Manitoba Labour Board

Annual Report
2024-2025

Commission du travail du Manitoba

Manitoba Labour Board

Report Structure

The Board's annual report is prepared pursuant to Subsection 138(14) of The Labour Relations Act:

> "The report shall contain an account of the activities and operations of the board, the full text or summary of significant board and judicial decisions related to the board's responsibilities under this and any other Act of the Legislature, and the full text of any guidelines or practice notes which the board issued during the fiscal year."

Structure du rapport

Le rapport annuel de la Commission est rédigé conformément au paragraphe 138(14) de la Loi sur les relations du travail:

> «Le rapport contient un compte rendu des activités de la Commission, le texte ou le résumé intégral de ses décisions et des décisions judiciaires importantes reliées aux attributions que la présente et toute autre loi de la Législature lui confère ainsi que le texte complet des lignes directrices ou notes de pratique qu'elle a établies au cours de l'exercice. »

Manitoba Labour Board
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Electronic format:
http://www.gov.mb.ca/labour/labbrd/publicat.html

Land Acknowledgement

We recognize that Manitoba is located on the Treaty Territories and ancestral lands of the Anishinaabe, Anishininewuk, Dakota Oyate, Denesuline and Nehethowuk peoples.

We acknowledge Manitoba is located on the Homeland of the Red River Metis.

We acknowledge northern Manitoba includes lands that were and are the ancestral lands of the Inuit.

We respect the spirit and intent of Treaties and Treaty Making and remain committed to working in partnership with First Nations, Inuit and Métis people in the spirit of truth, reconciliation and collaboration.

Reconnaissance du territoire

Nous reconnaissons que le Manitoba se trouve sur les territoires visés par des traités et sur les terres ancestrales des peuples anichinabé, anishininewuk, dakota oyate, dénésuline et nehethowuk.

Nous reconnaissons que le Manitoba se situe sur le territoire des Métis de la rivière Rouge.

Nous reconnaissons que le nord du Manitoba comprend des terres qui étaient et sont toujours les terres ancestrales des Inuits.

Nous respectons l'esprit et l'objectif des traités et de la conclusion de ces derniers. Nous restons déterminés à travailler en partenariat avec les Premières Nations, les Inuits et les Métis dans un esprit de vérité, de réconciliation et de collaboration.

Minister of Labour and Immigration
Minister responsible for The Workers Compensation Board
Legislative Building, Winnipeg, Manitoba R3C 0V8 CANADA

Her Honour, the Honourable Anita R. Neville, P.C., O.M.
Lieutenant-Governor of Manitoba
Room 235, Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

May it Please Your Honour:

I have the privilege of presenting, for the information of Your Honour, the Annual Report of the Manitoba Labour Board, for the fiscal year ended March 31, 2025.

Respectfully submitted,

Original signed by

Honourable Malaya Marcelino
Minister of Labour and Immigration

Ministre du Travail et de l'Immigration
Ministre responsable de la Commission des accidents du travail
Palais législatif, Winnipeg, Manitoba R3C 0V8 CANADA

Son Honneur l'honorable Anita R. Neville, P.C., O.M.
Lieutenante-gouverneure du Manitoba
Palais législatif, bureau 235
450 Broadway
Winnipeg (Manitoba) R3C 0V8

Votre Honneur:

J'ai le privilège de vous présenter, pour l'information de Votre Honneur, le rapport annuel de la Commission du travail du Manitoba pour l'exercice financier terminé le 31 mars 2025.

Je vous prie de recevoir l'expression de mes sentiments les plus distingués,

Original signé par

Honorable Malaya Marcelino
Ministre du Travail et de l'Immigration

Commission du travail du Manitoba
Manitoba Labour Board
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The Honourable Malaya Marcelino
Minister of Labour and Immigration
Room 156 Legislative Building
Winnipeg, MB R3C 0V8

Dear Minister:

It is my pleasure to present to you the Annual Report of the Manitoba Labour Board covering the period from April 1, 2024 to March 31, 2025.

Respectfully submitted,

Original signed by

Karine Pelletier
Chairperson

Commission du travail du Manitoba
Manitoba Labour Board
500-175 rue Hargrave Street, Winnipeg MB R3C 3R8, Canada
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L'honorable Malaya Marcelino
Ministre du Travail et de l'Immigration
Palais législatif, bureau 156
Winnipeg (Manitoba) R3C 0V8

Madame la Ministre,

J'ai le plaisir de vous soumettre le rapport annuel de la Commission du travail du Manitoba pour l'exercice financier allant du 1er avril 2024 au 31 mars 2025.

Je vous prie de recevoir, Madame la Ministre, l'expression de mes sentiments les plus distingués.

Original signé par

Karine Pelletier
Présidente

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Chairperson's Message

It is my privilege to submit to you the 2024-2025 Annual Report, outlining the activities of the Manitoba Labour Board for the period from April 1, 2024 to March 31, 2025.

First and foremost, I want to thank the incredible team at the Board for pulling together the information in this report and ensuring that it is both comprehensive and accessible.

I want to recognize the exceptional efforts of our team during a year of significant change. The reporting period saw major legislative amendments that expanded the Board's responsibilities and jurisdiction, and our staff rose to the challenge with remarkable dedication. Together, we developed new tools, information bulletins and reviewed its Rules of Procedure. Behind these initiatives is a dedicated group of professionals who worked tirelessly to ensure the labour relations community has the resources needed to access our services with confidence and ease.

In addition to these accomplishments, the Board hosted the annual Chairpersons' Conference, bringing together the chairpersons, vice-chairpersons and registrars from labour boards across Canada. This event is invaluable for sharing best practices, knowledge and experiences among jurisdictions. Hosting it in Winnipeg provided us an opportunity to showcase our city. The conference was well attended and warmly received.

On a personal note, I want to express my heartfelt gratitude to Helen Krahn and Melissa Beaumont, who accepted appointments as Vice-Chairpersons during the reporting period. Their steady guidance, listening ears and invaluable support have been instrumental to our success. I also owe a special thanks to Raymond MacIsaac, whose deep knowledge of Board policy and procedure was a lifeline during my first full year as chairperson.

Finally, I want to acknowledge the Vice-Chairpersons, representative members and all stakeholders who contributed to the success of our work this year. It has been a busy and challenging year, and I must once again single out the Board's staff for making my transition to Chairperson seamless. Their commitment, expertise, and patience have been extraordinary, and I am deeply grateful.

Thank you for your continued support and partnership. Together, we are building a stronger, more responsive Board for the people we serve.

Karine Pelletier
Chairperson, Manitoba Labour Board

Message de la présidente

J'ai le plaisir de vous présenter le rapport annuel 2024-2025, qui retrace les activités de la Commission du travail du Manitoba pour la période du 1er avril 2024 au 31 mars 2025.

Tout d'abord, je souhaite remercier l'incroyable équipe de la Commission qui a rassemblé les informations contenues dans ce rapport et veillé à ce qu'il soit complet et accessible.

Je tiens à saluer les efforts exceptionnels de notre équipe au cours d'une année marquée par des changements importants. Au cours de la période visée par le rapport, d'importantes modifications législatives ont élargi les responsabilités et la compétence de la Commission, et notre personnel a relevé le défi avec un dévouement remarquable. Ensemble, nous avons conçu de nouveaux outils, publie un bulletin d'information et révisé le Règlement sur les règles de procédure. Derrière ces réalisations se trouve une équipe dévouée qui a travaillé sans relâche pour offrir à la communauté des relations de travail les ressources nécessaires pour accéder à nos services en toute confiance et simplicité.

Nous avons également eu l'honneur d'accueillir la conférence annuelle des président.e.s, réunissant les président.e.s, vice-président.e.s et registraires des commissions des relations de travail de partout au Canada. Cet événement est essentiel pour le partage des meilleures pratiques, des connaissances et des expériences entre juridictions. Le fait de l'accueillir à Winnipeg nous a donné l'occasion de mettre en valeur notre ville. La conférence a attiré de nombreux participants et a été chaleureusement accueillie.

Sur une note plus personnelle, je tiens à exprimer ma profonde gratitude à Helen Krahn et Melissa Beaumont, qui ont accepté des postes de vice-présidentes au cours de la période visée par le rapport. Leurs expertise, leurs conseils avisés et leur soutien indéfectible ont été précieux. Je souhaite également remercier Raymond MacIsaac, notre registraire, dont la connaissance approfondie des politiques et procédures de la Commission m'a été d'une aide précieuse au cours de ma première année complète en tant que présidente.

Enfin, je remercie chaleureusement les vice-président.e.s, les membres représentatifs et toutes les parties prenantes qui ont contribué à notre succès cette année. Ce fut une période exigeante, et je tiens à souligner une fois de plus le rôle essentiel du personnel de la Commission qui m'a aidé à assurer une transition en douceur vers ma fonction de présidente. Leur engagement, leur expertise et leur patience ont été extraordinaires, et je leur en suis profondément reconnaissante.

Merci pour votre soutien et votre partenariat continus. Ensemble, nous bâtissons une Commission plus forte et plus agile pour les personnes que nous servons.

Karine Pelletier
Présidente, Commission du travail du Manitoba

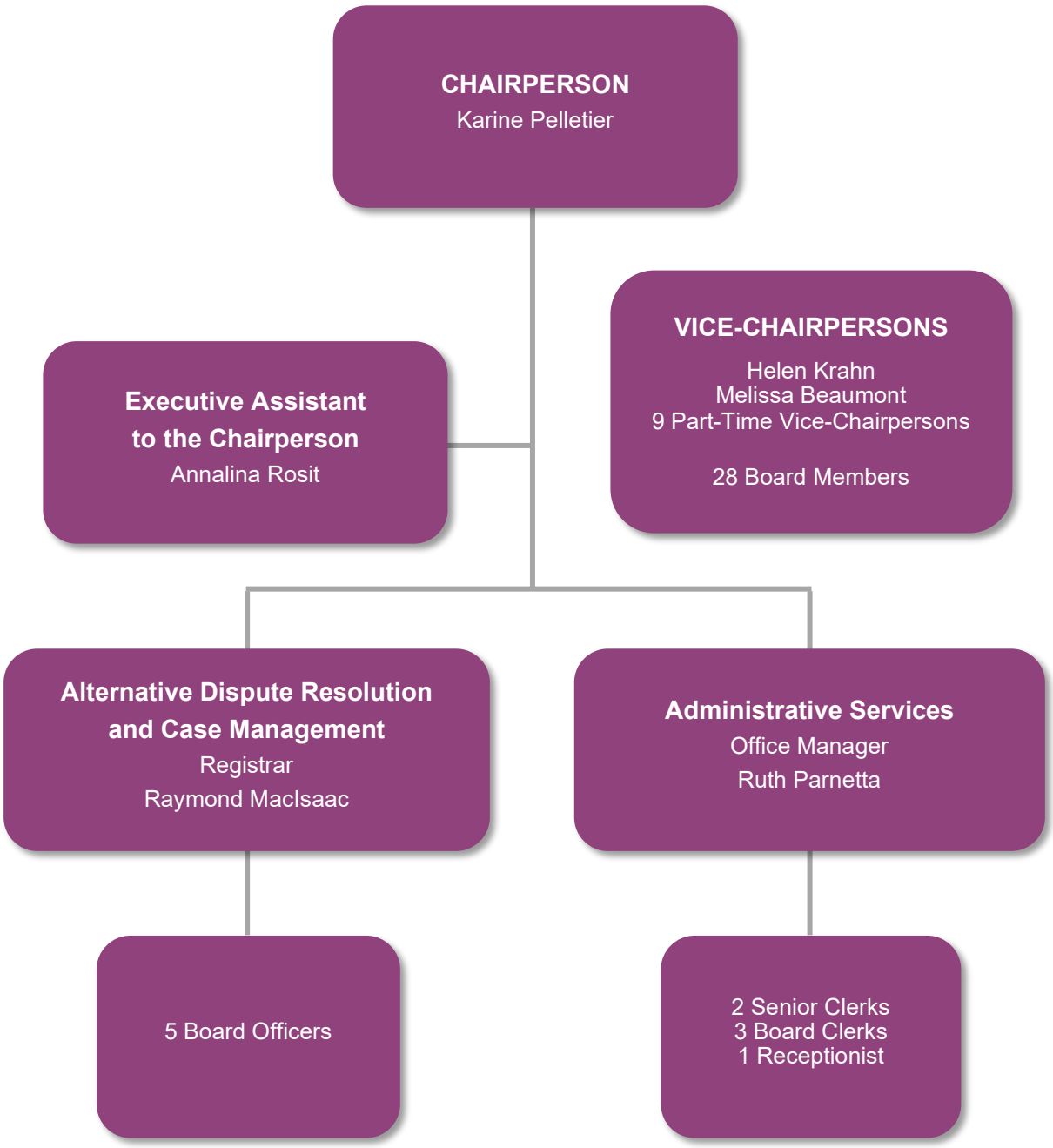
Board Members

In the year under review, the Board consisted of the members listed below. Biographies of all current members are available on our website. Biographies of newly appointed members are included on page 29.

