as they reportedly suggested, but in July of 2002 he was laid off from that department as well. In early October he wrote to management indicating that he now wished to bump into the tool design department. About a week later, the Company replied that, by electing to bump into the maintenance data department, he had foreclosed on what he then wished to do.

Over the next two and a half years, Mr. X wrote periodically to various Union officials who he hoped would be able to help him get his job back. He also wrote to management in the hope of achieving the same outcome. No formal action was ever taken by the Union, in part, because of several long delays for which Mr. X bore responsibility.

In January 2005 Mr. X changed his strategy, deciding to sign away his recall rights under the Collective Agreement in order to qualify for an early pension and severance package. In spite of taking this action, in the summer of 2006, he asked the union to file a grievance to help him get his job back. In response, the Union told Mr. X that he was no longer an active CAW member or an employee of the Company, and thus not eligible to participate in any relevant grievance procedure.

Over the next three years, Mr. X continued to ask the CAW to file a grievance on his behalf. He was consistently advised by both his Local Union and the National Union

that no such action would be taken. In January 2008, Mr. X wrote to the Public Review Board to appeal this decision and to seek an order requiring the Union to file a grievance on his behalf.

Arguments

Mr. X argued that the Union's refusal to file a grievance on his behalf was improper and should be overturned. In response, the Union argued that the PRB had no jurisdiction to hear Mr. X's appeal, on the basis that Mr. X had renounced his membership in the Union and exceeded the applicable constitutional time limits for filing such an appeal.

Decision

The PRB held that Mr. X's failure to observe the prescribed constitutional time limits was grounds for dismissing his appeal. While the Board left open the possibility that certain timelines might be by-passed in another case, it found that the magnitude of the delays in this case permitted no such adjudicative rescue. As a consequence, the Board felt that there was no need even to consider the issue of membership status and the appeal was dismissed without a hearing.

Case No. 58/08

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Facts

Mr. X was denied the opportunity to run in a 2005 election for an executive position with the Oshawa Area Skilled Trades Council (OASTC). The decision was based on his alleged failure to "declare to the president of the OASTC", within the prescribed period after the close of nominations, whether he would accept or decline the nomination. According to Mr. X, however, he had transmitted a "letter of intent" with his nomination card. He says that he also gave such a letter to the election committee of the Local Union.

Without explicitly alleging or finding that there was no such letter, the National Union claims that it did not receive the letter with the appellant's materials. It also says that there has been no confirmation from anyone else that the letter even existed. Moreover, the Union contends that the president of the Trades Council had attempted without success to reach Mr. X in order to ascertain his intentions.

Arguments

In his appeal to the PRB, Mr. X made it clear that he was not seeking to set aside the contested election. Indeed, all that he asked of the PRB was a declaration that he was in the right and the Union was in the wrong. In response, the Union argued that, given the lack of clarity in this case, such a declaration was not warranted.

Decision

The PRB found that the remedy that Mr. X sought would have virtually no practical impact. It noted that he had been successful in becoming a candidate in a subsequent election, which indicated that his electoral opportunities with the OASTC had not been affected by the conduct he sought to impugn. Moreover, since there had never been any suggestion of wrongdoing on Mr. X's part, there was no reason for concern about injury to his reputation. The Board also noted that there was evidence that the NEB has recommended changes to the impugned nomination process and that the OASTC has already indicated its intention to review the matter.

In the PRB's view, the facts of this case did not engage any compelling interests that would warrant the granting of a declaratory judgment. Accordingly, the appeal was dismissed without a hearing.

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 506 – 360 Bloor Street West, Toronto, Ontario, M5S 1X1; telephone and fax: 416-861-1291; email: cawprb@web.net.

Respectfully submitted

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

**A. Alan Borovoy
Chairperson**

APPENDIX A
RULES OF PROCEDURE

RULES OF PROCEDURE

Effective June 23, 2003

The following rules are promulgated by the Public Review Board, hereinafter 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. Any questions concerning these rules are cordially invited, by letter, telephone, or in person, at PRB headquarters, located at 394 Bloor Street, Suite 202, Toronto, Ontario, M5S 1X4, Telephone and Fax: 416-861-1291.

1. Appeals

Every notice of Appeal to the PRB shall be signed by the member or members appealing, shall be filed with the National President at 205 Placer Court, North York, Ontario, M2H 3H9, and 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:

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

2. Notification of Pending Appeal

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

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

3. Answer to Statement of Reasons for Appeal

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

specific request in lieu of such a decision, an Answer responsive to the arguments raised in the Statement of Reasons for Appeal shall be filed.

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

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

4. The Record

At the time the National Union files its Answer it shall forward to the PRB its complete written record in the case, including all correspondence, briefs, or written arguments, minutes, transcripts, and exhibits submitted in connection with the local union and National Union proceedings. A copy of the Record will be supplied by the PRB to each party.

It shall be the duty of each party receiving the Record to notify the PRB in writing within ten days after receipt of any deficiency in the Record supplied and, when possible, to supply the missing documents.

