PUBLIC HEARINGS ON BILL 44 LABOUR STATUTES AMENDMENT ACT, 1983

Thursday, April 28, 1983

[The committee met at 2:30 p.m.]

MR. CHAIRMAN: We call the committee to order. I would like to welcome everybody to the fourth and final day of hearings to be held by the Public Affairs Committee on Bill 44.

For those who were not present the last few days, I would like to run over the procedures under which the hearings will be held. The maximum time allotted for each presentation will be 40 minutes. This includes the time for questions from members. The groups presenting the brief may use this time in any manner they choose. They can use it all or any portion thereof for questions or for presenting their brief, whichever suits them best. A bell will ring briefly at the 35-minute mark, signifying that you have five minutes remaining. Another bell will ring to signify the end of the presentation.

Special sections have been reserved in the gallery for the presenters, invited guests of members, and the public. The hearings will be conducted under the rules which govern the proceedings of the Legislative Assembly. There will be no standing in and no interruptions from the galleries. All questions to the presenters will be for clarification only and should be short and to the point. Due to the time constraint, we will allow only two supplementary questions for each questioner. Because the sound system is at table level, we ask the presenters to remain seated while making their presentation and also the members. All the proceedings will be recorded in *Hansard* in their entirety.

Alberta Association of Municipal Districts and Counties

MR. CHAIRMAN: With that, I would like to welcome to the public hearings the Alberta Association of Municipal Districts and Counties: Mr. Les Miller, president; Mr. Wallace Daley, vice-president; and Jack Edworthy, executive director. You may begin your presentation, gentlemen.

MR. MILLER: Thank you, Mr. Chairman. Good afternoon, ladies and gentlemen, members of the committee.

We're certainly pleased with the opportunity to make this presentation to you. To start off, perhaps I should introduce the rest of the executive who are present and then explain, particularly to the urban members of this committee, who our association is. With us today, in addition to me, you introduced Wallace Daley, our vice-president, and Jack Edworthy, our executive director. In the gallery, we have Joe Smith, director from zone three, the Edmonton zone; Glen Clegg, director from the northern zone; John Glazier, director from the central zone; and Dick Papworth, director from the southern zone.

The AMD&C is a voluntary association open to all MDs and counties in Alberta, and all 18 MDs and 30 counties are members. We therefore represent all the incorporated rural municipalities in Alberta. While the time frame for preparation was short, we were successful in surveying our members. The Edmonton zone, zone three, which comprises 22 of our 48 members, by coincidence had their regular zone meeting on Monday this week. We were therefore able to take our brief and presentation to that zone meeting to have them review it. That group endorsed it by a vote of 90 to two. Our directors for zones one and two directly contacted their jurisdictions and received solid support for the position we are putting forward at these hearings. At their regular meeting in February, zone four had already suggested this type of legislation. Mr. Chairman, we are in a position to indicate to you that this brief sincerely and clearly reflects the views of our members.

As I said, the Alberta Association of Municipal Districts and Counties is pleased to be able to present our views and thoughts on Bill 44. As you are no doubt aware, only a few counties and municipal districts are unionized, and we therefore have not been actively involved as an association in employee/employer relations or labor relations. As a result, our comments will largely be of a general rather than a specific nature. We don't have a staff of resource or legal people to do research for us, so we are simply responding on the level of lay people involved in this type of legislation.

We feel very strongly that public-sector employees are in a different position than private-sector employees and must therefore, in some instances, be governed by different rules. For those in the public sector, the security of employment and assurance of getting paid, et cetera, are positive factors, and they must expect some regulations that people in the other sectors do not have. At the same time, it is obvious that if you take away some privileges, safeguards must be put in place to protect those people. The Alberta Association of Municipal Districts and Counties therefore supports Bill 44 in principle and feels it is a positive step. We will comment on a few sections with which we have some concerns and which we feel may need some modification.

Section 74(1). Again, our understanding of the briefing we had on this Bill is that only directly related trade unions could decide to band together to bargain collectively. However, it would appear to us that this could be the thin edge of the wedge, after which unrelated unions could endeavor to band together for collective bargaining purposes. If this were to occur, it could prove disastrous to our members. In effect, a municipality could be totally shut down. We therefore suggest a serious review of this section.

Section 102.2(2). Again, we agree with the recommendation but feel the board should conduct and supervise. The section suggested that the board supervise the vote. We think the board should also conduct the vote.

Division 1.1, compulsory arbitration. While our members are not directly involved to a great extent in the areas outlined, they have expressed strong support for this type of legislation. In fact, they would probably have expanded the list. As we stated earlier, public-sector employees have many positive benefits and therefore must accept this offsetting negative factor. The groups mentioned in this section are viewed by the general public as being the "humanitarian" employees and certainly carry a high image and a high degree of respect from the public. Strikes certainly do not fit that image. We recognize that there also must be safeguards for these employees. It certainly appears to us that Bill 44 does provide a reasonable compromise and that kind of safeguard to these employees.

Section 117.5(6). Again, we concur with this section, except we feel that a judge should only serve on an arbitration board as chairman, not in one of the lesser roles on the board.

Section 117.8. Again, we strongly support this section but suggest adding a fourth factor in (a). That would be along the lines that the board also consider the economic conditions that affect that particular area or community.

Of necessity, our comments are of a general nature but certainly reflect what we have heard our members saying. We must admit that we have not looked at any of the legal implications of Bill 44. Certainly other more qualified people appear to have done that and are doing that.

Mr. Chairman, we feel a great kinship to the government as they bring forward what I'm sure they feel is necessary legislation, but knowing it will be unpopular with many people. Our executive, with the help of a committee, again did a study of the assessment and taxation process this winter, because there is a problem there that needs to be solved. Our study determined that the assessment of all residences appeared to be the best solution to alleviate the problem: that is, it was the best solution that we at least could come up with.

We carried this forward as a recommendation to our spring convention. We knew we would be criticized and that the recommendation would be unpopular and frightening to some people. We brought it forward in spite of that fact, because we felt it was necessary in order to cure a problem. As president, I found myself in the same position as Mr. Young: doing my job, but knowing it wouldn't be popular to some people. However, our members were more fair than your critics have been. While many disagreed and spoke up and voted against it, they did not resort to name-calling or calls for resignation. Rather, they acted maturely and dealt with the issue.

Mr. Chairman, we are appalled when we hear people in responsible positions advocating violation of the law and support for people who would violate the law. We totally support and defend their right to criticize and oppose, but to recommend violation is intolerable. If a law or proposed law is bad or felt to be bad, work to have it changed or to have the people who implemented it replaced. But never, never advocate breaking the law. Too many people have died for our democratic process to let it be destroyed now.

Mr. Chairman, we wish to commend the government and, in particular, the Minister of Labour for proposing what we feel is positive legislation. Although it may not be the final or best answer, it is certainly a move in the right direction. Be assured that you have the support of a vast majority of Albertans.

We again thank the standing committee for allowing us to present our views on a subject of concern to the majority of our members. We would be most pleased, Mr. Chairman, to try to answer any questions that any members of the committee might have.

MR. ALGER: Mr. Miller, Mr. Daley, and Mr. Edworthy, on behalf of all the committee here present, I would like to thank you for your presentation. Believe me, it's quite a pleasure for me and all of us to hear a brief that is brief.

Now then, realizing that all levels of government operate somewhat differently, would you tell us how provincial salary settlements affect municipal salary settlements?

MR. MILLER: First, thank you for your comments. We are old fashioned. We still say "now" instead of "at this point in time" when we have the occasion. [laughter]

Yes, provincial settlements affect us very, very much. That's why we have always advocated and often have appreciated the dialogue we've been able to have with government in the fall. It didn't happen this year, but in some years we could dialogue and try to arrive at a consensus as to the direction we were going.

In fairness — and I must be fair — I think that in 1982, unfortunately we set the lead with some very high settlements. I think our members settled early. What looked reasonable in January and February, the 15-plus per cent settlements we all entered into, turned out to be disastrous settlements come July, when the economy took a downturn. So I think that in this instance, maybe we were a bad example for government. But certainly in the past, the provincial settlements affected us very, very much. In particular, we've had a great deal of trouble where regional offices have moved into an area and, in essence, have stolen employees from some of our members. They have had to compete, and it has been very difficult for them.

MR. ALGER: A supplementary, Mr. Chairman. Seeing that you have outlined a definite relationship between the provincial and municipal wage settlements, Mr. Miller, can you clarify for me my understanding that your organization has shown some real leadership in restraint? Would you elaborate on how, exactly, you are going about this task?

MR. MILLER: Mr. Chairman, I guess that would again be a matter of opinion. We think we're showing some leadership. Certainly, a number of people have told us that we are showing leadership; other people have told us that we were fools.

Realistically, yes, our members at our fall convention indicated by resolution that they would strive for 0 per cent salary increases in 1983. Again, let me emphasize that no member was bound. This was purely a motion that we strive — as I knew this resolution was coming forward, and knowing that if I were re-elected as president, I would have to defend that position, I did a lot of soul-searching and looking around. I really, sincerely believe — I've been on council 17 years. For 16 years, I supported and fought with our council to have some very major settlements with our employees. I don't think we ever had less than 6 per cent, and that was in the AIB years.

I really believe that this year, when the people who are paying those salaries are living on zero or less than zero in most cases — and I look around at my neighbors and urge you to do that yourselves. Look around your block, advocate to other people to look around and count their neighbors and see how many of them really have been getting increases in 1983. I think that you'll be lucky if you find 5 per cent, and most of those will be provincial civil servants. The private sector simply have had zero increases or rollbacks.

It was interesting to me that when this came up at our convention, one of the reporters who was speaking to me about it said: you know, it's funny; we just got our letters this morning telling us that that's what our increase will be for 1983. So they understood. That's the direction that our members are moving and feel very strongly about. Obviously, some have settled in figures slightly beyond that. But it is a figure that we are all striving for, and one we think is realistic and fair.

MR. ALGER: A final supplementary, Mr. Chairman, if I may. Mr. Miller, you mentioned local economic conditions as consideration in wage settlements. Are you saying that public awards should take into consideration the

private-sector wage levels in existence at the time of your decision?

MR. MILLER: Certainly, very clearly that's what we're saying. We recognize that if an award goes back to cover a previous year, then that has to be looked at as well and taken into consideration. Again, I look at some of the provincial settlements this year. They must go back and take up the year where we had some very sizable increases. The basic answer to your question is, very clearly, yes. We think people have to live in the real world as it exists at that time.