Chairperson
Karine Pelletier (appt 2024-05-01)
Colin S. Robinson (to 2023-04-30)
Full Time: Vice-Chairperson
Melissa Beaumont (appt 2025-03-05)
Helen Krahn (appt 2024-05-01)
Karine Pelletier (to 2024-04-30)
Part Time: Vice-Chairpersons
Adrian Frost
Kristin L. Gibson
T. David Gisser, K.C.
Blair Graham, K.C.
Helen Krahn (to 2024-04-30)
Janet Mayor
Kathy McIlroy
Colin S. Robinson (appt 2024-06-03)
Michael D. Werier, K.C.
Gavin M. Wood

Employer Representatives	Employee Representatives
Tammy Lee Anthony (appt 2025-01-01)	George Bouchard
James H. Baker	Marie Buchan
Michael Bereziak	Abstinencia Diza
Elizabeth M. Black	Greg Flemming
Christiane Y. Devlin	Colin Ghostkeeper
Scott Jocelyn	Tom Henderson
Paul J. LaBossiere (to 2024-12-04)	Janet Kehler
Chris W Lorenc	Nancy Kerr
Yvette Milner	Marc Lafond
Sean Naldrett	Mary Lakatos
René Ouellette	Lee Manning
Darcy Strutinsky	Paul McKie
Denis Sutton	Aarti Sharma
Andrea Thomson	Glenn Tomchak
Peter Wightman	

Organization Chart



(as of March 31, 2025)

Introduction

Role

The Manitoba Labour Board has responsibilities under The Labour Relations Act, The Employment Standards Code, The Workplace Safety and Health Act and 9 other statutes. The Board responds to applications, appeals, and referrals and assists parties to resolve disputes either informally through mediation, or formally by issuing final decisions, often after conducting a hearing.

The Labour Relations Act	The Employment Standards Code	The Workplace Health & Safety Act
The Remembrance Day Act	The Elections Act	The Essential Services Act (Government and Child and Family Services) (repealed Nov 7, 2024)
The Pay Equity Act	The Construction Industry Wages Act	The Essential Services Act (Health Care) (repealed Nov 7, 2024)
The Public Schools Act	The Apprenticeship and Certification Act	The Public Interest Disclosure (Whistleblower Protection) Act
The Worker Recruitment and Protection Act	The Victims Bill of Rights	

Values and Mission

As an independent and autonomous specialist tribunal, the Manitoba Labour Board's mission is to support the fair and equitable application of the labour and employment statutes under which it has jurisdiction. The values that guide Board activities include impartiality, efficiency, timeliness and consistency. Through its activities, the Board aims to enhance the public's understanding of the statutory rights and responsibilities in the legislation. The Board is dedicated to providing mediation to parties in an effort to help them resolve their differences where possible, while providing fair and impartial adjudication when necessary.

Objectives

- to discharge its statutory responsibilities in an impartial, efficient, knowledgeable, timely, respectful and consistent manner
- to encourage and facilitate the settlement of disputes through appropriate alternative dispute resolution mechanisms where possible, while providing adjudication where necessary
- to foster understanding of the rights, responsibilities and procedures set forth in the legislation under which it has responsibilities
- to maintain current and effective rules, practices and procedures which are clear, accessible, fair and impartial

Rôle

La Commission du travail du Manitoba a des responsabilités en vertu de la loi sur les relations du travail, du code des normes d'emploi, de la loi sur la sécurité et la santé au travail et de neuf autres lois. La Commission répond aux demandes, aux appels et aux renvois et aide les parties à résoudre leurs différends de manière informelle par la médiation ou de manière formelle en rendant des décisions finales, souvent après avoir tenu une audience.

Loi sur les relations du travail	Code des normes d'emploi	Loi sur la sécurité et l'hygiène du travail
Loi sur le jour de Souvenir	Loi électorale	Loi sur les services essentiels (services gouvernementaux et services à l'enfant et à la famille) (Abrogé le 7 novembre 2024)
Loi sur l'égalité des salaires	Loi sur les salaires dans l'industrie de la construction	Loi sur les services essentiels (soins de santé) (Abrogé le 7 novembre 2024)
Loi sur les écoles publiques	Loi sur l'apprentissage et la reconnaissance professionnelle	Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles)
Loi sur le recrutement et la protection des travailleurs	Déclaration des droits des victimes	

Valeurs et mission

En tant que tribunal spécialisé, indépendant et autonome, la Commission du travail du Manitoba a pour mission de favoriser l'application juste et équitable des lois en matière de travail et d'emploi qui relèvent de sa compétence. Les valeurs qui guident les activités de la Commission sont l'impartialité, l'efficacité, la rapidité et la cohérence. Par ses activités, la Commission vise à mieux faire comprendre au public les responsabilités et les droits prévus dans la loi. La Commission s'engage à offrir des services de médiation aux parties afin de les aider à résoudre leurs différends dans la mesure du possible, tout en rendant une décision juste et impartiale, au besoin.

Objectifs

- s'acquitter de ses responsabilités législatives de manière impartiale, efficiente, bien informée, respectueuse et cohérente, et en temps opportun
- encourager et faciliter le règlement de différends par le biais de mécanismes alternatifs de résolution des différends, dans la mesure du possible, tout en rendant des décisions, au besoin
- favoriser la compréhension des droits, des responsabilités et des procédures énoncés dans les dispositions législatives que la Commission doit interpréter et appliquer
- établir des règles, des pratiques et des procédures efficaces, qui sont claires, accessibles, justes et impartiales

2024-2025: A Year of Transformation and Progress

On May 1, 2024, Karine Pelletier was appointed Chairperson, following the retirement of Colin Robinson. That same day, Helen Krahn was appointed full-time Vice-Chairperson.

Later, on March 5, 2025, Melissa Beaumont was appointed full-time Vice-Chairperson, increasing the full-time Vice-Chairperson complement to two, strengthening the Board's leadership team.

A major milestone occurred on November 7, 2024, when significant legislative changes were enacted, reshaping key areas of our work:

- **Certification**: Applications demonstrating a clear threshold of support now qualify for automatic certification, eliminating the need for a vote in most cases.
- **Replacement Workers**: Employers are now prohibited from engaging replacement workers during strikes or lockouts.
- **Essential Services**: New legislative provisions surrounding essential services prompted the Board to introduce new information bulletins, processes, rules, and forms, and to host public information sessions. An annotated PowerPoint is available on our website to guide stakeholders. These measures ensure the continued delivery of services, operation of facilities and production of goods to prevent a threat to the health, safety or welfare of Manitoba residents, maintain the administration of justice, and prevent a threat of serious environmental damage.

The Board responded to these significant jurisdictional changes by adapting existing procedures, creating new ones, and expanding our team. Increased case load led to authorized funding for additional positions during the fiscal year. Mid-year legislative changes and a steady year-over-year increase in applications resulted in a **48% increase in case load** and a **134% increase in hearing dates**. Meeting contractual obligations as outlined in the re-negotiated collective agreement, combined with minimal vacancies and the creation of new positions resulted in actual salary expenditures **$501,000 above the initial budget** for the 2024/25 fiscal year. Additional funding of **$351,000** was provided to offset this increase.

To improve accessibility and accommodate the surge in hearings, the Board also installed audio-visual equipment in the second hearing room and upgraded its equipment in the main hearing room to support remote and hybrid hearings. Despite these essential investments, careful planning and resource management allowed us to **underspend our $190,000 operational budget by $12,000.**

Through innovation, collaboration, and commitment, the Board has positioned itself to meet the evolving needs of Manitoba's labour relations community.

Ongoing Activities and Strategic Priorities
Looking ahead, the Board is focused on initiatives that will strengthen service delivery and stakeholder engagement by:

- **New Website**: Developing a modern, user-friendly website to improve accessibility and navigation, including redesigning forms for greater clarity and usability.
- **Process Streamlining**: Exploring opportunities to simplify procedures, with community input playing a central role.
- **Visioning Exercise**: Conducting strategic planning sessions with Board members and staff to help ensure the Board remains agile and responsive to evolving needs.
- **Building Internal Capacity**: Continuing to invest in staff training and development to equip our team with the knowledge and skills needed to deliver high-quality services.

2024-2025: Une année de transformation et de progrès

Le 1er mai 2024, Karine Pelletier a été nommée présidente, à la suite de la retraite de Colin Robinson. Le même jour, Helen Krahn a été nommée vice-présidente à temps plein.

Par la suite, le 5 mars 2025, Melissa Beaumont a été nommée vice-présidente à temps plein, portant ainsi à deux le nombre de vice-présidents à temps plein et renforçant l'équipe de direction de la Commission.

Le 7 novembre 2024 marque une étape déterminante avec l'entrée en vigueur de modifications législatives substantielles, qui redéfinissent des domaines clés de notre travail :

- **Certification :** les demandes démontrant un seuil de soutien clair sont désormais admissibles à une certification automatique, supprimant dans la majorité des cas la nécessité d'un scrutin.
- **Travailleurs de remplacement :** il est désormais interdit aux employeurs de recourir à des travailleurs de remplacement pendant les grèves ou les lock-out.
- **Services essentiels :** les nouvelles dispositions législatives relatives aux services essentiels ont conduit la Commission émettre des bulletins d'information, à mettre en place de nouveaux processus, règles et formulaires, et à organiser des séances d'information publiques. Un PowerPoint annoté est disponible sur le site web pour guider les parties prenantes. Ces mesures garantissent la continuité des services, le fonctionnement des installations et la production de biens afin de prévenir toute menace pour la santé, la sécurité ou le bien-être des résidents du Manitoba, de maintenir l'administration de la justice et de prévenir toute menace de dommages environnementaux graves.

La Commission a répondu à ces changements significatifs en adaptant les procédures existantes, en créant de nouvelles procédures et en élargissant notre équipe. Afin d'absorber l'augmentation du nombre de dossiers, la Commission a reçu l'approbation d'élargir son effectif en finançant des postes supplémentaires au cours de l'exercice financier. Les changements législatifs intervenus en cours d'année et l'augmentation constante du nombre de demandes d'une année à l'autre ont entraîné une **augmentation de 48 % du nombre de dossiers** et de **134 % du nombre de dates d'audience**. Le respect des obligations contractuelles prévues dans la convention collective renégociée, conjugué à un faible taux de postes vacants et à la création de nouveaux postes, a entraîné des dépenses salariales réelles supérieures de **501 000 dollars au budget initial** pour l'exercice 2024/25. Un financement supplémentaire de **351 000 dollars** a été accordé pour compenser cette hausse.