5. Correspondence

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

6. Change or Error of Address

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

7. Time, Place and Notice of Oral Argument

- (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 will be sent to various colleges and universities, libraries, news media, private publishing services, and individual subscribers to the decisions of the PRB unless prior objection is received from any party.

10. Motions

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

11. Additional Evidence

- (1) Additional evidence - that is, evidence in addition to that in the Record transmitted to the PRB - may be presented only in the following situations:
 - (a) Where authorized by the Chair of the panel of the PRB or offered and received without objection by any other party on the basis of a written request filed with the PRB within 20 days after the transmittal of the Answer submitted by the National Union. The request to present additional evidence shall set forth:
 - (i) Persuasive reasons for presenting such evidence and for not having presented it at prior hearings in the case;
 - (ii) The names of all witnesses whose testimony is desired to be presented;
 - (iii) The relevance of the anticipated testimony of each of these witnesses to the issues before the PRB; and,

- (iv) A description of any documentary evidence to be offered.
- (b) Where required by the PRB in order to inform itself adequately to reach a just decision.
- (2) Whenever such presentation of evidence is authorized, it may be received by the PRB in the form of a record made before a PRB-appointed hearing officer, or otherwise, upon such terms as are prescribed for the particular case and are consistent with the principles of notice, confrontation, cross-examination and opportunity for rebuttal.

12. Rules to be Liberally Construed and May be Modified

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

APPENDIX B
ANNUAL FINANCIAL INFORMATION
2006 – 2008

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

Year ended December 31	2006	2005
Revenue		
Grant from The Canadian Autoworkers Union	\$ 75,000	\$ 25,000
Expenses		
Rent	17,997	18,053
Counsel fees	17,001	2,300
Hearing fees	11,400	2,400
Meeting fees	10,200	3,600
Travel	4,300	160
Director's fees	4,200	4,200
Administrative and secretarial	3,889	2,136
Professional fees	3,365	2,150
Office and miscellaneous	2,619	1,658
Telephone	1,846	1,326
Meeting room rental	1,019	-
Computer services	528	507
Printing	350	116
Translation fees	-	474
Amortization	789	1,096
	79,503	40,176
Excess of expenditures over revenue	(4,503)	(15,176)
Net assets, beginning of year	10,816	25,992
Net assets, end of year	\$ 6,313	\$ 10,816

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF OPERATIONS AND CHANGES IN NET ASSETS
Year ended December 31

2007

2006

Revenue		
Grant from The Canadian Autoworkers Union	\$ 100,000	\$ 75,000
Expenses		
Rent	21,071	17,997
Hearing fees	12,000	11,400
Counsel fees	10,698	17,001
Meeting fees	8,100	10,200
Administrative and secretarial	4,750	3,889
Office and miscellaneous	4,223	2,619
Director's fees	4,200	4,200
Professional fees	3,127	3,365
Telephone	1,977	1,846
Travel	1,860	4,300
Printing	953	350
Meeting room rental	912	1,019
Computer services	434	528
Amortization	1,027	789
	75,332	79,503
Excess (deficiency) of revenue over expenses	24,668	(4,503)
Net assets, beginning of year	6,313	10,816
Net assets, end of year	\$ 30,981	\$ 6,313

THE CANADIAN AUTOWORKERS PUBLIC REVIEW BOARD
STATEMENT OF OPERATIONS AND CHANGES IN NET ASSETS
Year ended December 31

2008

2007

Revenue		
Grant from The Canadian Autoworkers Union	\$ 100,000	\$ 100,000
Expenses		
Rent	23,865	21,071
Meeting fees	16,800	8,100
Hearing fees	10,200	12,000
Executive secretary fees	9,124	10,698
Audit fees	7,673	3,127
Administrative and secretarial	5,625	4,750
Board member fees	4,900	4,200
Telephone	2,145	1,977
Office and miscellaneous	2,092	4,223
Travel	1,824	1,860
Printing	1,770	953
Meeting room rental	809	912
Computer services	430	434
Amortization	1,348	1,027
	88,605	75,332
Excess of revenue over expenses	11,395	24,668
Net assets, beginning of year	30,981	6,313
Net assets, end of year	\$ 42,376	\$ 30,981

APPENDIX C
INDEX OF APPEALS
2006 - 2008

**INDEX OF APPEALS CONSIDERED
2006 – 2008**

Case Name and Number

Case No. 49/06

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Case No. 50/06

Members, CAW Local 123 v. CAW Local 123 and the National Executive Board

Case No. 51/06

Member, CAW Local 123 v. Local 123 and the National Executive Board

Case No. 52/07

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Case No. 53/07

Member, CAW Local 123 v. CAW Local 123, CAW Local 123 Election Committee, and the National Executive Board

Case No. 54/07

Member, CAW Local 123 v. CAW Local 123, CAW Local 123 Election Committee, and the National Executive Board

Case No. 55/07

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Case No. 56/08

Member, CAW Local 123 v. CAW Local 123 and the National Executive Board

Case No. 57/08

Members, CAW Local 123 v. CAW Local 123 and the National Executive Board

Case No. 58/08

Members, CAW Local 123 v. CAW Local 123 and the National Executive Board