MR. R. MOORE: Mr. Miller, how does your association see Bill 44's effect on the market place in the area of public-sector settlements, with Bill 44 in place, versus private-sector settlements?

MR. MILLER: If I heard you correctly, do we think Bill 44 will have a big effect?

MR. R. MOORE: I'm asking, do you feel it will have an effect on the market place?

MR. MILLER: In answer to the question, Mr. Chairman, no. I don't see it having a big effect. I think it is almost unrelated to that. The market place has to deal with the things at that time. I think this Bill primarily sets some guidelines for arbitration and settlements that avoid a strike in certain areas. I don't see it affecting the market place to any great degree.

MR. R. MOORE: A supplementary, Mr. Chairman. From your previous answer, though, there is a relationship between the public-sector and the private-sector settlements. There is a direct relationship or effect. You mentioned safeguards in your presentation. What safeguards would you suggest be included in Bill 44 to realistically address the relationship?

MR. MILLER: Mr. Chairman, what we said in our brief is that we think there are safeguards in the legislation. That's why we commend the legislation. If you're taking away some rights from people, which you are doing in the legislation, then you must put some safeguards in place. We believe that the safeguards you have put in with the binding-arbitration process provide some very good and proper safeguards to the people affected.

MR. R. MOORE: A supplementary, Mr. Chairman. Would you feel those safeguards are adequate?

MR. MILLER: In our view, yes, Mr. Chairman.

MR. MUSGROVE: Mr. Miller, you indicated that you polled your members and got a positive response. You indicated to us that in the area around Edmonton, you got real good support for your position. Could you give us an indication of what percentage of positive response you got for the rest of the province and what you mean by a positive response?

MR. MILLER: As I indicated, Mr. Chairman, our respective directors directly contacted all the municipalities by phone or in person. In most cases they talked to the reeve. In turn, in most cases he talked to his council and got back to them. In all cases the comments were supportive. In fact, think I have some of Mr. Glazier's here. You know they raised some concerns. One of the reeves indicated that the council agreed but that the hospital board had some reservations. Another agreed but would like us to check on the following: that an arbitration award must be decided on the basis of the latest offers, either the highest or lowest offer. I think what he was referring to was the best-offer settlement that you allude to in the Bill. So those were the kinds of responses they got. While we didn't comment on that section, it's the kind of award that I personally like, and I know many people don't. But I really think it makes people put forward realistic positions when they know you are going to go to best-offer selection.

MR. MUSGROVE: A supplementary question. Did you get any negative responses to speak of?

MR. MILLER: No, we did not. As I indicated, two people at the Edmonton zone meeting voted against the motion of support, and there were 90-plus in attendance.

MR. CHAIRMAN: Are there any other questions from members of the committee?

MR. NOTLEY: Mr. Miller, I'd like to explore this question of compulsory arbitration for just a moment. There's an old saying that justice delayed is justice denied. Some mention has been made by a number of groups — and I think you made reference to it yourself, sir — about the time frame for which these awards have come down. Have you had an opportunity to assess the process under the present Act with respect to compulsory arbitration, as to the time frame? Do you think there are dangers that the process in fact takes too long and, as a result, puts the award in a rather different context than the actual period of time for which it should be awarded?

MR. MILLER: We haven't studied the present legislation in detail. I would tend to agree with you that the awards and the process should go as rapidly as is reasonably possible. I think you can speed them up too much. But certainly an award coming down a year or two years late is too late.

MR. NOTLEY: Do you have any suggestions for members of the committee, Mr. Miller, as to changes in the process which would allow more a expeditious conclusion? Yesterday, for example, the Christian Labour [Association], also a group that supports compulsory arbitration, made submission. The burden of their brief was that there has to be a much more expeditious conclusion than we have had to date.

MR. MILLER: No, Mr. Chairman. It's certainly an area we would look at and get comment on, but at present we haven't determined a better way of handling it than what's been advocated.

MR. CHAIRMAN: Any further questions?

MR. BATIUK: Mr. Miller, earlier in your presentation you stated that

> only a few counties and municipal districts are unionized, and we therefore have not been actively involved . . . in employee or labor relations . . .

Insofar as members of the municipal districts and counties, this is so. But your members are automatically on the board of education, which is involved quite closely

with unionized people. Even though we will be having a presentation by the Alberta School Trustees' Association and I'm sure they'll bring those facts out, I wonder what effect it has on you as elected members.

MR. MILLER: What effect it has . . .

MR. BATIUK: . . . on school trustees or members of the boards of education as members of the county councils.

MR. MILLER: It has a very great effect, of course. As I indicated earlier, 30 of our members are counties and therefore deal directly with teachers' settlements. We certainly feel strongly that the position we have taken should apply to teachers as well as all our other employees and are maintaining that position and intend to maintain that.

MR. CHAIRMAN: Any further questions from the committee? If not, do you have any closing remarks you would like to make to the committee?

MR. MILLER: No, Mr. Chairman, we don't have any closing remarks. Again, I appreciate the courtesy extended to our association in allowing us to present our views. We appreciate that our brief was short. As I indicated, we don't have resource people to do a lot of research and deal in depth with these things. But I assure you that our members feel very, very strongly about these issues. We appreciate the leadership you're showing with this legislation, and we wish you well on it.

MR. CHAIRMAN: Thank you very much. This concludes this session of the committee hearings. We're running a little ahead of schedule. If our next group is here, we'll adjourn for five minutes. If not, we'll most likely have to wait longer.

[The committee adjourned at 2:55 p.m. and resumed at 3:20 p.m.]

Alberta Union of Provincial Employees

MR. VICE-CHAIRMAN: Could we call the committee to order, please.

Members of the committee, we have the Alberta Union of Provincial Employees appearing before us today. Making representation on behalf of the organization are Mr. John Booth, president; Mr. Tim Christian, legal counsel; and Mr. John D'Orsay, union representative. Gentlemen, I'm sure you're aware of the 40-minute time limit with regard to making the presentation. A bell will go when five minutes remain. You may utilize the time in any way you deem effective. Would you please proceed.

MR. BOOTH: Thank you, Mr. Chairman. On behalf of the members of the Alberta Union of Provincial Employees, I have to put on record our disapproval with your government for the manner in which Bill 44 has been introduced. Even as of today, our organization has not been approached by the government, or any member of the government, for input into the proposed changes contained in Bill 44. The manner in which the Alberta government has handled Bill 44 is totally unreasonable. The only notice we have is contained in the throne speech. Mr. Chairman, it should be noticed that on March 23 this year, the AUPE responded to the throne speech with a submission to all Members of the Legislative Assembly. Given the fact that we did respond to the throne speech and outlined our position and our concerns as to the Public Service Employee Relations Act, we believe the government has approached this matter in a sinister manner.

Our organization has not been given any official notice of any changes to the existing legislation. Acting on reports from the news media, our union has attempted, and we're still attempting, to contact the International Labour Organization in Geneva in an effort to have the proposed Bill 44 declared in violation of international labor standards. We read in the media that a non-labor group, the [Organization] of Small Business, was contacted by the Labour Minister to submit a presentation. The government's overall approach in handling its labor relations, and in particular its introduction of Bill 44, is suspect.

We are advised that the Minister of Labour has reported to this Legislative Assembly that the present Public Service Employee Relations Act complies with the International Labour Organization. Mr. Chairman, I would like to relate the latest report we have from the ILO with regard to case No. 893, dated November 1980. I quote the following from the report: On the other hand, regarding the allegations that the government has ignored the committee's recommendation, the committee, while noting the result of the provincial union's challenge to the Act in the Court of Queen's Bench of Alberta, feels that it must recall that Canada, in ratifying Convention 87, undertook to give effect to its provisions and gave this undertaking with the unanimous consent of the provincial governments.

I believe it would be beneficial, especially for those new members of this Assembly, to go into a little history with respect to labor relations in the provincial government service. In 1971 the then Leader of the Opposition, Mr. Lougheed, promised that if the PC Party formed the government, they would move very quickly to extend to provincial government employees the same basic bargaining rights as other workers in the province. Since then, we've received no correspondence from the Premier with respect to this matter.

It was not until 1977 that the Lougheed government introduced Bill 41, the Public Service Employee Relations Act. It was at that time that the then Provincial Treasurer, Mr. Leitch, who was also the minister responsible for the administration of the Public Service Act and the Crown Agencies Employee Relations Act, stated — and we quote the rationale for the Provincial Treasurer's argument in favor of Bill 41 from *Hansard*, dated May 10, 1977:

> Also, the members of the task force jointly recommended that the minister for personnel not be involved in the administration of the labor relations system, and that this responsibility be transferred to an independent third party. Under our current system, decisions respecting the definition of "bargaining units", opting out, and the determination of negotiable matters are made by the member of Executive Council charged with the administration of The Public Service Act and The Crown Agencies Employee Relations Act. Mr. Speaker, that is the same minister — myself at the present time — who directs the province's personnel operation. I think it's important to keep in mind that if this is not in fact an unfair arrangement, at least it appears to have a potential for unfairness.
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> Bill 41 removes those decisions from the minister and places them in the hands of the five-member,

> independent board entitled the Public Service Employee Relations Board. This board will also have the capacity to make decisions ensuring that the negotiating process will move forward smoothly to a resolution of disputes. Under existing legislation, the absence of such a board creates the situation where it is perceived that the only way to keep the negotiating process moving is through lengthy civil actions.

Mr. Chairman, I believe it's no secret that the Alberta Union of Provincial Employees opposed the introduction of the Public Service Employee Relations Act in this form as presented by the government at that time. It's also no secret that the AUPE proceeded to lay complaints with the International Labour Organization and that, on a number of occasions, the ILO has requested this government to amend its legislation to comply with Convention No. 87 of the ILO, a convention which has been ratified by Canada and one which this government is presently violating.

Mr. Chairman, given the approach of this government and its handling of labor relations in this province, the question has to be asked: are the members of this Legislative Assembly placing their individual political careers and their own aspirations before the well-being of the people they are supposed to represent in this Assembly? If we look at the track record of your government as it relates to working people, it does not look that way. For example, we have to consider the fact that members of this government are on public record as criticizing the communist government in Poland for its treatment of the Solidarity organization. Yet it's strange that in its treatment of the working people in Alberta, the government's approach is still similar to that being carried out in Poland.

Mr. Chairman, I suggest that the members of this Legislature have to do a little soul-searching on the matter of labor legislation in this province. Is it not true that elected representatives here in this Assembly are elected to look after the interests of people from all walks of life, be they people who belong to organized labor or unorganized labor — the handicapped and senior citizens? Those are the members of society who have little or no voice in the democratic process. The actions of this government have not represented the interests of the general population of Alberta.