Afin d'améliorer l'accessibilité et de répondre à l'augmentation du nombre d'audiences, la Commission a également installé du matériel audiovisuel dans la deuxième salle d'audience et modernisé son équipement dans la salle d'audience principale afin de permettre la tenue d'audiences à distance et hybrides. Malgré ces investissements essentiels, une planification rigoureuse et une gestion rigoureuse des ressources nous ont permis de **réaliser des économies de 12 000 dollars sur notre budget de fonctionnement de 190 000 dollars.**

Grâce à l'innovation, à la collaboration et à son engagement, la Commission s'est positionnée pour répondre aux besoins évolutifs de la communauté des relations de travail du Manitoba.

Activités en cours et priorités stratégiques
Pour l'avenir, la Commission se concentre sur des initiatives visant à renforcer la prestation des services et l'engagement des parties prenantes en :

- **Nouveau site web** : développer un site web moderne et convivial afin d'améliorer l'accessibilité et la navigation, y compris la refonte des formulaires pour plus de clarté et de faciliter d'utilisation.
- **Simplification des processus** : explorer des moyens de simplifier les procédures, en plaçant la contribution de la communauté au cœur de cette démarche.
- **Exercice de réflexion prospective** : organiser des séances de planification stratégique avec les membres et le personnel de la Commission afin de garantir que la Commission reste agile et réactive aux besoins changeants.
- **Renforcement des capacités internes** : continuer d'investir dans la formation et le développement du personnel pour doter notre équipe des connaissances et des compétences nécessaires pour fournir des services de haute qualité.

Operational Overview

The Board's operations can be categorized into three broad sections: Adjudication, Alternative Dispute Resolution and Case Management, and Administration. The Board's adjudicators and representative members are appointed by Order in Council for fixed terms. The alternative dispute resolution and case management, and administrative staff are public servants as defined in the Public Service Act.

Adjudication

Over the course of the reporting period, the Board was comprised of a full-time chairperson, two full-time vice-chairpersons, nine part-time vice-chairpersons and 28 board members with an equal number of employer and employee representatives. The chairperson is the presiding officer of the Board pursuant to the provisions of The Labour Relations Act. Representative Board members are paid in accordance with the number of meetings and hearings held throughout the year. The Board does not retain legal counsel on staff. Legal services are provided through Legal Services Branch of Manitoba Justice.

Alternative Dispute Resolution and Case Management

The Alternative Dispute Resolution (ADR) and Case Management team is comprised of the registrar and five board officers, who report to the registrar. The board officers are responsible for the day-to-day management of files, applications, appeals, and referrals filed with the Board. They are appointed to act as Board representatives to attempt to resolve or narrow issues between parties, reducing the need for hearings. They act as returning officers in Board conducted representation votes, attend hearings and assist the registrar in the processing of various applications.

The registrar, reporting to the chairperson, is the chief administrative officer of the Board, responsible for the overall administration of the Board's business operations, mediation and adjudication. The registrar supervises the day-to-day alternative dispute resolution and case management activities of the Board. The primary responsibility of the registrar is to oversee the effective processing of each case and communicating with parties and with the public, together with the board officers, regarding policies, procedures and jurisprudence. They act as the conduit between the Board and the government.

Administrative Services

The office manager, reporting to the chairperson, plays a key role in ensuring the efficient operation of the Board through the effective coordination of financial oversight, procurement, information technology and client services. The office manager also supervises six clerical staff, who provide day-to-day administrative support of the Board. Additionally, they ensure fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures. The group receives and processes freedom of information and protection of privacy requests and is responsible for the maintenance and documentation of the Board's records and files.

Aperçu opérationnel

Les activités de la Commission peuvent être classées en trois grandes catégories : L'arbitrage, l'administration et le règlement des différends et gestion de cas. Les arbitres de la Commission et les membres représentatifs sont nommés par décret pour une durée déterminée. Le personnel administratif et les services de médiation et d'enquêtes sont des fonctionnaires au sens de la loi sur la fonction publique.

Adjudication
Au cours de la période considérée, la Commission était composée d'un président à temps plein, d'une vice-présidente à temps plein, de neuf vice-présidents à temps partiel et de vingt-huit membres la Commission, avec un nombre égal de représentants des employeurs et des employés. Le président préside la Commission conformément aux dispositions de la loi sur les relations du travail. Les membres représentatifs de la Commission sont rémunérés en fonction du nombre de réunions et d'audiences tenues au cours de l'année. La Commission ne dispose pas d'un conseiller juridique au sein de son personnel. Les services juridiques sont fournis par la Direction des services juridiques de Justice Manitoba.

Règlement des différends et Gestion de cas
Les services de règlement des différends et gestion de cas sont composés du registraire et de quatre agents de la Commission, qui rendent compte au registraire. Les agents de la Commission sont chargés de la gestion quotidienne des dossiers, des demandes, des appels et des renvois déposés auprès de la Commission. Ils sont nommés pour agir en tant que représentants de la Commission afin de résoudre ou de simplifier les contentieux entre les parties, afin d'éviter les litiges. Ils agissent en tant qu'agents de scrutin lors des votes de représentation organisés par la Commission, assistent aux audiences et aident le registraire à traiter les différentes demandes.

Le registraire, sous l'autorité du président, est le principal fonctionnaire administratif de la Commission. Il est responsable de l'administration générale des activités de la Commission, de la médiation et de l'arbitrage. Le registraire supervise les activités quotidiennes de règlement des différends et gestion de cas de la Commission. La principale responsabilité du registraire est de superviser le traitement efficace de chaque dossier et de communiquer avec les parties et le public, en collaboration avec les agents de la Commission, en ce qui concerne les politiques, les procédures et la jurisprudence. Le poste agit comme intermédiaire entre la Commission et le gouvernement.

Services administratifs
Le gestionnaire de bureau, qui rend compte au président, joue un rôle clé dans le fonctionnement efficace de la Commission en coordonnant les fonctions de surveillance financière, d'approvisionnement, de la technologie de l'information et des services à la clientèle. Le gestionnaire de bureau supervise également cinq employés qui assurent le soutien administratif quotidien de la Commission, le contrôle fiscal et la responsabilité des dépenses opérationnelles, ainsi que l'élaboration et le suivi des systèmes et des procédures du bureau. Le groupe reçoit et traite les demandes relatives à l'accès à l'information et la protection de la vie privée.

Communications/Resources

Website

Visit the Board's website at http://www.gov.mb.ca/labour/labbrd to find:

- The Acts under which the Board has jurisdiction
- Guide to the Labour Relations Act
- What to expect at your hearing
- Forms
- Information Bulletins
- Written Reasons for Decision and Substantive Orders

Annual Report

Manitoba Labour Board Annual Report - a publication disclosing the Board's staffing and membership as well as highlights of significant Board and court decisions and statistics of the various matters dealt with during the reporting period.

Library Collection

Copies of these documents can be made available in accordance with the fee schedule by calling 204-945-3783 or by emailing MLB@gov.mb.ca.

- Arbitration awards
- Collective agreements
- Certificates
- Unions' constitution & by-laws
- Written Reasons for Decision and Substantive Orders
- Essential Services Determinations
- Essential Services Agreements

The Board distributes full-text copies of Written Reasons for Decision and Substantive Orders to various publishers, including CanLII, for selection and reprinting in their publications or on their websites.

Information Bulletins

The Board produces information bulletins regarding its practice and procedure. In the year under review, the Board developed Information Bulletin No. 20: Essential Services. The full text, in both English and French, are found on pages 30 and 37.

Ressources en matière de communication

Site Web

Consultez le site Web de la Commission à l'adresse www.gov.mb.ca/labour/labbrd/index.fr.html pour trouver:

- Les Lois duquel la Commission dérive sa juridiction
- Guide à la Loi sur les relations du travail
- Comment vous préparer pour votre audience
- Formulaires
- Bulletins d'information
- Motifs écrits des décisions et ordonnances importantes
- Determinations de l'existence des services essentiels
- Ententes sur les services essentiels

La Commission distribue des copies en texte intégral des motifs de décision écrits et des ordonnances de fond à divers éditeurs, y compris CanLII, pour qu'ils les sélectionnent et les reproduisent dans leurs publications ou sur leurs sites Web.

Rapport annuel

Rapport annuel de la Commission du travail du Manitoba – une publication qui présente les effectifs et les membres de la Commission ainsi que les points saillants des décisions importantes rendues par la Commission et les tribunaux ainsi que des statistiques concernant les diverses affaires traitées au cours de la période couverte par le rapport.

Collection de la bibliothèque

Des copies de ces documents sont accessibles conformément au barème des droits en téléphonant au 204 945-3783 ou en écrivant à MLB@gov.mb.ca.

- Décisions arbitrales
- Conventions collectives
- Certificats
- Statuts et règlements des syndicats
- Motifs écrits des décisions et ordonnances importantes

Bulletins d'information

La Commission publie des bulletins d'information sur ses pratiques et procédures. Au cours de l'année considérée, la commission a élaboré le bulletin d'information no. 20 : les services essentiels. Le texte intégral, en anglais et en français, se trouve au pages 30 et 37.

Performance Reporting

CASES OPENED

24/25

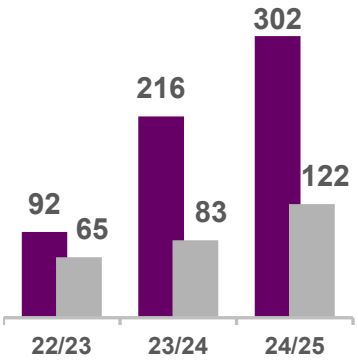
48%

Increase over previous year

	24/25	23/24	22/23	21/22	20/21
LRA	277	201	219	209	143
ESC	58	35	29	19	27
WSH	26	10	8	12	12
OTHER	2	0	0	0	0
TOTAL	363	246	256	240	182

HEARINGS

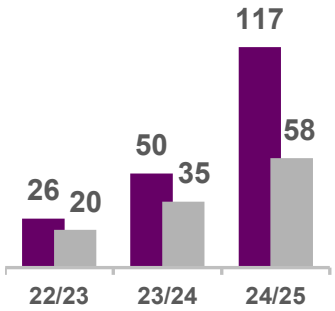
Hearings Scheduled



Many cases that are scheduled for hearing require multiple hearing dates.

In 24/25, **134%** more hearing dates and **66%** more cases proceeded compared to the previous year.

Hearings Proceeded



Hearing Dates Number of Cases

ESSENTIAL SERVICES

As of November 7, 2024, the Board requires parties to file a determination on whether an Essential Services Agreement (ESA) is necessary. If an ESA is required, it must also be filed with the Board.

During the 24/25 fiscal year, the Board received:

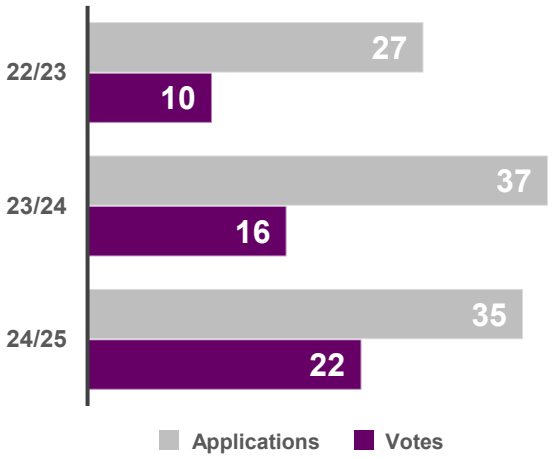
- **57** determinations regarding Essential Services
- **18** Essential Services Agreements

Additionally, Board representatives were appointed to assist in resolving **15** applications related to requests for ESA resolution.

