

THE MANITOBA LABOUR MANAGEMENT  
REVIEW COMMITTEE

March 2, 2009

Honourable Nancy Allan  
Minister of Labour and Immigration  
Room 317 Legislative Building  
Winnipeg MB R3C 0P8

Dear Minister Allan:

As requested in your letter of October 1, 2007, and as required under Section 87.4 of *The Labour Relations Act* (the Act), we are pleased to provide you with the report of the Manitoba Labour Management Review Committee's review of Sections 87.1 - 87.3 of the Act.

The Committee wishes to thank you for the opportunity to express its views to the Government on this important issue.

If you have any questions or wish to discuss any aspect of the report, please do not hesitate to contact the Chairperson.

Sincerely,

Original signed  
Darlene Dziewit  
Labour  
Caucus Chair

Original signed  
Michael Werier  
Chairperson

Original signed  
Peter Wightman  
Management  
Caucus Chair

Enclosure

cc: Members of the Labour Management Review Committee

**REPORT OF**  
**THE MANITOBA LABOUR MANAGEMENT REVIEW COMMITTEE**  
**SECTIONS 87.1 TO 87.3 OF THE LABOUR RELATIONS ACT**

**March 2, 2009**

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Section 87.4 of *The Labour Relations Act* (the Act) states that at least once every two years the Minister of Labour and Immigration is to request that the Manitoba Labour Management Review Committee (LMRC) review the operation of procedures contained in sections 87.1 to 87.3 of Act, respecting the settlement of subsequent agreements during a work stoppage that has continued for at least 60 days. The review that ordinarily would have been conducted in 2006 was delayed because of the Committee's involvement with other matters, most notably a comprehensive review and major amendments to *The Employment Standards Act*. After those issues were dealt with, on October 1, 2007, the Minister requested that the LMRC undertake a review of Sections 87.1 to 87.3 and provide a report respecting its findings.

In undertaking its deliberations, the Committee noted that only four applications had been made under these provisions since their introduction in 2000, with only one resulting in an order by the Manitoba Labour Board. That order, issued in May 2007, dealt with a dispute between the Fort Rouge and Imperial Veterans Legion and the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 144.

During its review, the Committee focused on two issues:

## **1. Extending term of collective agreement**

Under Section 87.3(5.1), the term of an arbitrated agreement is extended by six months after the date of settlement if the settlement occurs more than six months after the expiry date of the last collective agreement. This provision is meant to prevent the awkward situation of an arbitrated agreement being expired or almost expired by the time it is settled due to a protracted work stoppage or lengthy procedures in settling the dispute.

The Committee felt that the six month extension may be too short, especially if the parties have gone through prolonged and difficult negotiations. They agreed that the extension should be increased to avoid having the parties re-enter bargaining so soon after a protracted dispute.

***The LMRC therefore recommends that consideration be given to lengthening the extended term of an arbitrated collective agreement to one year.***

## **2. Time period for determining if parties are bargaining in good faith**

Under section 87.1(3.1) of the Act, once the parties involved in a dispute are notified of an application to settle the provisions of a collective agreement the Board has 21 days to determine whether the parties have bargained in good faith. If the Board finds that the applicant is bargaining in good faith and that a new collective agreement is unlikely to be concluded, any work stoppage must be terminated immediately before the arbitration process begins.

The Committee's labour representatives suggested that the Board may not be able to determine whether good faith bargaining has occurred within the 21-day period, particularly if a party uses tactics that delay the Board's processes. Labour stated that the Fort Rouge Legion case, in which the Board took longer than the 21 days, was an example of the legislation's failure to end a lengthy work stoppage quickly. Labour suggested that the 21-day period be extended to 30 days and that an ongoing work stoppage be terminated once that 30 days had passed. They added that ending a work stoppage prior to a determination of good faith bargaining would not reward "bad faith" because it would not result in a contract.

The Committee's management representatives were opposed to any measures that would end a work stoppage prior to determining good faith bargaining and stated that ending a work stoppage in this way would further interfere with and constrain free collective bargaining while leaving workplace issues unresolved. Management noted that while they generally dislike the alternative dispute settlement provisions, in the Fort Rouge Legion case the legislation worked in ending the work stoppage, though not as fast as it might have under different circumstances. In this light, management suggested that no change be made to the legislation and added that it is important to retain all due processes regarding what is in its view very intrusive legislation.

***As labour and management have not reached agreement on this matter, no recommendation is made.***