For example, shortly after forming the government, legislation was passed which gave members of this Assembly a full-formula pension at age 55 after only two years in office. This was done at the stroke of the legislative pen. Mr. Chairman and members of this Assembly, you should know that we in the Alberta Union of Provincial Employees do not necessarily disagree with this. What we do disagree with is the legislative fact that under the Public Service Employee Relations Act, pension is an issue which cannot be referred to arbitration.

There is an injustice in the system, in that the union has worked toward a deferred compensation plan over many years. Then it would seem we have a government which came into power and voted themselves a plan which is over and above the plan negotiated for members by the union over a long, long period of time. This is a matter of interest to the public, Mr. Chairman. I think members of this Assembly and the public should be aware that the MLAs' pension plan is the only government-administered plan which is running in the red and has been for a number of years.

I'd like to comment now with respect to the 1982 arbitration awards which, I understand from the media, have prompted this Assembly to introduce Bill 44. It seems that all the hullabaloo this government has generated from the recent arbitration awards is uncalled for. Maybe the general public has been misled, or maybe the members of this government are naive, in trying to accept the argument that the arbitration awards were too high. We've heard the Premier and other members of this government talking about restraint. We've heard the example given by them that they themselves are prepared to tighten their belts. Now we have some interesting information about the so-called Tory belt-tightening.

The arbitration award handed down for Local 1 of the AUPE provided for a 9.1 increase for a Clerk 1-11. At the maximum level — that's after six years of service in the government — related into dollars, this amounts to $121 per month. When we hear the members of this Assembly talking about 5 per cent increases, we have to look at the devious way in which the increase in excess of 5 per cent is passed along. For example, a cabinet minister at 1982 salaries, $33,600: MLA indemnity, $22,050: allowances, $6,485. A total of $62,135. Increases to those figures for 1983 relate as follows: salary, 10.25 per cent, for an increase of $3,444: indemnity, 23.9 per cent, for an increase of $5,260: allowances, 10.3 per cent, for an increase of $655. The total percentage increase is 15.1 per cent, for a total dollar figure increase of $9,369. We have to compare the total dollar increase with the total dollar increase of a Clerk 1-11, that being $1,452 a year, compared to $9,369 a year for a cabinet minister. While we're talking about percentage, Mr. Chairman, that's a difference between the two increases of 649 per cent.

We look at some other areas of pay increases within government service, and this question must also be asked: how come provincial court judges receive an increase of 40 per cent from this government — an increase which is retroactive to April 1, '82 — which provides for a dollar adjustment of $26,000 a year?

Citizens of this province have to recognize that statements made by the Premier are not always correct. On January 2, '83, Premier Lougheed is quoted as saying: arbitrators don't live in the real world I'm in. It's clear to me that we have to reassess the process, because I don't think it's satisfactory for an arbitrator to ignore what's going on in the non-unionized private sector of our province.

It's interesting to note that the Public Utilities Board in effect acts as a type of arbitrator with regard to utility rates. I have not heard the Premier or any of his colleagues come out with any critical statements with regard to the Utilities Board's determination to ignore the Premier's so-called real world. We now quote from the Public Utilities Board with respect to restraint: Although the Board is aware of present economic conditions and the heightened opposition of our customers to any rate increase under such circumstances, it cannot impose any arbitrary determined limit such as 5 or 6 per cent on the amount of any rate increase it will approve. However attractive such a simplistic approach may seem, it would be arbitrary and beyond the powers of the board.

Mr. Chairman, it seems that we are faced with a clear double standard from this government, a standard which clearly looks after the interests of the corporations and which is quite prepared to disregard the concerns and well-being of working people in this province. It would seem that they are not only disregarding the concerns of working people but, with the proposed amendments contained in Bill 44, this government is attempting to usurp the rights and benefits workers have strived for over

many, many years. The position of our union with respect to Bill 44 is that the Bill is legislation which our organization will take to the ILO in an effort to have this type of regressive labor legislation removed from the statutes of Alberta.

In conclusion, I strongly urge this Assembly to reconsider its position, not only with Bill 44 but also with Bill 41. You have to recognize that the labor climate in this province, and especially within provincial government service, is at an extreme low. It's incumbent upon this government to serve the needs of people from all walks of life, but as an employer it should also be concerned directly with its own employees. The challenges that employer and employee groups are faced with today in the area of technological change and the economic hardships faced by all people are ones to which this government should address itself, looking after the interests of all people.

This government is responsible for the Public Service Employee Relations Act and the arbitration process contained in the Act. It would seem that whoever drafted Bill 44 has no idea whatsoever as to the implications of those proposed amendments in the field of labor relations. Given the distinct possibility that Bill 44 and Bill 41 contravene international labor standards, the very least this Assembly could do is to suspend all matters, pending the report from the ILO on our complaint.

Mr. Chairman, I ask our legal counsel, Mr. Timothy Christian, to address the Assembly.

MR. CHRISTIAN: Thank you, Mr. Booth.

Mr. Chairman, I propose to highlight two or three issues contained in the brief of the AUPE, to attempt to emphasize the legal significance which I see in these provisions, and to urge this Assembly that it not give passage to these particular passages in the Bill.

First of all, I'd like to deal with the change, in both the Public Service Employee Relations Act and the Labour Relations Act, to the criteria arbitrators are going to be required to consider when they are considering interest disputes between organized labor and management. Mr. Chairman, I think it must be frankly acknowledged at the outset that there are two views of these criteria. The first view is that they will have no effect whatsoever, that the particular requirement that an arbitrator take into account the fiscal policy of the government will have no effect. Many of the arbitrators who have sat on these boards have said as much. They've said that they would come down with the same decisions regardless of the insertion of the new criteria. If it's true that the criteria will have no effect, there's no point in introducing them. In my submission, they ought not to be introduced at all.

But there's a second view, Mr. Chairman, and that is that these criteria are inserted for some purpose; that particularly the criterion which requires that an arbitrator take into account government fiscal policy, is inserted precisely because it is the intention of the government that an arbitrator shall not impartially determine a dispute between the parties but shall, in fact, be bound by the government's fiscal policies. Now as any lawyers in the audience will appreciate, there are many evidential difficulties in determining exactly what government fiscal policy is at any particular point, and I submit that there will be many games played if this criterion is kept in the Act.

I think the point is that it is fundamentally unfair for this government to ask an ostensibly neutral arbitrator to give overriding consideration to the statement of economic policy of one of the parties to the dispute. It's not only unfair from a common-sense point of view; in my submission it's also contrary to Convention 87 of the International Labour Organization. That convention, which this Assembly is familiar with and has heard much about, among other things provides that where a trade union is denied the right to strike, there shall be substituted an impartial method of dispute resolution. In my submission, Mr. Chairman, the criteria proposed in this Bill do not constitute an impartial tribunal. Rather, what is intended is that the arbitrator will give overriding consideration to the criterion of government economic policy, and thereby will fetter its discretion and not conduct an impartial adjudication. In my submission, what it is really designed to do is have an ostensibly impartial adjudication which in fact is not impartial at all but an adjudication in which the arbitrator is bound to give overriding importance to the government's own statement of economic policy.

The position which was stated over and over again in the awards delivered in the most recent round of interest arbitrations was that the problem was not with the criteria. The problem, first of all, was that the government did not make a convincing case before the arbitrators or, secondly, and perhaps more significant, that arbitrators were not going to be toadies to government economic policy. If the government wishes to exercise its power, which undoubtedly it has, many of these arbitrators said they ought to do it fairly and squarely and introduce wage controls, and not have an ostensibly impartial process, an ostensibly impartial arbitrator act in a subordinate fashion to government fiscal policy.

Mr. Chairman, there are many points that can be made in the brief of the union. Obviously I don't have time to get into many of them. I submit that members could look to that for guidance on some other issues. But there's one other point I want to make. There's one other section in this Bill which, in my submission, is reprehensible. I'm referring to section 117.94 of the Labour Relations Act, and 92.2 of the Public Service Employee Relations Act. As you know, these provisions essentially empower an employer to unilaterally suspend the payment of dues to a trade union, notwithstanding any contractual obligation on the part of the employer to pay the dues.

It's a common form of industrial relations in this country that where a union/management relationship exists, there will be provision for dues check-off. The employer automatically remits the dues the employees have agreed to pay to the trade union. In essence, what this provision seeks to do is to empower the employer unilaterally to suspend payment of dues when the employer determines that there has been a strike. It further provides that the relevant board, be it the Labour Relations Board or the Public Service Employee Relations Board, may subsequently review the determination of the employer that there was an illegal strike and, if the board determines that there was not an illegal strike, order that the suspension of dues payment be stopped and the dues be repaid. In other words, the dues which were wrongfully withheld ought to be paid back. However, the board also has the authority to increase the penalty to six months.

But here's the rub: this provision provides that the board is not empowered to reduce the penalty below one month. In other words, what we've created here is a system where the employer can unilaterally determine whether there's been an illegal strike, which, with all due deference to the drafters of this Act, is a very difficult

determination. And I'm sure lawyers in the audience will agree with me. What is an illegal strike is a very difficult legal question. What this government has done in this Bill is allow the employer to make a final and binding determination of that, and to impose a minimum penalty of one month.

In my submission, Mr. Chairman, this is not good legislation. It's not fair. Let me give you a sports analogy. Let's say we're playing hockey. On one side we have labor; on the other side we have management. This is like having the referees withdrawn at half-time. The referees are taken out, and the captain of one of the teams is given the power to determine whether there's been a penalty and what the punishment will be. I submit that if any of the members of this Legislature were playing in such a game, they would say, we're not interested in playing this any more; we don't want to play this game. That's essentially what the trade unions have been telling you this week.

In effect what we have here is a system where an employer — and we're talking about a municipal council, a hospital board, or a department of government — is given the power to unilaterally determine that an illegal strike has occurred and to suspend payment of dues. In my submission, this device is clearly designed to financially cripple a trade union. Now you may all think that an illegal strike should not occur and there should be a serious form of punishment for engaging in that sort of action. But I would submit that even persons in our society charged with the most heinous crimes are entitled to a fair hearing before a penalty is imposed. Why is it that this government sees fit to depart from this fundamental principle of natural justice in this context? What justification is there for it? In my submission there is none.