CERTIFICATION AND REVOCATIONS

Legislative changes as of November 7, 2024, mean that votes are no longer required for the certification of a bargaining unit when a clear majority of support for the union is demonstrated.

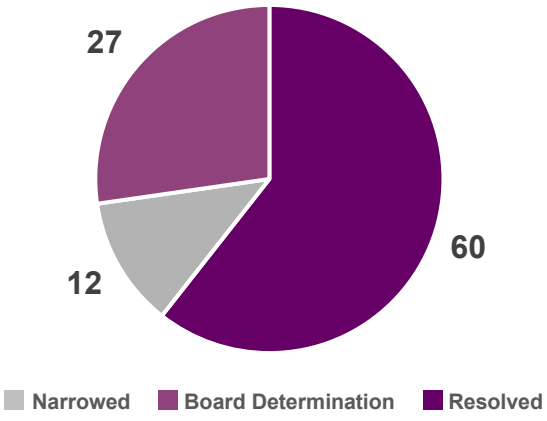
The Manitoba Labour Board conducted **22** representation votes related to **35** applications for the certification or revocation of bargaining rights in 24/25, impacting **1,240** workers in Manitoba.



ALTERNATIVE DISPUTE RESOLUTION

In 2024/25, Board officers were appointed to assist parties in resolving or narrowing the issues in dispute in **99** cases.

This year, when appointed, Board officers helped parties resolve **63%** of cases and helped narrow the issues in an additional **10%**, improving efficiency and reducing hearing costs for all parties.



363 CASES OPENED

102 CASE MANAGEMENT CONFERENCES

130 ORDERS ISSUED

29 CERTIFICATES AND DECERTIFICATIONS ISSUED

66 EXPEDITED ARBITRATION APPLICATIONS

21 CONCILIATORS AND GRIEVANCE MEDIATORS APPOINTED

15 REQUESTS FOR EARLY INTERVENTION OF ESSENTIAL SERVICES AGREEMENTS

Since November 7, 2024

Statistics

Type of Application	Cases Carried Over	Cases Filed	Total	Disposition of Cases					Disposed	Pending
				Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Take Action		
Labour Relations Act										
Certification	6	34	40	25	2	6	-	-	33	7
Revocation	-	3	3	2	-	-	-	-	2	1
Amended Certificate	-	6	6	3	-	-	1	-	4	2
ESA	0	15	15	8	-	3	-	-	11	4
Unfair Labour Practice	6	19	25	2	5	5	-	-	12	13
Board Ruling	5	2	7	-	1	2	-	-	3	4
Review and Reconsideration	2	13	15	-	12	1	-	-	13	2
Extension of time (Sec. 10(3))	-	10	10	9	-	-	-	-	9	1
Duty of Fair Representation (Sec. 20)	22	36	58	2	28	8	-	-	38	20
First Contract	-	1	1	-	-	1	-	-	1	-
Religious Objector	-	1	1	1	-	-	-	-	1	-
Successor Rights	1	1	2	-	-	2	-	-	2	-
Other	-	1	1	-	1	-	-	-	1	-
Appoint Arbitrator (Sec. 115(5))	-	8	8	5	1	2	-	-	8	-
Request to Appoint a Conciliator	-	18	18	15	-	2	-	-	17	1
Referral for Expedited Arbitration	3	63	66	59	-	-	-	-	59	7
Sub Totals	45	233	278	131	51	32	1	-	215	63
Employment Standards Code										
ESC referrals and appeals	21	31	52	7	15	20	-	-	42	10
ESC reduction	-	7	7	3	-	-	-	-	3	4
Workplace Safety and Health Act										
WSHA referrals and appeals	7	19	26	-	7	9	-	-	16	10
Other										
Other	1	1	2	-	1				1	1
Totals	73	290	363	- 141	73	61	1	-	276	87

Summaries of Significant Board Decisions

Labour Relations Act

E.M. and Canadian Union of Public Employees, Local 204 and Concordia Hospital
Section 20 of the Labour Relations Act – Duty of Fair Representation
Case No. 90/23/LRA
April 23, 2024

The Employee was issued a five-day suspension and subsequently terminated from employment. The Union grieved both the suspension and the termination; eventually withdrawing both grievances. The Employee filed their Section 20 complaint approximately 2.5 years later.

Decision: The Application was successful. On the issue of delay, the Board exercised its discretion to allow the Application. The Employee's explanation for the delay included the fact that they had been in a serious motor vehicle accident, the death of their mother, and their own neurodegenerative disease and psychiatric disorders.

The Board found no violation of Section 20(a) with respect to the termination grievance. The Union had filed a grievance, made submissions to the Employer requesting reinstatement, meaningfully investigated the alleged conduct that led to the termination, and interviewed the Employee's co-workers.

The Board did, however, find a violation of Section 20(b) with respect to the suspension grievance. The Union did not investigate the Employee's explanation, did not speak to witnesses, made no attempts to review allegedly available video footage and provided no meaningful analysis in its grievance assessment; all of which the Board determined was arbitrary conduct. In terms of remedy, referring the grievance to arbitration was not appropriate, given the significant delay and erosion of the Employee's memory. The Board ordered the Union to pay $2,000 to the Employee.

P.T. and Canadian Union of Public Employees, Local 5546; Salem Home Support Association; R.O.; and Salem Home Inc.
Section 20 of the Labour Relations Act – Duty of Fair Representation
Case No. 49/24/LRA
May 31, 2024

The Employee filed a Section 20 complaint against both CUPE and the Association as well as the Association President concerning their non-selection for a position and toxicity in the department. They had asked the Association to file a grievance on both the selection and respectful workplace issues. Months went by as the Association said they were trying to resolve the issues without a grievance. Ultimately, a grievance on the selection was filed.

About one month later CUPE became the bargaining agent and advanced the grievance. The Employer took the position it had been abandoned as nothing had happened since the cancelled grievance hearing in December. Nonetheless, CUPE referred the grievance to arbitration. Both the

Association and CUPE said the Association should be removed as they were no longer responsible for the Employee's representation. CUPE argued that this application was premature as the grievance had not worked itself through the process.

Decision: As the successor union, CUPE assumed conduct of the grievance. Since the grievance was proceeding and had not yet been resolved, the Board ruled the application was premature.

A.T. and Amalgamated Transit Union Local 1505 and City Of Winnipeg
Section 20 of the Labour Relations Act – Duty of Fair Representation
Case No. 35/24/LRA
May 15, 2024

The Employee filed a Section 20 complaint against the Union for failing to grieve their sick leave accrual. The Employee had been on a leave of absence with the Employer while they worked for 3 years in an elected position for the Union. They fell ill after their return to the Employer and sought access to their accrued sick leave while working for the Union.

Decision: The Board dismissed the application for lack of jurisdiction. The issue of sick leave accrual while working as an elected official for the Union were governed by the Union's by-laws, and not pursuant to the collective agreement. The internal affairs of a union are not governed by Section 20.

T.M. and Canadian Union of Public Employees, Local 4588, and Pembina Trails School Division
Section 20 of the Labour Relations Act – Duty of Fair Representation
Case No. 227/23/LRA
April 9, 2024

The Employee filed a Section 20 complaint against the Union, alleging that the Union delayed in representing them.

The Employee raised concerns of workplace harassment with their Union. They then went on medical leave. The Union advised the Employee to focus on their health and that it would address their concerns once they were fit to return to work.

Unbeknownst to the Union, the Employee filed a respectful workplace complaint directly with the Employer and participated in the Employer's investigation process. Once the Union was made aware of the investigation and its outcome, the Union filed a grievance on behalf of the Applicant.

Decision: The Application was dismissed. As a matter of policy, the Union does not meet with the Employer or its members until the member is cleared to return to work. This is so that the member is not further harmed and can focus on getting themselves ready to return to work.

The Employee proceeded with their own respectful workplace complaint without the Union's knowledge. They did not ask the Union to assist them in the investigation process. Once the Union became aware of their complaint and the outcome of the investigation, it took steps to address the Employee's concern by filing a grievance. The Union was actively pursuing the Employee's grievance at the time they filed the Application.

The Board held that the Application was premature. The Applicant also failed to establish a *prima facie* case under Section 20 of the Act.

G.Q. and Canadian Union of Public Employees, Local 204 and Shared Health
Section 20 of the Labour Relations Act – Duty of Fair Representation
Case No. 57/24/LRA
July 5, 2024

The Employee filed a Section 20 complaint against the Union, alleging that the Union refused to proceed to arbitration with their grievance.

The Employee received a verbal warning for taking unauthorized time off work. The Union filed a grievance, proceeded through the grievance process and referred the matter to arbitration. The Union then obtained a legal opinion from its counsel that concluded that the grievance did not have a reasonable likelihood of success. The Union made attempts to negotiate a resolution with the Employer but was not successful. The grievance was ultimately withdrawn.

Decision: The Application was dismissed. The Employee failed to establish a *prima facie* case. The Union relied on the advice of experienced counsel. The opinion suggested that advancing the grievance to arbitration could result in a decision that could be harmful to other Union members. There was nothing to suggest that the Union's reliance on the legal opinion amounted to arbitrary, discriminatory or bad faith conduct.

T.U. and Manitoba Government and General Employees' Union, and Office of the Chief Medical Examiner, Manitoba Justice
Section 20 of the Labour Relations Act – Duty of Fair Representation
Cases No. 158/24/LRA
December 9, 2024

The Employee accepted a Senior Medical Examiner Investigator position that had not been posted by the Employer. Another employee reached out to the Union with concerns about how the Employer had filled the position. The Union also held those concerns and received legal advice that a group grievance may have merit. Accordingly, the Union emailed other members who may have been interested in the position to seek authorization to file a group grievance (which it did).

The Employee filed a Section 20 complaint alleging that, as a member of the Union, it was unfair to them and inappropriate for the Union to solicit support from other members.

Decision: The Application was dismissed. The Union's decision to pursue a grievance was founded on the collective agreement, existing staffing policies and procedures, and past selection processes. Challenges to job selections often involve a union having to grieve on behalf of one or more members, to the detriment of another member. So long as the decision is not arbitrary, discriminatory or in bad faith, it does not violate the Act.

W.S. and Manitoba Government and General Employees' Union, and Brandon Correctional Centre
Section 20 of the Labour Relations Act – Duty of Fair Representation
Case No. 55/23/LRA
October 4, 2024

The Employee had been employed with the Employer previously and left to work for a crown corporation. The two Employers had a reciprocal agreement regarding accrual of service. The

Employee returned to the Employer as a term employee in their same classification approximately 2 years later. The Employee applied for a promotion into an acting position and participated in the competition but was ultimately removed from the competition, as the Employee was ineligible as a term employee. They raised concerns about the competition process with the Union. The Union reviewed the matter and determined that the grievance had no reasonable likelihood of success and communicated this to the Employee. No grievance was filed. The Employee filed a Section 20 complaint with the Board.

While their Section 20 complaint was ongoing, the Employee applied for another posting for a full-time position but was screened out of the competition on the basis that they were still a term employee and therefore ineligible. The Union filed a grievance with respect to the second competition, which proceeded to arbitration but was ultimately dismissed by the arbitrator. The Union argued, among other things, that the Section 20 complaint was moot. The Arbitrator's decision with respect to the 2023 competition dealt with all the issues that would have been considered if the Union had filed a grievance with respect to the 2022 competition.