It becomes particularly difficult if you examine the sorts of problems that exist in the real world of industrial relations. For example, it's possible for an isolated illegal strike to take place in a remote location, and for the employer to have the power thereafter to suspend payment of dues for the entire bargaining unit. If we talk about the general service in the case of this union, we're talking about 30,000 employees, the employer having the power to unilaterally decide to withhold the payment of all their dues because of the walkout of two people in some isolated instance, some disagreement with their local boss. I submit that the drafters could not have intended this absurd result.

This legislation is really too strong; it's too unfair. It just doesn't accord with the principles of fundamental justice. I would think that a government which takes pride in its record in the bill of rights area, a government which is proud that it was one of the first governments in Canada to enact something like the provincial Bill of Rights, a government which claims to be concerned about individual liberty, should not be seen as and should not be the government which would impose this type of legislation which confers upon some bureaucrat the right to override the indication of persons that they wish a certain amount of money to be paid to the trade union of their choice. Not only is it unfair; it doesn't make good labor relations sense. It's going to create all kinds of problems. There are going to be all kinds of prosecutions as a result of this, and it would complicate rather than simplify the system. It's not a good piece of legislation.

Mr. Chairman, I believe that my time is just about up. Mr. D'Orsay is going to deal with some of the other provisions in the Act which deal with exclusions. Before I quit, I'd just like to raise one other point. In my submission, another provision in this statute makes no sense at all from a labor relations point of view. That is the provision which expressly states that there shall be only one strike or lockout vote in the currency of a dispute. This just doesn't make any sense. In the first place, this is one of the few jurisdictions in Canada where there is a supervised strike vote. What's the purpose of a supervised strike vote? I submit that it's simply this: to determine in a fair and impartial way, before a particular dispute, what the employees or the employers in an employers' association wish to do. Do they want to strike? Do they want to lock out? The supervision is necessary to ensure that it's a free and democratic election. In some jurisdictions there is no government supervision at all. There's not even a statutory requirement of a strike vote. The trade union is allowed to make up its own mind, the employers' association is allowed to make up its own mind, as to when it will strike and if it will strike.

What this statute obviously says is that there shall be only one strike vote. But what is the effect of that? In my submission, the effect of that — and this could not have been intended — is to make the strike vote a mere formality. What's going to happen? People will get a strike vote at the commencement of negotiations and there won't be another one. That will be it. That's the way it will be handled. This government, as a government which is supposed to be sympathetic to small business, understands how people try to circumvent regulations. What you're doing here, it strikes me, is overregulating this industry. You're not being concerned about the real consequences of it. You're reacting to some sort of perceived evil. It's not sensible legislation, it's not going to work, and it's going to create more difficulties than it solves.

Mr. Chairman, I don't have time to deal with any of the other provisions of the statute. But in my submission, there are many others that haven't been thought out that are going to create a lot of trouble. I don't see why the government would intend to do that.

Thank you, sir.

MR. D'ORSAY: I want to turn to the proposed amendments to the sections of the Public Service Employee Relations Act dealing with exclusions. Of course these are to be greatly expanded. That's general summary.

I think this is an example in this legislation of AUPE paying the price for success. In the last year and a half, I was directly involved in interpreting those sections in several cases before the Public Service Employee Relations Board. The board, relying upon its labor relations expertise — they're all people experienced in labor relations — having heard, in some cases, two and three days of argument and evidence on the various positions and interpretations of various sections, rendered decisions. In virtually all the proposed amendments to these exclusion provisions, the exclusion nullifies and reverses the direction of the decision taken by the Public Service Employee Relations Board.

I take your minds back to that quote by Mr. Hyndman about how it wasn't fair for the Minister responsible for Personnel Administration to determine the composition and scope of the bargaining units, and that this should be done by an independent board. That board, having turned its mind to the evidence and the argument put before it, decided that in particular cases no labor relations purpose was to be served by excluding various groups of employees.

The one I refer to in particular is the amendment to 21(1)(b), which is going to add a series of functions to the definition of "payroll". That was argued for three days in front of the Public Service Employee Relations Board. They determined that payroll functions are not a personnel function. There is no labor relations reason to exclude those people. That decision was supposed to be final and binding. Now this Legislature is being asked to override that decision. If you're going to run it through this Legislature like that, that's not very far removed from the situation where the Minister responsible for Personnel Administration made those decisions himself.

Similar things are also occurring. The most salient example there, I think, is the proposal to add disbursement control officers to a list of exclusions. That, as well, was argued for two days in [front of] the Public Service Employee Relations Board. That board heard all the evidence as to the duties of those positions, heard arguments about the possibility of conflict of interest and why these people should not be included in a bargaining unit, applied their experience and knowledge of labor relations to the situation, and made a determination that there was absolutely no labor relations reason to exclude those people. Yet now we have a specific amendment to do that.

I've got about four minutes in front of this committee, and you're proposing that we should re-argue that case and try to prove to the members of this Legislature, without any particular experience in labor relations, that you should not make the same determination, that you should not just follow the line adopted by the employer counsel in that argument, a losing argument. With any sense of fairness in the minds of the members of this Legislature, you will accept the people that the Lieutenant Governor in Council himself has appointed to that board for their labor relations experience, accept their judgment that there's no labor relations reason to do that, and not make that sort of change.

The same thing can be said for other proposed changes to that section. If you want to go further afield, if you want to compare what happens in the private sector and whether these positions would be excluded there, they wouldn't be. The Labour Relations Act is quite simple on the question of who's out of a bargaining unit: it's persons who are definitely managers and people who are confidential in matters related to labor relations.

Five of the other provinces in which there's collective bargaining in the public sector manage to use the same criteria in both the public and private sectors. They don't add any extra exclusions. The other four jurisdictions, plus the federal government, do add some. But they go nowhere near the extent this government does. None of them, for example, excludes payroll clerks. Why? Have you got a labor relations justification? Has some member of the Executive Council or of your caucus presented to you a labor relations justification for any of these exclusions? If they have, I would like to know about it. I would like to have the opportunity to respond to it. Obviously we're not going to get to do that today.

Another section I want to touch on briefly — already highlighted by Mr. Christian — is the arbitration provisions and the proposed addition of criteria. Yesterday you heard the Christian Labour Association propose that arbitrators should be allowed to develop their own criteria. If you examine the appendices to our brief, you'll find that arbitrators have developed their own criteria. There are a number of jurisdictions in this country that use arbitration to resolve disputes in the public sector. Those arbitrators have developed a good body of applicable criteria. So those criteria do exist.

With regard to the ministers who say that the arbitrators had their heads in the sand and weren't looking at the real world, the fact is that those arbitrators had to make a decision based on the evidence and argument placed in front of them. They had to go in with open minds and hear two arguments. As our brief emphasizes, what you're being asked to do is remedy, in perhaps a cosmetic fashion . . . If one stream of thought is correct, as Mr. Christian points out — if these amendments wouldn't make any difference because arbitrators already consider these factors — what you're being asked to do is remedy the fact that the government didn't present a good case.

As a person who was involved in preparing the union's case, especially the union's reply to the government's argument on the economic circumstances and the union's argument on that, I'd point out that in our brief we note and attach government submissions to those arbitration boards, the first one and the last one, arbitration submissions some three and a half months apart the same economic argument twelve times; it wasn't changed once. While the ministers were saying in the press that they're ignoring our economic situation, nothing was done to improve the argument the government was presenting to the arbitration boards. In the face of that kind of reasonable, rational explanation for your failure to implement a fiscal policy through arbitration, you are being asked to amend legislation. Obviously that's totally unnecessary. All you need to do is argue better.

You introduced arbitration as the dispute resolution process in the first place. That was a decision of this Legislature. This union has argued throughout that by introducing arbitration as the method of settling disputes, you have shown that you have no commitment to make collective bargaining work, because you're not willing to face economic sanctions from the people who work for you. What this amendment shows is that you're also not willing even to make arbitration work. This Legislature is being asked to cover up for the failure to work within the rules that you yourself established.

MR. VICE-CHAIRMAN: Are there any members with questions?

MR. LEE: Mr. Chairman, my question will refer to the brief submitted by the Alberta Union of Provincial Employees. I direct this question to the President, Mr. Booth. Specifically I refer to "Item 3 – Factors to be Considered by Arbitrators", beginning on the top of page 8. I note that you state:

> . . . because the fact is that in each of the 12 awards in the General Service, the Arbitrators expressly stated that they were considering precisely the factors which the government is choosing to legislate.

My question, through the Chair, would be: if, as you state, that is already true, then why would you object to formally including these factors in the Act for the benefit of giving more precise criteria to arbitrators?

MR. BOOTH: Mr. Chairman, if an arbitrator is considering it, I don't see any reason to place that into legislation. As Mr. D'Orsay indicated, you have every opportunity in arguing your case in front of an arbitration board. If your representatives in front of that board are not doing a good job, Mr. Chairman, then I suggest that you get better representatives. Don't tie the hands of arbitrators

or make things more difficult than they are for people who are representing working people in front of an arbitration board.

MR. LEE: Mr. Chairman, a supplementary. I note, through the Chair to Mr. Booth, that in appendix C you make reference to the arbitration awards, more specifically the December 31, 1982, Division 3 ruling, in which even the chairman states that it is unfortunate that the legislation fails to identify which factors of the statutory criteria are most important. Therefore I pose the question: given the lack of clear direction to arbitrators and your position that even given this ruling they are being considered anyway, why would you still object to their inclusion within the Act?

MR. CHRISTIAN: Mr. Chairman, Mr. Booth has asked me to respond. The simple point is that there's no weighting given in the proposed Act either. You're simply setting out a whole pile of criteria.

MR. LEE: Mr. Chairman, a supplementary. Sir, are you not aware that in fact the new Act does give weighting in that it determines . . .

MR. CHRISTIAN: There's a mandatory provision in one section, and then there's a directory provision in the other. I don't see what difference that's going to make. The one view is that it's not going to make any difference at all. The other view is that by seeking to mandatorily require that an arbitrator be most impressed by the statement of government fiscal policy, whatever that is, you're weighting it unfairly, because you are essentially requiring the arbitrator to give greater weight to the bargaining position of one of the parties. That's the argument.

MR. HIEBERT: That completes this particular hearing. The committee stands adjourned for five minutes. Thank you for making a representation today.

[The committee adjourned at 4 p.m. and resumed at 4:08 p.m.]

Canadian Federation of Independent Business

MR. CHAIRMAN: I would like to call the meeting to order again. Would members please take their places.

I would like to welcome to the hearings today the Canadian Federation of Independent Business: Mr. Brien Gray, Mr. Richard Wietfeldt, and Mr. Jack Foster. Gentlemen, you have 40 minutes in which to make your hearing. A bell at the 35-minute mark will signify that you have 5 minutes left in your presentation. You can make use of the 40 minutes in any way you wish. Would you begin now and give your presentation.

MR. GRAY: Thank you, Mr. Chairman. I'd like to just briefly reintroduce Mr. Foster, on my left. He's the regional representative of the CFIB here in Edmonton. Mr. Wietfeldt is director of our research function in Toronto, and I'm Brien Gray, director of legislative affairs for the federation, based in Toronto.

I'd like to give just a brief introduction. After that, I'd like to ask Mr. Wietfeldt, who's been in charge of a major study on the entire issue of public service labor relations, to talk briefly to those issues, as well as to Bill 44.

The CFIB welcomes the opportunity to speak to Bill 44, the Labour Statutes Amendment Act, and to the issue of public-sector labor relations in general. Briefly, the CFIB represents 60,000-plus small and medium-sized firms across Canada, approximately 6,000 here in Alberta. We pretty much reflect the breakout of the economy in a sectoral sense, and we represent quite small firms. We represent our members on all aspects of public policy that affect them, not only business policy but matters such as education policy. We are governed by our members' opinions, and they are broad-based across Canada.

I'd like to mention at this time that the issue of public-sector labor relations, wage disputes, disruptions, and the like, is a major concern of the CFIB and its membership, and has been since our outset in 1971. In large measure, this is because too often in the past small and medium-sized industries unwittingly have been third-party victims of strikes and excessive salary rates in the public sector. Our members express a continuing and escalating concern on such matters as public-sector growth, lack of direction, bad policy, excessive employee compensation, lack of performance, postal strikes at the federal level, rate increases for hydro companies, and employee demands for control and power. Canadians generally face strike threats weekly in some part of Canada. For these kinds of reasons, the federation began a major research study in November 1980. Over that period, approximately 13 people have made substantive contributions to the study and sections of the work, and outside consultants have come in as well. This does not include computer assistance on the impact of the postal strike, which we undertook two years ago.

The reason we are here today is that we want to give a voice to our members on an issue where the public had very little effective input in the past. We'd also like to make available to you the results of our work in areas where little study has been done. Unfortunately we have not had time to study Bill 44 itself in great detail in the context of labor practice and legislation in Alberta. All this having been said, I would like to refer the rest of my time to Richard Wietfeldt, who has been the director of the research study, and share with you our findings in that study as they relate to some of the things you have in Bill 44.

MR. WIETFELDT: Thank you, Mr. Gray. Mr. Chairman and hon. members, I think you have a short brief from us. We apologize for not having time to share more fully with you what we have done. At my left elbow is a copy of the final draft of most of the study. It is still being completed in several sections, but I can confidently give you at least the conclusions of most of our findings. I will simply do so from notes I've made, and hopefully allow some time for questions on parts you might want elaborated.

The first conclusion is an important one to us: the growth of collective bargaining in the public sector in Canada over the last 15 or 20 years has not brought labor peace to public-sector labor relations. That was one of the main stated aims in the various jurisdictions. Clearly that has not happened. I think we were the first ones to tabulate year by year for 20 years, by province, the rate of strikes in various jurisdictions in the public sector. We're using a broad definition of "the public sector", including education and health, teachers and professors, and so forth.

We have calculated the total days lost in strikes accord-

ing to Labour Canada's own published statistics on strike loss, but we have designated it for various public sectors for the first time. It shows for virtually every jurisdiction — not exactly every one — on five-year averages, that at least till 1980 when we completed this, the strike rates in the public sector had escalated rapidly from a very small beginning in the early 1960s to a very high rate that appears, at least in '80 and '81, to be continuing to increase. At that point — from 1975, say, to 1980 — it reached a level where it was very close to our industrial strike rate as a percentage of work time lost to work stoppages. The public sector has very nearly equalled the rate in the private sector as a whole.

Now that's not quite true for Alberta. Alberta is somewhat better in the public-sector record than the national average. But at the same time, the trend is very clear and undeniable. Our feeling is that not only the actual time loss but the regular and continuing experience of Canadians that day after day, or at least week after week, they read in the papers about other threats of strikes, is a serious national situation.

We have certainly not examined the policy of all the governments in the world, but we have examined quite a few. Most governments still believe, at least according to the law in right, that public sector workers should not have the right to strike. Now more places than admit that do put up with public-sector strikes. For example, our nearest neighbor, the United States, has only a few states that really admit in law the right to strike for public-sector workers of various types. Yet a number of jurisdictions have experienced strikes with impunity, without punishment. So we're certainly not supposing that doing away with the right to strike automatically does away with strikes. That is certainly not the case. Still, generally, governments do recognize that there is a considerable difference between other employers and the government as employer in the sense of the government's public responsibilities, and that is the reason most often stated for not allowing the right to strike.

Our own conclusions — we looked at a number of jurisdictions in detail in a sort of 20-year history. Unfortunately we couldn't focus on all the provinces, and we didn't focus on the province of Alberta in particular. The focus was on several jurisdictions of the federal government — the post office, federal government employees — and both the provincial and municipal governments in three provinces, namely British Columbia, Ontario, and Quebec. We don't feel that British Columbia, although it's nearest to you, is probably the nearest model to what goes on in Alberta, but perhaps that Ontario is all the same.

The general conclusions we have drawn about the way public-sector bargaining works is that it works very differently from private-sector bargaining, to the extent that the free collective bargaining model in the private industrial sector cannot be said to be applied fairly to the public sector. There are quite a few things you could mention.

The general idea of private-sector bargaining — the free collective model developed in the private sector — is that there are two economic forces, the employers and the employees, and they are going to balance one another with a countervailing force of some type. That is based on the idea that there is an income stream to that industry or business which is to be divided between employers and employees, that the stream has some limits, that it is market tested in some way, and that there is no particular authority or simple regulation which says what the income stream is going to be. It depends on competitiveness, productivity, marketing, and all the skills that workers and management together possess and exercise.

In the public sector, for regulated industries like hydro and other industries, and certainly government workers, the income stream is a regulated or tax-provided stream which for the most part does not have those limits. For the most part, they are by public regulation or publicly raised taxes or debt. In bargaining, both the employers and the employees know this. That difference can very easily be seen to be working through the negotiations, as you follow it. The employer does not have the same regard for what the ultimate limits are. The employees certainly do not. Therefore the idea of a test, first by bargaining and then perhaps the ultimate weapon of the strike to see what the economic realities really dictate in the conflict, doesn't happen at all. It is simply a misnomer to say it's free collective bargaining in the same sense. The total situation of the bargaining is different.

The strike sanction in the case of the private-sector model is that the group of workers is going to inflict a cost mainly on the employer who is competing with other businesses and his own life as an employer is at stake, that he has to meet those costs, and that it is a way of balancing the power of the workers against the employer. That doesn't happen in the public sector. First of all, as we said, the economic realities are different. Secondly, the sanctions are not against a particular company which is in competition with a number of others, but they are largely against the public who are the users of that service.

It is not too much to say that in that sense, the strike is against the public, not against the employer. The sanction is an entirely different weapon. It's much broader and more acute in its impact. It's much broader because the public generally are the users of the services. And it's much more acute because, for the most part, the services provided are monopolies or near monopolies and there are no alternatives for the customers of that firm to go to. So the costs tend to be very great. It's obviously somewhat different for a postal strike than for government clerks. But all the same, the impact is much larger.

Employers' restraints in public-sector strikes are mainly public opinion and political, and their considerations are not economic. They are trying to weigh public opinion about the loss of service. The employees recognize the same realities. Their appeal is to the public. Oftentimes public-sector strikes are mainly waged in the media. It's a concern on both sides to influence the media. We cite many examples of this. Therefore the realities of bargaining work in a completely different way from the private sector. Not that there are no media representations in private-sector strikes and that public opinion is not at all a factor, but the political reality rather than the economic one is the main power play.

In private-sector bargaining, the employees are looking for a fair share of the income stream in that firm or industry. In the public sector, the dispute is increasingly not over a fair share of the economic stream, but it is an aspiration for political power or control over that particular sector — teachers over their sector, public-sector workers over their sector, and so forth — control over mangement, and over how much public money, how much public commitment, is going to be directed to that sector. That, on all accounts, certainly is a difference between public- and private-sector collective bargaining.

We conclude from these criteria, and it could be elaborated, the fact that public-sector pay — and we go into

that at a later time — is leading private-sector pay for comparable jobs. With regular strike threats, those two facts, in our view, are not unrelated. Legislation allowing collective bargaining and strikes has affected our public-sector pay in general — not that you can draw direct lines of causality in all cases, but clearly our feeling is that the effects are from the collective bargaining system in the public sector.

When we started in 1980, we hired a young PhD in labor economics to research the literature for us to see whether anybody had ever studied the impact of strikes. There have been virtually no studies, he reported to us. There was one on Hawaii. We did surveys ourselves on the impact of two strikes on independent businesses. One was the postal strike in 1981. We sent a questionnaire to selected areas for a cross section of the country, and to different types of businesses. We did this at the last minute, because we didn't know whether there was going to be a strike. But we had a lengthy questionnaire. Fifteen hundred members took the time to fill it out and respond.

For six weeks we had three senior people tabulating the responses, and they were computer processed. We found, to our own surprise, that a great number of the people reported it was relatively low, on average, across the 1,500 businesses. As I say, the responses were across all sectors and were pretty well evenly distributed among manufacturing, retail, and so forth. They quantified the average damage at over $5,000 per firm as to the various categories. That was the average. Some were very high, some very low. It impacts businesses very differently. But we were surprised. It's obviously a very great impact, particularly when you take it against the level of their profits, for example.

The other survey we did was on the effects of the six-week police strike in Halifax in 1981. We sent a professional consultant from Toronto to interview people on Gottingen Street, where the main impact of the strike was. While this was certainly not representative of all the merchants in Halifax, we went to places where the impact actually was. I guess we interviewed some dozen merchants on Gottingen Street alone — not pre-selected in any way — who were able and willing to quantify the impact for us. These are the kinds of things: plywood to cover windows, extra help they hired, guard dogs, extra transportation expenses, and a number of things like that. The average of those 12, per firm, on that one street was $20,000. As I say, that wouldn't be the average for Halifax as a whole, but it shows you the tremendous impact that can happen.

We have looked at various types of mechanisms, not only here but in the United States and other places, for trying to mitigate the impact of strikes, of the way collective bargaining actually happens. We have looked at a lot of the articles discussing third-party mediation of various types, and so forth. We haven't found any particular method that solves the problem. There isn't anything that appears to be working well that tries to combine free collective bargaining, or negotiations modelled on the private sector, with third-party mediation or something, that really does bring the public interest to bear on the dispute. Final offer selection arbitration, for example, is one thing that is often tried. Some states in the U.S. have this. The results are very mixed, and it doesn't appear that any particular mechanism of that type is available.