Decision: The Board had originally determined that the Employee had established a prima facie case and had directed that it proceed to a full hearing of the issues as the Union may not have properly considered the unique circumstances of their return to the Employer. Following the arbitration decision the Board dismissed the application without a full hearing on the merits that the application would serve no useful purpose given the later arbitration decision involving the same Employee and issues.

L.O. and Amalgamated Transit Unit, Local 1505 and City of Winnipeg
Section 20 of the Labour Relations Act – Duty of Fair Representation
Case No. 136/23/LRA
August 19, 2024

The Employee was a mechanic in an apprenticeship program and was off on sick leave resulting in the Employer placing them on an attendance management program. The Employee said they had a disability, and they continued to miss work. They ultimately returned to work to finish their level 4 apprenticeship and asked the Union about receiving an increase in pay and about backdating their classification seniority. The Union relied on past practice on the pay issue in deciding not to grieve but with respect to the classification seniority, the Union did not grieve the Employer's equating medical absences to poor performance, which the Employee argued was improper and discriminatory.

Decision: Failing to investigate the allegations of discrimination relating to the classification seniority issue was a breach of Section 20. Despite having information pertaining to the Employee's disability, the Union concluded that the Employee had no chronic medical conditions. The Union did not turn their minds to the facts and failed to inquire or act on available evidence. There was also no investigation of the protected leave issue. Given the Employee's medical condition, the Union ought to have taken extra steps and should have had a heightened sensitivity to inform, support and advocate for them. The Board concluded the Union had acted in a dismissive and perfunctory manner.

Z.A. and Tommy Gun's Original Barber Shop
Section 7 of the Labour Relations Act – Discrimination in hiring etc.
Case No. 73/24/LRA
November 13, 2024

The Employee filed a Section 7 unfair labour practice complaint claiming the Employer told them they were being terminated for making a claim with the Employment Standards Branch. The Employer said they did not know when the complaint was filed or if it was still outstanding. Rather, the Employer argued that the Employee was terminated for performance concerns and their ongoing problematic behaviour in the workplace.

Decision: There was no evidence as to the substance of the Employment Standards complaint or when it was filed. The evidence of the Employer established that there was just cause to terminate that had nothing to do with the Employee's unspecified complaint to the Branch.

United Brotherhood of Carpenters & Joiners of America, Local 343 and Ironclad Developments Inc.
Application for Certification
Sections 40 and 45 of the Labour Relations Act – Voting constituency
Sections 5, 6 and 7 of the Labour Relations Act – Unfair Labour Practice
Cases No. 62/23/LRA and 72/23/LRA
July 16, 202453

The Union filed an Application seeking certification of a proposed bargaining unit of all carpenters and carpenter's apprentices employed by the Employer. The Board dealt with numerous issues.

Decision: The Union asserted that the Board should count the vote of an employee who was laid off to attend apprenticeship training on the date the Application was made but who returned to work two weeks after the vote was conducted. The Board determined that the employee was not employed on the date of the Application and his vote should not be counted.

The Union asserted that the Employer committed an unfair labour practice by altering the voters list. The Board determined that while the alteration of a voters list is a serious matter which will attract strict scrutiny from the Board, no unfair labour practice was committed by the Employer. While it was improper for the Employer to alter the voters list, it was not reasonable to conclude in the circumstances that employees would have been discouraged from exercising their rights under the Act or that that they would perceive the election to be unfair.

The Union asserted that a meeting called by the site supervisor the day before the representation vote constituted an unfair labour practice. The Board determined that no unfair labour practice was committed. The meeting was to discuss legitimate business issues and there was no evidence that the Employer made any negative comments about the Union or potential impacts of certification were made. The Employer did not engage in intimidation. Employees were not told how to vote.

The Union asserted that the Employer committed an unfair labour practice by laying-off two out of four employees in the proposed bargaining unit after the representation vote was conducted. The Board upheld the unfair labour practice. While there was a legitimate business need for the layoffs,

the two employees selected were perceived to be Union supporters and the Employer did not consider factors such as seniority, performance, attendance and experience.

In terms of remedy, the Board ordered that the two employees be compensated for their diminution of income as a result of the layoffs. The Board declined to grant discretionary certification as the unfair labour practice did not occur until after the representation vote was held. The Board declined to order reinstatement given that the Employer no longer had any active projects in Manitoba.

Canadian Blood Services and Manitoba Association of Health Care Professionals
Section 53 of the Labour Relations Act – Cancellation for abandonment
Case No. 133/24/LRA
August 6, 2024

The Union had previously filed a request with the Board to appoint a conciliator pursuant to Section 67 of the Act. The Employer then filed an application requesting that the Board exercise its jurisdiction under Section 53 to investigation whether the Union had failed to exercise its bargaining rights and, if so, cancel the Union's certification.

Decision: The Application under Section 53 was dismissed. The Board determined that although the Union delayed in proceeding with collective bargaining, it nevertheless contacted the Employer in an effort to recommence collective bargaining, exercised its right to request the Board appoint a conciliator, and claimed to enjoy the support of employees in the bargaining unit. Accordingly, the Board was not satisfied that the Union failed to exercise its bargaining rights.

Unifor and White Cap Supply Canada Inc.
Section 39 of the Labour Relations Act – Interim certification
Case No. 6/25/LRA
February 11, 2025

The Union applied for certification of a proposed bargaining unit. The Employer proposed an alternate bargaining unit description. The Board granted interim certification to the Union pending determination of the bargaining unit description. The parties subsequently informed the Board that they had reached agreement on the bargaining unit description and jointly requested that the interim certification be rescinded. The Board ordered that the interim certification be rescinded and that a representation vote take place.

Decision: The Application was dismissed. The Board was satisfied that there was insufficient support for the Union

Construction and Specialized Workers' Union Local 1258 and Wintec Building Services Inc., F.I., O.L., T.E., G.M., and Wintec Employee Association
Section 5, 6, 17, 4 of the Labour Relations Act – Unfair labour practices
Case No. 124/23/LRA and 147/23/LRA
October 22, 2024
Reasons issued November 20, 2024

The Union filed an Application alleging that the Employer committed an unfair labour practice by supporting an Employee Association that was seeking to displace the Union. The Union alleged that the Employer actively supported the Employee Association, communicated erroneous information to employees meant to undermine the Union, and promised benefits to induce employees to support the Employee Association.

The Union also alleged that the Employee Association committed an unfair labour practice by conducting its organizing drive during work hours and subjecting employees to intimidation, fraud, coercion and threats.

Decision: The Application was allowed, in part. The Board determined that the Employer committed an unfair labour practice by actively supporting the Employee Association's organizing drive and showing management support of the Employee Association, by making disparaging communications about the Union, and by attempting to influence employees. Other allegations, including those made against the Employee Association, were dismissed.

In terms of remedy, the Board issued a declaration that the Employer had committed an unfair labour practice, ordered that the Employer pay $2,000 to the Union, and that the Employer post the Board's Order in the workplace for 7 days. The Board declined to cancel the Employee Association's representation vote having determined that, in the circumstances, the unfair labour practices committed were not such that the true wishes of employees were not likely to be ascertained.

Manitoba Association of Health Care Professionals and Shared Health Inc
Section 142(5) of the Labour Relations Act – Employed in a confidential capacity in matters relating to labour relations
Case No. 112/24/LRA
February 12, 2025

The Employer created a new classification of Wellbeing Leader which the Union argued ought to be within the bargaining unit. The Employer argued that the position had duties that are confidential to labour relations and inclusion in the bargaining unit would be a conflict of interest. The incumbents provide psychological-social and emotional support to employees and leaders and management, working in health care.

Decision: Exclusions should be based on confidential capacity related to labour relations rather than personal or other confidential information and must relate to the core of a position. Simply having exposure to or handling confidential or sensitive information is insufficient to warrant exclusion from a bargaining unit. To be excluded, the confidential information must relate to labour relations, the disclosure of which would adversely affect the Employer, and the access to confidential information must be part of the regular duties of the position or is integral to the position. In this

case, the Board was not satisfied that those three elements were met by the Employer. The confidential information Wellbeing Leaders would be exposed to "general confidential information" which any employee would need to hold confidential in the course of their employment. Any information obtained would be incidental to matters relating to labour relations. There was no evidence that the position engaged in industrial relations strategies for the Employer. Therefore, the position of Wellbeing Leader was not excluded from the bargaining unit.

Plug In Inc and I.A.T.S.E Local 63
Section 10(3) of the Labour Relations Act – Extension of Period
Case No. 160/24/LRA
August 22, 2024

The Union filed an application for Certification that included all employees excluding the executive director. The Employer requested the exclusion of the Operations Manager on the basis that they were employed in a confidential capacity in matters related to labour relations.

Decision: The Board determined that the employee was not employed in a confidential capacity in matters related to labour relations, nor did they primarily perform management functions. The Board determined that the Employer was not entitled to one confidential exclusion, but rather it needed to examine the duties of the position as they existed on the date of application.

Employment Standards Code

Curtis Carpets Ltd. and S.A.
Section 2(4)(a) of The Employment Standards Code – Management functions primarily
Case No. 202/23/ESC
May 15, 2024

The Employee appealed the dismissal of their claim for overtime by the Employment Standards Branch. The Employee argued that they did not perform management functions primarily and were not exempt from overtime.

Decision: The Appeal was dismissed. The Employee was the Employer's Warehouse Manager. There was no dispute that position was managerial and fell under the exemption for overtime. However, the Employee had been performing additional tasks of the Warehouse Purchaser, which were not managerial, after that position became vacant. The Board determined that the Warehouse Purchaser tasks were secondary to their tasks as Warehouse Manager and that the Employee had taken it upon themselves to do the purchasing work.

Anicinabe Housing Corporation and T.A.
Section 61 of The Employment Standards Code – Wages in lieu of notice
Section 59.10 of The Employment Standards Code – Long-term leave for serious injury or illness
Case No. 223/23/ESC
June 13, 2024

The Employee appealed the Employment Standards Branch's dismissal of their claim for wages in lieu of notice due to the termination of their employment while on a protected leave (serious injury or illness). The Employer denied that the Employee was on such a leave and asserted that the Employee was terminated for just cause due to a violent outburst toward another employee.

Decision: the Appeal was dismissed. The onus is on the Employee to establish that they were on a protective leave. Pursuant to Section 59.10, the Code requires reasonable evidence to verify the Employee was incapable of work due to serious illness or injury. There was no evidence that the Employee had accessed or consulted any medical professional until after their termination. The generic medical note that he obtained after their termination was not sufficient.

The Employer's evidence on the just cause issue was uncontroverted. The Board determined that the violent outburst constituted just cause.

D.S. and R.T.
Section 4 of The Employment Standards Code – Regulation – Employee in Employer's Residence – Minimum wage, overtime
Case No. 222/23/ESC
September 17, 2024

The Employee appealed the Employment Standards Branch's dismissal of their claim for wages and vacation wages. The Employee was hired to perform short-term relief work (18 days). The work involved caring for a dependent of the Employer while the Employer travelled out of country. The parties agreed that the Employee would be paid $70.00 for each day they stayed in the Employer's residence. The Employee was responsible for assisting the dependent and getting them to and from their daily program (7:30 a.m. to 4:30 p.m.). The Employee asserted that they should have been paid minimum wage for 24 hours per day for 18 days, plus overtime rates for all hours exceeding eight hours each day.

Decision: The Appeal was allowed in part. The Board held that, pursuant to Section 4 of the Code Regulation, Part 2 of the Code does not apply to persons who care for, or supervise, a member of the household in their employer's residence, but do not live with the employer. The Board determined that the Employee satisfied the exemption set out in Section 4(b) of the Code Regulation. However, there was a small shortfall in the payment of the agreed upon wages and the Board ordered the Employer to pay the outstanding balance to the Employee.