The province of Ontario has a structure somewhat similar to yours. Teachers generally have the right to strike, but public servants do not. We know that the arbitration system in effect has given very rich settlements in an attempt to buy labor peace, and not to bring into Ontario the strike situation that is evident in some other provinces. We didn't get from the government exact figures on comparisons of salaries in the public and private sectors, but they did give us enough information that we were able to judge, compared to salaries across Ontario, with a survey done by the federal government. The clear case is that for Ontario government employees as well, the arbitration procedure has given very generous settlements which generally have brought public-sector employees — on the basis of matched jobs, looking at clerks with these qualifications in the private and public sectors — to a substantially and measurably higher level than in the private sector.

One of the things that has been used in Canada, I think, almost uniquely — although the idea is sort of involved everywhere — is that we have put in place the idea that essential services shall be excluded from collective bargaining or from strikes. In our view, that has not worked very well. First of all, the definition of "essential" is very narrow. The criterion that it basically comes down to a matter of "if people aren't losing life or limb, it's not essential" has not worked to really restrict the damage of strikes on the public.

The idea seems clear that you should be able to have some arbitrators sit down and decide what is fair pay. It doesn't work that way. Studies that are done — the federal government has a Pay Research Bureau, with a large staff, especially set up to do that. We have studied their surveys and their methodology in detail, and have an entire chapter describing it. Like most of the provinces that do their own surveys, they survey 100, 150, or 175 companies. They are the largest companies. Labour Canada's wage survey shows that larger companies pay more than smaller companies, so they are comparing federal government workers to the elite of private industry — large firms where they can go right in and find people with exactly the same classifications. We haven't been able to find any reason that government workers should be paid comparable to an elite rather than the general average of private-sector workers.

Secondly, the comparability studies pretty well all take wages and salaries into account. Then if they do look at benefits or other considerations, they look at those entirely separately. While they may compare hours worked, time off for holidays, pension levels, or different benefits, they do that separately and the comparison is never a total comparison. That is, if there is an advantage on pay and salaries for public workers, a small advantage for various benefits like holiday pay, and an advantage of extra job security in addition to that — which is never taken into consideration — the three are never added up, one to another. Our view is that it should be a totally fair package and not just fair or close to fair on one side. That is obviously a lengthy subject.

We have looked at several of the government's own surveys. As I said, the Pay Research Bureau surveys federal government pay. The usual way the public sector is compared to the private sector is, what are the current settlements? Are public-sector settlements currently running above private-sector settlements in a relative sense? That is, is it 9 per cent, 7 per cent, or what is it? You'll appreciate that if the public sector already enjoys a certain advantage — and I'm not just posing this as a hypothesis; that's what we have shown in several chapters — the increase that is the same as a percentage level obviously means that the increase is continuing, and what is posed as a fair change is really continuing an advantage

for the public sector.

As I started to say, the Pay Research Bureau survey does not allow us to look at actual government salaries. They keep secret what the provincial governments report to them and their own federal government averages in each of the categories. But what they do show is public sector in terms of public utilities as compared to private companies. Remember, I'm talking about 150 or so companies all together, therefore we're talking about large firms in the private sector. Public-sector employees — and they concentrate especially on professional types, but also office administration types, and so forth — clearly show higher pay for public utilities than even the elite of the private sector. This is comparing only salaries and wages, not any advantages in pension plans and benefits.

The Labour Canada survey of wage rates is done every fall in October. It is not even widely known that this is used. That survey is weak on calculating professional pay, but it does allow you to look at — they have categories where they have manufacturing, various other private-sector service and trade sectors, and so forth. They also have public administration, which is all three levels of government: federal, provincial, and municipal. So we can't separate which level of government it is. But the average for jobs that have been matched by the personnel officers in the country to the job descriptions covering some 650,000 to 700,000 workers each year in their survey, that is, about 7 per cent of the employees in 58 or 60 different occupations — that's not all of them, but it is a large number. In our view, a substantial majority of government employees would fall into these. A large number are office employees, and then there are some trade occupations and some general maintenance and labor jobs.

The overall average advantage for government workers is not in dispute at all. We have made a weighted average for 1975, '77 — we couldn't do all the years — '78, '79, '80, and '81. I think that is about the period for this. It shows a clear advantage for public-sector workers — for government workers and public utilities workers, because they can be separated out. We present all that evidence here in detail so anybody can have a crack at it. We make it easy for you to refute us, if you care to try.

I won't summarize this at any length. We have also made comparisons for a number of sectors between Canada and the U.S. Not all public-sector workers have direct comparability with the private sector, so we have compared professors, teachers, nurses, some state governments with some provincial governments in selected jobs, U.S. and Canadian federal employees for some select jobs, and post office employees across the two. We didn't select the evidence we presented. Obviously we selected certain states. We asked all the provinces to submit; not all did. We have not selected the evidence in any way other than trying to be representative in general. The results are not clear in every case. Obviously there's black, white, and gray. But indisputably, the average is that our public sector is very well paid compared to the U.S., strikingly well paid in some of those jurisdictions and sectors, and in some cases — professors, for example, where the qualifications are very similar and basically they operate in one labor market — the differences are striking.

The rejoinder to this type of evidence tends to be, well, that may be so, but justice demands that public-sector workers also have the right to strike and full collective bargaining, and the right to strike is just part of that. Our view is that that is not so. The very qualification that says essential workers do not have the right to strike shows that it is not an absolute right, that you're not somehow taking away an inherent right that every employee by the law of nature enjoys, that he has the right to strike just because he happens to be an employee.

Our view is based on the considerations we have already made. One, public-sector strikes inflict a lot more intense and broad damage to the public than private-sector strikes. Public-sector strikes have somewhat different aims and objectives, in the sense that the whole economic context is different, and so forth. We have elaborated these different reasons. In our view, the right to strike in the public sector is not a basic right that overrides all other considerations.

Our members vote in ways that are fairly surprising. They fool us in many of the votes. Most of our votes are split. Our policy votes have a basic question-and-argument context in what is being proposed, what the question is about, and then arguments for and against. We make every effort to balance those. On the question of the right to strike in the public sector, I think you have seen the vote. There is no question in their minds that an understanding government workers take on is that their jobs and responsibilities are separate and different, and that the right to strike is not a right they enjoy in working for the public sector.

So our view is that it is time to reassert the authority and sovereignty of governments in this country. We feel that in 15 or 20 years, the experiment of giving rights of collective bargaining in the public sector has had its trial period. We think the trends are bad in pretty well all regards. It has not brought labor peace; it has not brought fair pay in the public versus the private sector; it has certainly not brought fairness in the sense of having the public interest considered in public-sector wage negotiations. So our view is that it is time to halt this experiment.

Our feeling is that governments need to be in charge of their economic programs. Our job is a research job, but I should say that the feeling of our members is intense that oftentimes skilled employees working for them are paid less than much less skilled workers for the post office and other public sectors. This constitutes a near crisis in the psyche of the country, in the sense that it makes people feel that for whatever training they have — as a carpenter working for a small business, or a secretary doing many more jobs than a specialized job might be in the public sector or a government office — clear advantages in pay, benefits, and job security are unfair, and that this is going on apparently with the blessing of government or with the inability of governments to correct it. This is a situation which leads to more and more people feeling that they might as well work without reporting it for taxes, that they will not work as hard, that they won't care as much. Those types of things are directly related to the experiences they see reported in the paper day after day and see from their friends and people they correspond with.

To conclude that point, recently we took a survey of the conditions in businesses and the investment expectations for the coming year, and so forth. You may have seen the newspaper reports about this. It was called a hard-facts survey. Fourteen thousand members responded. This was a mail survey of all the members. They reported the number of workers they have now as compared to January 1, 1981 — this was in February — or two years earlier. Fourteen thousand reported 45,000 fewer employees. I took the pains to project this to the whole economy, using the industrial breakdown of small

business, and so forth. As a very conservative estimate, there were at least 700,000 fewer jobs in small businesses now than two years ago. We note that the city of Calgary has laid off 400 workers, and that's news. It's news when relatively few public-sector workers are laid off. The employees of our firms know the restraint that has had to go on.

We surveyed them also as to the number who took losses, or increases of less than 6 per cent this year, and the great majority of small businesses and small business owners took that kind of restraint this year. Quite a few of them had taken that restraint before this year, in 1982 or 1981.

Our view with regard to Bill 44, to give our general position — and we are not in a position to comment in detail on all the measures — is to support and applaud the government for the direction in which it's going. We feel strongly that the types of considerations you say compulsory arbitration must consider should indeed be considered. We can be a little less optimistic, however, whether this in fact will do the job. As I said earlier, arbitration by third parties unfortunately has not shown itself to be effective in reducing wage settlements from what they are in other jurisdictions under strikes — not because arbitrators have shown that they really have a grasp of economic realities and that they judge on the basis of facts and adjudicate in terms of what is fair. Those criteria that were referred to previously often specifically exclude the concept of fairness from the adjudication process.

So while we are glad to support the government in its intent and the general direction in which they are moving in removing the right to strike from certain jurisdictions — I think our study will provide a lot of evidence in support of that — we can be a little less hopeful that the arbitration route is going to solve the problem you hope to solve.

I'm sorry that we have taken up so much time, and I thank you very much for your attention.

MR. CHAIRMAN: There's a question from a member.

MR. ZIP: I would like to direct to Mr. Foster my question regarding statement number four on page 2 of your brief. Because of the fact, as you point out, that wages and salaries paid by small business of necessity must take into consideration the impact of market forces, exactly what effect do public-sector settlements have on your wage settlements?

MR. FOSTER: I beg your pardon. Did you say number four on page 2?

MR. ZIP: Number four, page 2:

> We have studied several data bases which allow broad comparisons of the actual compensation of like public and private sector occupations. Public sector workers on average enjoy wages and salaries above those of the larger private corporations and considerably more than those in smaller businesses.

MR. FOSTER: It would probably be more appropriate if Mr. Wietfeldt answered that, inasmuch as there are sections contained within the study he referred to that specifically detail the kind of information you're looking for.

MR. WIETFELDT: I can best report it anecdotally. It illustrates how, in particular cases — for example, when a government office moves into a city, as there has been some shifting around in cases, members feel it very directly. A secretary in a law firm will say: I would like to continue working here; it's much more interesting work, but because of the benefits package in the government, I simply have no choice; I have a family to support, and I have to go over.

At times, it is a matter of direct competition. At many other times, it's somewhat less direct than that, in the sense that small businesses have to try to keep up with the . . . There is some differential, but in general they have to try to meet the market. And the market is governments and somewhat larger firms that are paying more but, in addition, have benefit levels in terms of pensions, certain insurances offered, and so forth, that are usually advantageous, along with job security that is usually somewhat better.

MR. CHAIRMAN: That is the end of this segment of the hearings. We'd like to thank you very much for your presentation.

[The committee adjourned at 4:49 p.m. and resumed at 4:54 p.m.]

Alberta Federation of Police Associations

MR. CHAIRMAN: Would committee members please return to their seats.

I would like to welcome to the Public Affairs Committee, Mr. Andrew Sims, Mr. Syd Shields, and Mr. David Wismer, of the Alberta Federation of Police Associations. Gentlemen, you have 40 minutes in which to make your presentation. At the 35-minute mark, a bell will ring briefly, signifying that you have five minutes left. You can use that time in any way you see fit, whether it's a question period or your presentation. You may begin your brief.

MR. SIMS: Thank you, Mr. Chairman. I've been instructed to act as spokesperson on behalf of the Federation of Police Associations. We thank you for the opportunity to appear in front of you.

The federation represents police associations in Alberta that bargain for and represent approximately 2,500 police officers employed in the police forces of Edmonton, Calgary, Medicine Hat, Lethbridge, Camrose, Lacombe, Taber, Coaldale, and Redcliff. As I'm sure you're aware, the Police Act in Alberta gives municipalities a choice between RCMP coverage and an independent, municipally run police force. The federation represents police forces in cities that do not elect RCMP coverage.

The throne speech certainly indicated to those in labor relations that some changes to the arbitration process would be coming, and my clients were certainly braced for some changes. The comments today are not going to be primarily directed at the changes to the arbitration process, although some comments will be made on that question as well. The primary thrust of the submission we make to you today is that the federation is extremely concerned that for the first time in Alberta, legislation is introduced in the House that will place police collective bargaining under the same statutes as all other collective bargaining in the province and, as a consequence, remove police from their separate collective bargaining statute.

It is the position of the federation that police collective bargaining should be covered by one specialized piece of

legislation. There are sound policy reasons why this should be done and, in our submission, insufficient reasons why police should be placed under the Labour Relations Act. A police officer is not an ordinary employee. He is a public officer who is sworn to a public duty, and must be available to uphold the law 24 hours a day, 365 days per year.

In the past, the Legislature of Alberta has seen fit to preclude police from joining trade unions. This prohibition has lasted until now and has a number of reasons underlying it. It is of concern to the association that this principle is being changed. The split in collective bargaining legislation between the police and the regular labor force is of significance not only legally but also conceptually in terms of the way police officers view their role, the way the public views the role of the police officer and, particularly, the way a police officer views the role of his association.

As a consequence of putting police under the Labour Relations Act, the Legislature has before it a proposal to put in the Act a provision that reads:

> A police association for the police officers of a municipal police force who hold ranks lower than inspector shall be deemed to be a trade union for the purposes of this Act.

In the past, police associations have not been trade unions and have been precluded from membership in trade unions. I should point out that this is separate and distinct from the position that has been [imposed] on firefighters who, for many years, have been entitled to trade union membership and have exercised that right.

One concern of the associations within the federation is that if police are to be governed by the same legislation that governs other bargaining groups and trade unions, pressures will inevitably be upon the police associations to begin conducting their labor relations in accordance with the examples set by other bargaining groups and by trade unions. Associations will inevitably be faced with pressures from their membership to engage in activities that are similar to the activities engaged in by others under the same legislation. I think it's easy for you to see that if success is achieved in collective bargaining by taking a militant stance, then there's going to be pressures from police officers within their associations to have their executives follow that example from other trade unions. This is in no way critical of what other trade unions do. It is merely the federation's position that there are sound reasons why the pressures on police should be substantially different and should be resisted.

Police in Alberta have not adopted a militant stance toward their collective bargaining. They have accepted binding arbitration and, since it was first introduced in 1953, have always conducted their collective bargaining under that regime. The proposed legislation undermines the perceived difference between the role of the police officer and that of other employees. Over time, this must inevitably lead to a change in stance. In their attitude to labor disputes in the past, police officers have been able to take the position that they are governed by separate legislation and are not intimately concerned with labor legislation in the more general sense. This is something that would change drastically under the proposed legislation.

I would like to emphasize that there have been no police strikes in Alberta, no slowdowns, no work stoppages, or any of the types of bargaining militancy that are seen in other fields of collective bargaining. The federation is deeply concerned that the proposed legislation may lead to pressures to engage in such activities within the associations. It is something they would like to have the legislative foundation to resist.

The association is particularly concerned about being included in the labor Act and subject to the provisions of proposed section 117.94. The definition of strike under the Labour Relations Act is drawn so as to include many, many forms of work slowdowns or stoppages. It empowers the employer — in the case of police, a municipality — to stop deducting dues when such an incident occurs. I suggest to you that the track record of police associations in Alberta could only lead you to the conclusion that in any such situation involving police, the association would predictably, and has historically, opposed such activity. To subject them to a penalty from what might be the activities of a few dissident members, is an unfortunate consequence of this legislation. Simply put, if there were an illegal stoppage or slowdown in police activity in Alberta, it would be contrary to the position of the federation and its member associations, and certainly not organized by it. The federation stands on the record in police bargaining that has existed since 1953.

In section 117.94, the associations are also concerned that placing the onus upon the association to disprove such activities is basically contrary to the principles that are normally upheld in Canadian law, and is unjustified, given the record in this industry.

We'd like to suggest that it's appropriate that police legislation be placed in one enactment. At present, there are a number of pieces of legislation governing the conduct of police, and this is leading to tremendous confusion. There is the Police Act, which governs the appointment and discipline of police officers throughout the province. Under that Act, you have the municipal police disciplinary regulations, which are a fairly substantial body of regulation governing the conduct of disciplinary proceedings and the conduct of police in their duties. Pensions are governed by the Special Forces Pension Act. At present, labor relations are governed by the Firefighters and Policemen Labour Relations Act. A police officer's duty is governed by many statutes: the Criminal Code and a variety of pieces of provincial legislation.

Bill 44 adds yet one more piece of legislation to this complex web of enactments that cover the police officer's position. There are already a series of conflicts between the legislation presently on the books. The Police Act does not co-ordinate well with the Firefighters and Policemen Labour Relations Act. There have been a number of examples in the courts where difficulties have been encountered in sorting out just which piece of legislation is designed to prevail.

In our brief, I've provided only three examples. There are others. A situation arose in Hinton that gave rise to some complex litigation over whether the town could terminate its police force and hire the RCMP. Under the legislation, it was not clear whether the collective agreement or the Police Act right to hire the RCMP would prevail. Litigation ensued in a situation that ought to be clear in the legislation.

In 1978 the town of Taber, purporting to act under a term that was clearly in its collective agreement, terminated what it thought to be a probationary police officer. No such category was provided for in the municipal police disciplinary regulations. The courts overturned that termination, again following long, complex, expensive litigation. That, too, ought to have been clear in the legislation.

I suspect you are all familiar with litigation that has ensued in Edmonton and Calgary over the question of proposed layoffs of police officers — again, a clear conflict between the provisions of collective agreements, the Firefighters and Policemen Labour Relations Act, and the Police Act — an issue that should surely be clear in the legislation.

Over the past year the Solicitor General's department has been actively pursuing amendments to the Police Act. I think it's well known throughout police circles that changes are being proposed to update the Police Act, which has not undergone a major overhaul in the last decade. There is a climate of change in the air in relation to that Act.

It is our submission that what needs to be done, ideally, is for all legislation governing the role of the police officer to be co-ordinated in one revised Police Act, so that collective bargaining provisions, disciplinary provisions, public complaint provisions, and those other specialized provisions that apply to police officers, are contained in one coherent, comprehensive piece of legislation. The role of the police officer is very difficult at the best of times. When it has to be sorted out from a number of pieces of legislation, disputes arise that are unnecessary, uncertainties exist where there ought to be certainty, and there is general confusion about a very important role in society.

I suggest to you that there is something of a misconception about how frequently police forces have resorted to arbitration. Arbitration has come into the limelight in the last year, and I read between the lines of your legislation that you are responding to that. But might I suggest to you that in the case of the police industry in Alberta, resort to arbitration has been infrequent. The other side of that coin is that collective bargaining has been very successful, has been conducted across the table, and has resulted in voluntary, mutually agreeable settlements, which must surely be the ultimate object of any labor legislation. In the period from 1970 through 1982, the two largest police forces in Alberta have resorted to arbitration only twice in Edmonton and only three times in Calgary. In all the contracts in between — and there have been many — settlements have been voluntarily arrived at. Elsewhere in Alberta, resort to arbitration has been equally infrequent.

I want to point out one peculiar aspect of this round of collective bargaining, because it may have unduly focussed attention on the system in that it was anomalous in the cities of Lethbridge and Medicine Hat and in the town of Taber that one issue proved particularly insoluble. That was the introduction of the special forces pension plan. I've detailed the history of this in somewhat more detail in the brief. In a nutshell, this Legislature has enacted a special pension provision for police officers. In order to transfer into it, there is some initial cost impact. Bargaining that initial cost impact, which is a once for all time issue, caused three arbitrations that we can confidently say would not have occurred but for that one-time issue.

It's also been an unusual time in the economy, as we're all aware. That, too, may have unduly focussed attention on a system that has served the province extremely well in the police industry since 1953. The federation is very reluctant to see sweeping changes made to that system on the basis of what we suggest may be an anomalous year and without sufficient review of what all the consequences of the change might be in this particular industry.

The federation is concerned that the changes proposed will not necessarily produce better collective bargaining. Surely that must be the ultimate objective of any change. We're concerned that the extra steps added to this bargaining system are almost inevitably going to slow down the bargaining process in the police industry. At present, the system is easily and well understand by those who practise in the police sphere. One gives notice to bargain. One has no right to strike — that's acknowledged and accepted. If negotiations break down, a conciliation commissioner is available through the department. And if that fails, the matter can be submitted to arbitration.

Arbitration boards are given statutory power to mediate in a dispute. In my experience, boards have adopted that mandate and used it well. There is some concern expressed that too many issues go to arbitration. I suggest to you that the experience in the police industry is that arbitration boards, adopting their mediation mantle, have very successfully cut down to the real issues very quickly at the opening rounds of the arbitration process. It just takes an hour or so of talking to the parties sensibly and they soon get down to what the issues are.