Sharpe & Company Chartered Professional Accountant Ltd., and O.H.
Section 39(1) of The Employment Standards Code – Wages in lieu of notice
Case No. 122/24/ESC
January 3, 2025

The Employer appealed a payment of wages in lieu of notice order, taking the position the Employee resigned and therefore was not entitled to any wages. The Employer and Employee versions were at complete odds with each other. The Employer said the Employee abruptly left the workplace with their coat and keys, after a dispute about working over their lunch period to make up for a medical appointment, whereas other staff did not. Shortly after, they asked for wages in lieu and the Employer said they were not entitled to that as they had quit.

The Employee on the other hand said that the Employer approached them to discuss the issue and after the Employee dropped papers at the printer, and reached down to gather them, the Employer stood over the Employee intimidating them. The Employee decided to go outside and when asked if they were leaving, said yes. The Employer responded then don't come back and asked them to return their keys. Therefore, the Employee maintained they had been terminated with no notice.

Decision: During the hearing, due to a concern raised by the Employer, the Board allowed counsel to recall one of the Employer witnesses to put the Employee's version of events to them in cross-examination. While counsel to the Employee objected, the Board found the Employee's version was so different than what the Employer testified to, that it would be unfair to the Employer to not be able to respond to that version pursuant to the rule in *Browne v. Dunn.*

The Board found the Employee had quit when they picked up their keys and coat and proceeded out the side door. When the Employer asked if the Employee was leaving, the Employee said yes, to which the Employer told them not to come back and return their keys. The Employee did not say they were not quitting but returned to hand in their keys. The Employee did not at any point say they needed a break or that they intended to return. Instead, they asked for wages in lieu of notice later that day by email to which the Employer responded they were not entitled because they quit, an impression that the Employee did not correct.

S.H. and 79429 Manitoba Ltd. t/a Pyrene Fire Security Manitoba
Section 95 of The Employment Standards Code – Wages in lieu of notice
Case No. 147/24/ESC
January 10, 2025

The employee sought wages in lieu of notice. They had been terminated when 10-pound fire extinguishers were temporarily replaced with 5-pound extinguishers, which the Employer said was a breach of the Fire Code. The Employer relied upon an interpretation of the provincial Office of the Fire Commission. The Employee disagreed and said they had in fact been compliant with the Fire Code. They relied upon an interpretation from the Winnipeg Fire Department.

Decision: The Employee was entitled to wages in lieu of notice. The Employer had not interviewed the Employee to get his position. Further, the Employee was not immediately terminated for the alleged safety breach. Rather, 13 days later the extinguishers were replaced with the serviced extinguishers, and the Employee was terminated the following day.

6955461 Manitoba LTD. T/A Chaise Café and Lounge and A.K./ J.S./ E.E./ F.F.
Section 135(7) of The Employment Standards Code – Wages, General Holiday wages, Vacation wages
Case Nos. 103/24/ESC, 104/24/ESC, 105/24/ESC, 107/24/ESC
January 17, 2025

The Employer appealed the Employment Standards Branch's payment of wages for 4 servers, representing their last paycheque before they ceased working.

The Employer argued that tips paid to the employees' denoted as "Advances" on their paystubs were pay advances and owed back to the Employer. The advances were exactly equal to the tips earned and paid by credit card or debit and were paid bi-weekly. The first employee said they were told they appeared as advances to avoid tax implications.

The amounts were odd numbers like $18 or other random numbers versus a whole lump sum like $100 or $200 which one might expect if they were in fact pay advances. The Employer said they used advances as an incentive program – if you were a good employee and did not make mistakes, they could forgive the payroll advance. If you were not a good employee, they could demand repayment of the pay advance.

Decision: The Appeals were dismissed. The Board found that the amounts called "Advances" were not pay advances at all but tips paid out on each paycheque. None of the employees were aware of an "incentive program" nor did any of them request a pay advance. While there is no statutory entitlement for employees to keep tips under Manitoba's legislation, once a decision is made to remit tips to an employee, an employee is entitled to keep that amount. Simply calling it an advance does not make it an advance. This is particularly so when the employee was unaware of any such scheme to both pay an amount equal to tips and claw it back when an employee does something to upset the employer. Upon paying out the tips, they became a wage "measured by time, piece or otherwise" pursuant to the definition of a wage under the Code and there is no ability by the Employer to recall those payments by cloaking the amount with a different name or by claiming it is an arbitrary payroll error.

In case 107/23/ESC, the Employer failed to attend the hearing.

Workplace Safety and Health

K.G and L. CHABOT ENTERPRISES LTD.,
Section 42(1) of the Workplace Safety and Health Act – Reprisals Prohibited
Case No. 196/23/WSH
August 22, 2024

The employee operated a packer as a new employee. They were involved in a verbal altercation with a co-worker. A few days later they asked about receiving additional shifts but the machine they operated was being repaired so they were told to contact the office to inquire into alternative work. Instead, the employee contacted the foreman and became confrontational with them and threatened to report the foreman to Workplace Safety and Health, which the Employee did later

that day. They told WSH that they had been terminated for raising safety concerns following the verbal altercation with their co-worker.

Decision: The Board found the Employer had not engaged in any reprisal against the Employee. While a safety concern had been raised by the Employee, the Employer had not terminated the Employee. Rather, the Employee had self-terminated and threatened to sue the company and was not interested in meeting with the Employer to discuss their concerns. The fact that they did not receive additional hours were attributed to the Employee's own conduct, and disrespectful exchanges with the Employer subsequent to raising their safety concern.

Other

L.R. and Manitoba Human Rights Commission
Case No. 99/24/OTH
February 24, 2025

The Applicant had two complaints against the Manitoba Human Rights Commission, one dating back to 2006 and the other to 2012. Neither complaint was filed until 2023, years after the normal one-year time limit to do so.

Because the Commission did not deem it appropriate to rule on the timeliness of the complaints against themselves, they relied on Section 60 of The Human Rights Code and sought to delegate their authority to the Board as to whether the complaints were timely. The Board accepted the delegated authority limited to the question of timeliness.

Decision: The complaints were rejected as extremely delayed. The Board found it would be prejudicial to the Commission to have them proceed given the loss of memory, documents, and that the explanation for the delay was unreasonable. The Applicant had said they were waiting for an Executive Director that they could trust.

Judicial Review

S.C.S., S.A., L.D. v University of Winnipeg Faculty Association – Court of King's Bench of Manitoba
[S.C.S.] et al. v. Manitoba Labour Board et al. (2024) MBKB 62
MLB Case Nos. 12/22/LRA, 13/22/LRA, 14/22/LRA, 199/22/LRA, 200/22/LRA, 201/22/LRA
Docket CI 23-01-39190 - Heard by Justice Bock
April 25, 2024

This is an application for judicial review of three decisions of the Board. The employer required the applicants, who were teachers, to be fully vaccinated against COVID-19 to access the campus. Because none of them provided proof of vaccination, they were placed on unpaid leaves of absence. The Union did not grieve the employer's decision, and the applicants filed an application alleging a breach of the Union's duty of fair representation with the Board. The Board dismissed the applications. The applicants sought judicial review of the Board's decision for error. The court reviewed the Board's decision on a standard of reasonableness and determined that it met that standard. The applications were dismissed.

Biographies

In the year under review, the following vice chairperson and board member were appointed.

Melissa Beaumont

Appointed as full-time vice-chairperson in 2025, Melissa Beaumont holds a Bachelor of Commerce (Hons) degree and a Bachelor of Laws degree from the University of Manitoba. She practiced as a partner of a large law firm and practiced in all areas of labour and employment law. She also practiced as an independent workplace investigator. She is a past President of the Manitoba Bar Association and is a volunteer peer support for Law(yer) Strong. She has been involved in several community non-profit organizations. She was a recipient of the Lexpert Leading Lawyers Under 40 award in 2023.

Tammy Lee Anthony

Appointed in 2025, is a skilled Human Resources professional specializing in labour relations. She currently serves as the Regional Director for the Winnipeg Regional Health Authority's Corporate/Regional Programs and Labour Relations Services. In this capacity, Tammie leads and oversees labour relations activities within the Winnipeg-Churchill Health Region Employer Organization. Her experience includes collective bargaining, collective agreement interpretation, arbitration, grievance investigations, and negotiating essential services agreements, working at both strategic and operational levels. Tammie is known for her proven ability to collaborate effectively with both unions and management.

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Information Bulletin No. 20: Essential Services

This bulletin is intended to provide guidance to employers, bargaining agents and employees regarding the determination and maintenance of essential services during a strike or lockout. It is a general guideline and does not attempt to address every issue that may arise.

Introduction

The Labour Relations Act *(*"Act") requires that, during a strike or lockout, the employer, bargaining agent and employees must continue the supply of services, operation of facilities or production of goods to the extent necessary to

(a) prevent a threat to the health, safety or welfare of residents of Manitoba;

(b) maintain the administration of justice; or

(c) prevent a threat of serious environmental damage.

To achieve this, bargaining agents and employers must first determine whether essential services exist. If they do, then an Essential Services Agreement ("ESA") is required. The ESA must be filed with the Manitoba Labour Board ("Board").

If the employer and bargaining agent are unable to agree, the matters are to be settled by the Board.

Determining if essential services exist

The first step for parties will be to determine whether essential services exist, in which case, an ESA is required in the event of a lockout or legal strike (the "ESA Determination"). This determination, whether essential services are required to be maintained or not, must be filed with the Board 180 days prior to the expiry of their collective agreement.

If the parties are unable to come to an agreement on this threshold issue, either party may file an application requesting the Board to make the determination. If the Board is of the opinion that a lockout or legal strike could result in a failure to provide essential services, it may designate the supply of services, operation of facilities or production of goods necessary to ensure essential services are maintained.

Essential Services Agreement

If the parties, or the Board, determine that essential services exist in the workplace the next task will be for them negotiate an ESA.

The ESA must set out the manner and extent to which the employer, the bargaining agent and the employees in the unit must continue the supply of services, operate facilities and produce goods, including the number of employees that are necessary to maintain these essential services. The ESA must be completed and filed electronically with the Board at least 90 days prior to the expiry of the collective agreement.

If the parties are unable to agree either party may file an application requesting the Board to settle the ESA. Employers and bargaining agents may also choose to have the ESA settled by an arbitrator, with the cost of the arbitrator being shared equally by the bargaining agent and the employer.

Parties to a collective agreement who have determined that essential services exist in the workplace may not strike or lockout without an ESA filed with the Board.

Employers, bargaining agents and employees must comply with the ESA. The terms and conditions of the expired collective agreement continue to apply for any employee required to work in accordance with an ESA, unless otherwise negotiated between the parties, or imposed by the Board.

During a lockout or legal strike, either the employer or the bargaining agent may request a review of the ESA.

Substantial Interference with Collective Bargaining

If the bargaining agent or the employer believes that the ESA's effect is so significant that it will substantially interfere with collective bargaining, they may file an application with the Board for a determination. If the Board finds substantial interference with collective bargaining, there can be no further strike or lockout action, and either party may apply to the Board to settle the collective agreement.

Assistance to Parties

A negotiated agreement is preferable to a determination of the Board. Accordingly, the parties are encouraged to come to the Board for assistance at any time:

a. by requesting the appointment of a Board representative, or;

b. by seeking a Board determination of a question for the purposes of The Labour Relations Act pursuant to section 142(5).

Question and Answer

Who is required to consider essential services?

All employers, bargaining agents, and employees who work under a collective agreement in Manitoba are covered by the essential services sections of the Act.

Are there exemptions from ESA requirements?

The only exception from compliance with the essential services sections of the Act are for employees in a unit, such as police or firefighters, who are prohibited from striking. The Act applies to every union, employer and employee who is covered by a collective agreement. All unionized workplaces in Manitoba must determine whether or not a lockout or legal strike would interfere with essential services.

What is an ESA Determination and what is the requirement?

Parties are required to determine whether an essential service will be required in the event of a lockout or legal strike. The Act sets out that this determination must be made 180 days prior to the expiry of their collective agreement, and that they are required to file with the Board their

determination by that day. If no agreement is reached on the 180th day prior to the expiry of their collective agreement, either party may file an application for an ESA Determination. The Board will then have 30 days from the date of application to determine the issue.

What if the bargaining agent and employer agree that there are no essential services?

The Act still requires the parties to file an ESA Determination setting out the agreement that there are no essential services.

Can job action be taken in the absence of an ESA?

No. Section 89(3) of the Act requires that the bargaining agent and the employer must either file a determination with the Board that a strike or lockout will not interfere with essential services, or they must file an ESA before an employer can declare or cause a lockout of employees or for employees in a unit to go on strike.

Further, even if an ESA is concluded, notice of a lockout or of a strike must be served upon the other party at least three days prior to any job action.

When should I start negotiating the terms of an ESA?

At any time, the parties can negotiate and settle the terms of an ESA, and they may approach the Board for assistance. Even if they are outside of the timelines specified in the Act, they may file for a Board determination under section 142(5) of the Act.

Parties can also hire a conciliator to assist them in reaching an ESA. Either way, an ESA Determination must be filed with the Board 180 days prior to the expiry of the collective agreement and if it has been determined that an ESA is necessary, it must be concluded 90 days prior to the expiry of the collective agreement.

What should be included in an ESA?

The negotiation of an ESA is primarily the responsibility of the parties to the bargaining relationship. The parties best understand which services are essential to protect health, safety or welfare of residents of Manitoba, to maintain the administration of justice and to prevent a threat of serious environmental damage.

An ESA should identify:

- the manner and extent to which the employer, the bargaining unit and the employees in the unit must continue the supply of services, operations of facilities or production of goods during a strike or lockout
- the functions and duties of employees in the bargaining unit that are necessary to maintain essential services
- the specific job classifications required for essential services, the number of positions needed within each classification, and the total number of bargaining unit employees necessary to perform essential duties and functions
- the method by which employees capable of performing the essential services will be assigned to perform those services during a strike or lockout

- the procedures to be followed in responding to emergencies or unforeseeable changes to the essential services that need to be maintained during a strike or lockout. These procedures should be sufficiently flexible to allow the parties to quickly respond to emergent changes to necessary essential services
- if applicable, permissible changes to the terms and conditions of employment which will apply to designated essential services workers during a strike or lockout

How do I file an ESA Determination or ESA with the Board?

Section 94.3(2) of the Act requires the parties to a collective agreement to file their ESA Determination 180 days prior to the expiry of their collective agreement.

Section 94.3(8) of the Act requires that an ESA be filed with the Board 90 days prior to the expiry of their collective agreement.

When the agreement is filed, it has the same effect as an order of the Board.

ESA Determinations and ESAs, together with the expiring collective agreement, must be sent to mlb@gov.mb.ca.

We have some agreement on essential services, but we have reached an impasse. How can the Board assist?

The Board is prepared to work with the parties at any time, without application, to help resolve essential services disputes. Parties are encouraged to contact the Board to discuss manners in which the Board can assist in coming to an agreement on an ESA Determination or an ESA.

If the parties are unable to reach agreement by themselves or with the assistance of a conciliator/mediator, they may file with the Board to have the matter determined. For ESA Determinations, the application must be filed no earlier than 180 days before the expiry of the collective agreement. An application to settle an ESA must be filed no earlier than 90 days before the expiry of the collective agreement. In either case, the Board must determine the matter within 30 days of the Application.

How do I apply for an ESA Determination or an ESA?

The Board has developed a comprehensive application package that must be completed when filing an application regarding ESA Determinations and settlement of an ESA. The Board will require the applicant to file its direct evidence by way of affidavit, with the affiant being subject to cross examination by the replying party. Before an application is filed with the Board, it must be served on the respondent.

The Board will not accept an incomplete application package. Care must be taken to ensure the information requested is sufficiently detailed. The Board will inform the parties once it has accepted the application as complete and the timelines start once notice is effected.

Once the Board has accepted an application package as complete, the respondent will need to file its reply within three days. The reply must contain all the material facts on which the respondent intends to rely. The respondent may not be entitled to present evidence or make any representations about any additional material fact that was not set out in the reply, except with the permission of the Board.

The Board will schedule a Case Management Conference (CMC) on the day following the deadline for the filing of the reply. At the CMC, the Board will schedule the hearing, which must commence no later than six days after the CMC day after the acceptance of the application.

Please remember that the Board will have limited opportunity to conduct the hearing, assess the evidence and render a decision within the allotted time, and timelines must be strictly adhered to for decisions to be rendered in a timely manner. The Board will require that hearings proceed in a concise and timely fashion. Extensions will be exceptionally rare, and the availability of counsel will not be deemed an exceptional circumstance.

Are there any other alternatives to coming to the Board for settlement of an ESA?

Yes, the parties may jointly agree to appoint an arbitrator to settle their ESA. If the parties prefer to appoint an arbitrator, within two days of filing their application with the Board, they must inform the Board in writing of their agreement to settle the dispute by arbitration, along with the name of the individual who has agreed to act as arbitrator. The arbitrator is required to settle the terms of the ESA within 30 days after notice is served on the Board. The cost of the arbitrator is split equally between the bargaining agent and the employer.

If an arbitrator is selected to settle the ESA, they continue to have jurisdiction to settle requests for amendments. They must determine any matter in dispute between the parties during a lockout or legal strike within 2 days of the application, unless the arbitrator is unable or unwilling to act. In such cases, the parties may agree to another arbitrator, or if the parties are unable to agree, either party may request the Board to settle the issue.

Can I access mediation once an application is received?

Yes. A Board representative will be assigned to every matter that is received by the Board, who will continue to work with the parties to narrow or resolve matters.

What can I expect at the Case Management Conference?

The Board may inquire into any of the following:

1. Schedule a hearing, which must be scheduled to start no later than six days after the CMC and must be completed with enough time for the Board to render its decision within 30 days.
2. Develop an agreed statement of facts and obtain admissions which might facilitate the hearing.
3. Direct the parties to provide further facts or details of the position it is taking in the proceeding or prepare a sworn statement of the evidence which will be elicited from a witness in the proceeding.
4. Direct the pre-hearing disclosure of documents by a party or by any other person who may be called as a witness in the proceeding.
5. Discuss the conduct of the hearing, including the order in which the parties will proceed, the number and identity of witnesses, and the estimated length of time required.
6. Direct that a written submission be filed respecting any aspect of the proceeding.
7. Direct that the parties engage in mediation to narrow or resolve the issues in dispute.

Can my ESA be amended by the Board?

Yes. Parties may agree to amendments to an ESA at any time and file them with the Board. However, Section 94.3(24) of the Act states that on application by an employer or the bargaining agent during a lockout of legal strike, the Board may review, confirm, amend or cancel an ESA or make any order that it considers appropriate.

What happens if the ESA is not respected?

Section 94.4(4) of the Act indicates that any employer, union or other person who fails to comply with an ESA commits an unfair labour practice.

We are in the process of negotiating a new collective agreement and have not even discussed the issue of essential services. What now?

The Act contains transitional positions which enable parties whose collective agreements have already expired to immediately proceed to have the matters settled on application to the Board.

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Bulletin d'Information No. 20: Les Services Essentiels

Ce bulletin d'information vise à fournir des orientations aux employeurs, aux agents négociateurs et aux employés concernant la détermination et le maintien des services essentiels en cas de grève ou lock-out. Il s'agit d'une ligne directrice générale qui ne vise pas à traiter de manière exhaustive l'ensemble des questions pouvant se présenter.

Introduction

La Loi sur les relations de travail exige que, pendant une grève ou un lock-out, l'employeur, l'agent négociateur et les employés doivent maintenir la prestation de services, le fonctionnement d'installations ou de produire des biens dans la mesure nécessaire pour

a. prévenir une menace pour la santé, la sécurité ou le bien-être des résidents du Manitoba;
b. maintenir l'administration de la justice;
c. prévenir une menace de dommages environnementaux graves.

Pour ce faire, les agents négociateurs et les employeurs doivent premièrement déterminer si une entente sur les services essentiels (« ESE ») est requise, puis déposer une telle entente auprès de la Commission du travail du Manitoba (la Commission).

Si l'employeur et l'agent négociateur ne parviennent pas à s'entendre, les questions seront réglées par la Commission.

Détermination de l'existence de services essentiels

Dans un premier cas, les parties doivent déterminer si une ESE est requise en cas de lockout ou de grève légale (la « détermination de l'ESE »). Cette détermination, à savoir si les services essentiels doivent être maintenus ou non, doit être déposée auprès de la Commission 180 jours avant l'expiration de la convention collective.

Si les parties ne parviennent pas à s'entendre sur cette question préliminaire, l'une ou l'autre des parties peut déposer une requête demandant à la Commission de rendre une décision. Si la Commission est d'avis qu'un lock-out ou une grève licite pourrait entraîner un défaut de fournir des services essentiels, elle peut désigner la prestation de services, le fonctionnement d'installations ou la production de biens nécessaires pour assurer le maintien des services essentiels.

Entente sur les services essentiels

Si les parties, ou la Commission, déterminent que des services essentiels existent dans le lieu de travail, la prochaine tâche consistera de négocier une ESE.

L'ESE doit préciser de quelle façon et dans quelle mesure l'employeur, l'agent négociateur et les employés de l'unité doivent maintenir la prestation de services, le fonctionnement des installations et la production de biens, y compris le nombre d'employés nécessaires pour maintenir ces services essentiels. L'ESE doit être conclue et déposée par voie électronique auprès de la Commission au moins 90 jours avant l'expiration de la convention collective.

Si les parties ne parviennent pas à s'entendre, l'une ou l'autre d'entre elles peut déposer une requête demandant à la Commission de régler l'ESE. Les employeurs et les agents négociateurs peuvent également choisir de faire régler l'ESE par un arbitre, le coût de l'arbitrage étant partagé en parts égales entre l'agent négociateur et l'employeur.

Les parties à une convention collective qui ont déterminé que des services essentiels existent dans le lieu de travail ne peuvent pas déclencher une grève ou un lockout sans qu'une ESE ait été déposée auprès de la Commission.

Les employeurs, les agents négociateurs et les employés doivent se conformer à l'ESE. Les modalités de la convention collective expirée continuent de s'appliquer à tout employé tenu de travailler conformément à une ESE, sauf si les parties en ont convenu autrement ou que la Commission impose d'autres obligations.

Pendant un lock-out ou une grève licite, l'employeur ou l'agent négociateur peuvent demander une révision de l'ESE.

Entrave importante à la négociation collective

Si l'agent négociateur ou l'employeur estiment que l'effet de l'ESE constitue une entrave importante à une négociation collective véritable, ils peuvent déposer une demande auprès de la Commission pour obtenir une ordonnance. Si la Commission constate qu'il y a eu entrave importante a une négociation collective véritable, la Commission peut ordonner que toutes les questions en litige entre les parties soient réglées.

Aide aux parties

Une entente négociée est préférable à une décision de la Commission. Par conséquent, les parties sont encouragées de demander de l'aide de la Commission en tout temps :

a. en demandant la nomination d'un représentant de la Commission; ou
b. en demandant à la Commission de trancher une question aux fins de l'application du paragraphe 142(5) de la Loi sur les relations de travail.

FOIRE AUX QUESTIONS

Qui est tenu de tenir compte des services essentiels?

Tous les employeurs, agents négociateurs et employés qui travaillent en vertu d'une convention collective au Manitoba sont couverts par les dispositions visant les services essentiels en vertu de la Loi.

Existe-t-il des exemptions aux exigences de l'ESE?

La seule exception à l'application des dispositions visant les services essentiels en vertu de la Loi concerne les employés d'une unité à qui il est interdit de faire grève, comme les policiers ou les pompiers.

La Loi s'applique à tout syndicat, employeur et employé visé par une convention collective. Tous les lieux de travail syndiqués au Manitoba doivent déterminer si un lock-out ou une grève licite pourrait entraver les services essentiels.

Qu'est-ce qu'une détermination de l'ESE, et quelle est l'exigence?

Les parties sont tenues de déterminer si un service essentiel sera requis en cas de lock-out ou de grève licite. Selon la Loi, cette détermination doit être prise 180 jours avant l'expiration de la convention collective, et les parties doivent déposer la détermination auprès de la Commission au plus tard à cette date. Si aucune entente n'est conclue le 180^{e} jour avant l'expiration de la convention collective, l'une ou l'autre des parties peut déposer une demande de détermination de l'ESE.

La Commission disposera alors de 30 jours à compter de la date de la demande pour trancher la question.

Que se passe-t-il si l'agent négociateur et l'employeur conviennent qu'il n'y a pas de services essentiels?

La Loi exige que les parties déposent tout de même une détermination de l'ESE qui établit l'entente selon laquelle il n'y a pas de services essentiels.

Peut-on exercer des moyens de pression au travail en l'absence d'une ESE?

Non. Le paragraphe 89(3) de la Loi exige que l'agent négociateur et l'employeur déposent auprès de la Commission une détermination selon laquelle une grève ou un lock-out n'entravera pas les services essentiels, ou ils doivent déposer une ESE avant qu'un employeur puisse déclarer ou déclencher un lock-out des employés ou que les employés d'une unité se mettent en grève.

De plus, même si une ESE est conclue, un avis de lock-out ou de grève doit être signifié à l'autre partie au moins trois jours avant l'exercice de tout moyen de pression au travail.

Quand dois-je commencer à négocier les modalités d'une ESE?

Les parties peuvent négocier et régler à tout moment les modalités d'une ESE, et elles peuvent demander de l'aide de la Commission pour ce faire. Même en dehors des périodes prévues par la

Loi, les parties peuvent demander une détermination de la Commission en vertu du paragraphe 142(5) de la Loi.

Les parties peuvent également retenir les services d'un conciliateur pour les aider à régler une ESE. Quoi qu'il en soit, une détermination quant à l'ESE doit être déposée auprès de la Commission 180 jours avant l'expiration de la convention collective et, si l'on a établi que l'ESE est nécessaire, elle doit être conclue 90 jours avant l'expiration de la convention collective.

Que faut-il inclure dans une ESE?

La négociation d'une ESE relève principalement de la responsabilité des parties à la relation de négociation collective. Les parties comprennent le mieux quels services sont essentiels pour protéger la santé, la sécurité ou le bien-être des résidents du Manitoba, pour maintenir l'administration de la justice et pour prévenir une menace de dommages environnementaux graves.

L'ESE devrait indiquer :

- la façon dont l'employeur, l'unité de négociation et les employés compris dans l'unité doivent continuer maintenir la prestation de services, le fonctionnement d'installations ou la production de biens pendant une grève ou un lock-out, et dans quelle mesure;

- les fonctions et les tâches des employés de l'unité de négociation qui sont nécessaires pour maintenir les services essentiels;
- les classifications et le nombre de postes dans chaque classification requis pour fournir ces services essentiels;
- le nombre d'employés de l'unité de négociation requis pour exercer les fonctions et les tâches essentielles;
- la méthode selon laquelle les employés capables de fournir les services essentiels seront affectés ces services pendant une grève ou un lockout;
- les procédures à suivre pour répondre aux urgences ou aux changements prévisibles des services essentiels qui doivent être maintenus pendant une grève ou un lock-out. Ces procédures devraient être suffisamment souples pour permettre aux parties de réagir rapidement à des changements qui pourraient survenir dans les services essentiels nécessaires;
- le cas échéant, les changements autorisées des conditions d'emploi qui s'appliqueront aux travailleurs des services essentiels désignés pendant une grève ou un lock-out.

Comment puis-je déposer une détermination de l'ESE ou une ESE auprès de la Commission?

Le paragraphe 94.3(2) de la Loi exige que les parties à une convention collective déposent leur détermination de l'ESE 180 jours avant l'expiration de leur convention collective.

Le paragraphe 94.3(8) de la Loi exige qu'une ESE soit déposée auprès de la Commission 90 jours avant l'expiration de leur convention collective.

Lorsque l'entente est déposée, elle a le même effet qu'une ordonnance de la Commission.

Les déterminations de l'ESE et les ESE, ainsi que la convention collective qui arrive à échéance, doivent être envoyées à mlb@gov.mb.ca .

Nous nous sommes mis d'accord dans une certaine mesure sur les services essentiels, mais nous sommes dans l'impasse. Comment la Commission peut-elle nous aider?

La Commission est prête à collaborer avec les parties en tout temps, sans demande, pour les aider à résoudre les différends relatifs aux services essentiels. Les parties sont encouragées à communiquer avec la Commission pour discuter des façons dont elle peut les aider à résoudre toute question quant à une détermination de l'ESE ou sur une ESE.

Si les parties ne parviennent pas à s'entendre elles-mêmes ou avec l'aide d'un médiateur, elles peuvent faire une demande auprès de la Commission pour qu'elle tranche la question. En ce qui concerne les déterminations de l'ESE, la demande doit être déposée au plus tard 180 jours avant l'expiration de la convention collective. Une demande de règlement d'une ESE doit être déposée au plus tard 90 jours avant l'expiration de la convention collective. Dans les deux cas, la Commission doit statuer sur la question dans les 30 jours suivant la demande.

Comment puis-je demander une détermination de l'ESE ou une ESE?

La Commission a élaboré un formulaire de demande à completer au moment du dépôt d'une demande concernant les déterminations de l'ESE et le règlement d'une ESE. La Commission exigera que le demandeur dépose sa preuve directe par affidavit, et que le souscripteur d'affidavit fasse l'objet d'un contre-interrogatoire par la partie qui répond. Avant qu'une demande ne soit déposée auprès de la Commission, elle doit être signifiée à l'intimé.

La Commission n'acceptera aucun formulaire de demande incomplet. Il faut veiller à ce que les renseignements demandés soient suffisamment détaillés. La Commission informera les parties une fois qu'elle aura accepté la demande comme étant complète, et le délai commencera à courir dès l'avis donné.

Une fois que la Commission a accepté la demande comme étant complète, l'intimé doit déposer sa réponse dans les trois jours suivants. La réponse doit contenir tous les faits importants sur lesquels l'intimé entend s'appuyer. L'intimé ne peut présenter aucun élément de preuve ou ne peut faire des observations sur aucun autre fait matériel que ceux qui ont été mentionnés dans la réponse, sauf avec l'autorisation de la Commission.

La Commission organisera une conférence de gestion de cause le jour suivant la date limite pour le dépôt de la réponse. À la conférence de gestion de cause, la Commission fixera la date de l'audience, qui doit debuter au plus tard le 14^{e} jour civil suivant l'acceptation de la demande.

N'oubliez pas que la Commission aura très peu de temps afin de mener l'audience, évaluer les éléments de preuve et de rendre une décision, et que les échéanciers doivent être strictement respectés pour que les décisions soient rendues dans les délais impartis. La Commission exigera que les audiences se déroulent de façon concise et sans delai. Les demandes d'ajournement seront exceptionnellement rares, et la disponibilité d'un avocat ne sera pas considérée comme une circonstance exceptionnelle.

Y a-t-il d'autres solutions que de s'adresser à la Commission pour le règlement d'une ESE?

Oui, les parties peuvent s'entendre de nommer un arbitre pour régler leur ESE. Si les parties préfèrent nommer un arbitre, elles doivent informer la Commission par écrit qu'elles se sont entendues pour régler le différend par arbitrage dans les deux jours suivant le dépôt de leur demande auprès de la Commission, et lui communiquer le nom de la personne qui a accepté d'agir en tant qu'arbitre. L'arbitre est tenu de régler les modalités de l'ESE dans les 30 jours suivant la signification d'un avis à la Commission. Les honoraires de l'arbitre sont répartis en parts égales entre l'agent négociateur et l'employeur.

Si les parties choisissent de faire régler l'ESE par un arbitre, l'arbitre demeure chargé de trancher les différends relatifs à l'entente. Il a l'habilitée de trancher toute question en litige entre les parties pendant un lock-out ou une grève licite dans les deux jours suivant la demande, à moins que l'arbitre ne peut ou ne désire pas agir. Dans ce cas, les parties peuvent s'entendre sur un autre arbitre ou, s'ils ne peuvent pas s'entendre, l'une ou l'autre des parties peut demander à la Commission de résoudre la question.

Puis-je accéder à des services de médiation une fois la demande reçue?

Oui. Chaque dossier reçu par la Commission sera confié à un représentant de la Commission qui continuera de travailler avec les parties pour circonscrire ou résoudre les questions.

Que puis-je attendre de la conférence de gestion de cause?

La Commission peut se renseigner sur l'un des points suivants :

1. Fixer une audience, qui doit commencer avant le 14^{e} jour civil suivant la date à laquelle la Commission accepte la demande et se terminer à une date qui laisse suffisamment de temps à la Commission pour rendre sa décision dans les 30 jours;

2. Élaborer un exposé des faits et obtenir une reconnaissance des faits, ce qui pourrait faciliter l'audience;
3. Ordonner aux parties de fournir d'autres faits ou détails sur la position qu'elles adoptent dans le cadre de l'instance ou de préparer une déclaration sous serment des éléments de preuve qu'elles obtiendront d'un témoin dans l'instance;
4. Ordonner la communication des documents avant l'audience par une partie ou par toute autre personne qui peut être appelée à témoigner dans le cadre de l'instance;
5. Discuter du déroulement de l'audience, y compris l'ordre dans lequel les parties vont procéder, le nombre et l'identité des témoins et la durée prévue
6. Ordonner qu'un mémoire soit déposé relativement à tout aspect de l'instance;
7. Ordonner aux parties de recourir à la médiation pour circonscrire ou résoudre les questions en litige.

La Commission peut-elle modifier mon ESE?

Oui. Les parties peuvent s'entendre quant à des modifications à une ESE en tout temps et les déposer auprès de la Commission.

Toutefois, le paragraphe 94.3(24) de la Loi stipule qu'à la demande d'un employeur ou de l'agent négociateur pendant un lock-out ou une grève licite, la Commission peut réviser, confirmer, modifier ou annuler une ESE ou rendre toute ordonnance qu'elle juge appropriée.

Que se passe-t-il si l'ESE n'est pas respectée?

Le paragraphe 94.4(4) de la Loi indique que tout employeur, syndicat ou autre personne qui ne se conforme pas à une ESE commet une pratique déloyale de travail.

Nous sommes en train de négocier une nouvelle convention collective et nous n'avons même pas discuté de la question des services essentiels. Que devons-nous faire?

La Loi contient des dispositions transitoires qui permettent aux parties dont les conventions collectives ont déjà expiré de procéder immédiatement à la résolution des questions en présentant une demande à cet effet à la Commission.