I'm suggesting that the intent of the additional steps this legislation proposes to introduce is in fact presently being met by the arbitration boards themselves through their mediating function. That mediating function does not exist in other arbitration boards. Perhaps the degree to which it has been successful in the police industry has escaped public debate.

The first concern is the Disputes Inquiry Board, which, it appears to the federation, was introduced to bring a sober second thought to labor disputes that were liable to result in publicly unacceptable work stoppages. The federation is unable to see where this could have had any application historically in the police industry or to predict any situation where it might in future. In the past, issues have gone before arbitration boards without scrutiny by the Labour Relations Board, and they have been successfully resolved. In section 117.3 of the proposal, we suggest the step requiring an application to the Labour Relations Board is financially unacceptable, unreasonable, and an undue burden, particularly for small municipalities and small police forces. It is only designed to achieve something that is achieved in the legislation presently on the books. We are concerned about this expense and the delay caused by this extra step.

The federation is also concerned that this will cause some posturing when the parties are concerned to make it appear to a board that they have tried to deal with every issue. They sometimes devote more attention to making things appear like they are being done than to actually getting them done. The advantage of that procedure being done before an arbitration board is that that arbitration board is going to make the ultimate decision. People tend not to posture as much in that situation.

As we see it, the third uneccessary step, as it relates to police, is the fact that after a Labour Relations Board hearing, the matter is then referred to the minister to constitute a tribunal. The logic of adding that step escapes the federation.

As a last comment on the arbitration process itself, there is provision for final offer selection. The federation, which has had some considerable experience with arbitration, would like to caution the committee that final offer selection, if it is only left in the legislation as an option, has an extremely unsettling effect on collective bargaining. The whole purpose of sitting down at a table and trying to negotiate, is to try to get people to a rational

conclusion about what's mutually agreeable to them. Final offer selection allows one party in arbitration to think it might be able to tack on a few of its favorites to its monetary proposal and get them, where it could never get them by free collective bargaining. If you know in advance that that's the rules of the game, it's not so bad, because both sides know it equally. But if it's merely an option the arbitration board can indulge in if it chooses, it encourages the parties to keep a lot of minor issues on the table because they've got the hope that they can tie them all in at the end in a final offer selection process. Our point is only that if it's to be in there, it should be set out from the start. The federation's feeling is that it should not be in there.

I'm sure much has been said before you about the criteria proposed to be adopted for arbitration tribunals. I don't propose to deal with that in any great detail. The only thing I do wish to point out to the committee is that in the past couple of decades of arbitrated disputes in Alberta, there has been very, very little discontent with the results — a little here, a little there on either side, but a basically acceptable resolution has been achieved. And the Firefighters and Policemen Labour Relations Act says absolutely nothing about criteria. Yet arbitration boards, of their own volition, have considered those things that the House is now saying should be relevant. I point that out because I think that history speaks a lot for the success of the system.

It is the position of the federation that any necessary amendments to accomplish the House's objectives can be equally well achieved by amendments to the legislation presently governing police officers. It is not proposed to repeal the Firefighters and Policemen Labour Relations Act, [but] merely to take the vast majority of policemen and fire fighters out of it. We suggest that the changes you feel necessary after these hearings can easily be accomplished by making parallel changes to the present Act or by imposing a new part in the Police Act. We urge you to do so.

Any amendments made to the legislation must appear to be fair. I am not making any suggestion that this legislation is or is not unfair; we acknowledge the Legislature's role in setting out the ground rules. What we are cautioning is that collective bargaining is a very finely balanced system. If it is perceived by one side or the other that there is an advantage to one side or the other, that has an effect on the parties' willingness to settle and negotiate seriously. If there is a feeling — even if that feeling is unjustified or ill-founded — that arbitration boards, because of criteria imposed or procedures set out, favor one side, it means that at the bargaining table, where things should really be going on, there is an incentive not to come to an amicable settlement, not to get down to real issues. So when we comment that the legislation must appear to be fair, we do not do so by way of criticism or accusation. We merely caution of the effect it has on a very, very sensitive system that depends for its ultimate success on the good will and good intentions of both sides.

In summary, the federation urges the House not to place the police under labor relations legislation that covers the general sphere but to leave them under specialized legislation and not deem police associations to be trade unions. We urge the House to consolidate police legislation and not to fragment it more. We urge the House to avoid band-aid solutions to amendments. We suggest that nothing would be lost by deferring the consideration of police legislation until the fall sittings of this House. This would allow a summer for review and consultation. Virtually every settlement in the police industry has now been arbitrated for the remainder of this year. Over the summer, there are going to be no disputes that this legislation will cover. In that climate, in that situation, we suggest that a time for review would be worth while. In any event, review of the Police Act is being undertaken in the Solicitor General's Department, and we suggest that is the place where this legislation might appropriately appear.

I have with me the president of the Calgary Police Association and the president of the Alberta Federation of Police Associations. In the gallery are other representatives from police forces throughout the province. They have a very deep concern at the effect this legislation will have upon the public image of police, upon the police officer's image of himself, and on his conception of the role of his association. If we can answer any questions the members may have about our concerns and the legislation's effect on the industry, we will be happy to do so.

MR. CHAIRMAN: Thank you very much.

MR. R. SPEAKER: Mr. Chairman, to Mr. Sims for clarification. Firstly, your association made no request to the government of Alberta to come under the Labour Relations Act. Is that accurate?

MR. SIMS: If I might answer that firstly in a specific sense, no, there's no request to come under the labor Act. But in a more general sense, at times there have been discussions of some advantages that might accrue by having some access to the Labour Relations Board. What was thought of there was the ability, from the base of police legislation, to refer specific questions to a labor relations board and not to bring the police under the general provisions of the Labour Relations Act.

MR. R. SPEAKER: Supplementary to Mr. Sims. Was your association consulted or were you aware of any parts of Bill 44 prior to its presentation in this Legislature?

MR. SIMS: No. The federation was aware of the comments in the throne speech. It was of course aware that there was a general climate of concern over the Police Act, but was not aware of the sweeping nature of the changes that might be introduced in Bill 44.

MR. R. SPEAKER: Mr. Chairman, to Mr. Sims. In terms of the Acts that you support, the Police Act and the Firefighters and Policemen Labour Relations Act, have you been requesting any of the major amendments that have been introduced in Bill 44 into those respective Acts?

MR. SIMS: There have not been specific requests. There have been ongoing discussions. If I can say frankly, police ligitation and police legislation is something of a legislative backwater and, I might say, the federation feels some surprise at the degree of attention this legislation has suddenly been given. We have not really had the type of intimate consultations we feel would be appropriate. We have been fully aware of ongoing concerns about amending the Police Act, and we've participated in that system. But in terms of the specific changes in this Act, no.

MRS. FYFE: Firstly, I'd like to compliment your association on a well-developed brief and presentation. In both your written and oral submissions, you indicate that your members have been bound by binding arbitration over the past 30 years, that the associations have accepted binding arbitration, and that there has not been an instance of work stoppage or slowdown over that period of time. While you have spoken in a more general way and maybe referred to it, I wonder if you could perhaps summarize the reasons for the success your association has experienced in labor relations over this 30-year period.

MR. SIMS: I'll do my best. I have some personal experience in labor negotiations in the police industry. I sense that in the past, there has been a mature bargaining relationship between police and the municipalities they serve. There has not been public posturing. There have not been efforts to pull the strings of public sympathy and debate. You get bargaining going on where it's supposed to go on -- at the table. That has been very important.

I think there has been something of a breakdown. The federation is concerned, particularly in the last round, that municipalities found themselves very cash short. They'd had periods of large capital spending. They looked around for ways to cut back. There was a general municipal reluctance, if I might say, to bite the bullet publicly in an election year. The federation was concerned that in this round of negotiations there was not the degree of co-operation they had experienced before. There was not the willingness by councils to leave matters to administrators, as there had been before. As a result, police bargaining suddenly became a political issue, whereas in prior times it had been conducted efficiently and professionally without a lot of public string-pulling, I'll call it.

That breakdown is of concern to the federation, and we are concerned that the proposed changes will inevitably lead to more of that. We feel this was caused, in part, by an abnormal economic situation. But we also feel it has been something that has unfortunately led to a change in attitude to arbitration. I think there is a feeling on both sides that it would be nice to get back to the way the system worked before.

MRS. FYFE: A short supplementary for clarification. Perhaps I could put it into my words: you feel previous negotiations carried out at the administrative level on the part of the municipalities were acceptable and worked well until recent negotiations.

MR. SIMS: I think the record of the police industry in coming to mutual settlements in Edmonton, Calgary, and almost 90 per cent of collective bargaining disputes, speaks clearly of that.

MRS. FYFE: Thank you.

MR. NELSON: Mr. Chairman, just a short question to the gentlemen. I believe most or all committee members are interested in completing negotiations on time. You refer to this concern in your brief. Earlier in the week, we received the suggestion that we might consider specifying, for instance, a 30-day limit to require an arbitration board to report its award. Do you have any comments relating to this or any other suggestions that might assist us in dealing with that particular issue?

MR. SIMS: First, let me suggest that certainly in the case of police and firefighters, there has not been undue concern about delays in getting awards out. Awards have come out very quickly after the arbitration hearing. In terms of scheduling the hearings, I think you have to appreciate that in this industry there are two big forces, a couple of medium-sized forces, and half a dozen very small forces. There tends to be a natural order in which things go: one contract gets settled, then the remainder fall into place.

So I would caution that there should not be undue concern about the period of time it sometimes takes to get to arbitration, unless it's causing some labor strife, which in this industry it has not done.

MR. CHAIRMAN: Are there any other questions from members of the committee? If not, do you have any closing remarks?

MR. SIMS: I think my point has been made. I thank you for the time.

MR. CHAIRMAN: I would like to thank you very much for coming before the committee to present your views. That ends this segment of the committee's hearings.

MR. CRAWFORD: Mr. Chairman, if I might, there is a small procedural matter which involves both the committee and the Assembly. As the trustees make their way in for their presentation, perhaps I could move that the committee adjourn in order that the Assembly might consider a motion to adjourn until tomorrow, notwithstanding Resolution No. 13 passed on April 12, 1983, that the committee request the Speaker to reconvene the Assembly forthwith for this purpose, and that the committee now adjourn until after the Assembly has dealt with the proposed adjournment motion.

[Motion carried]

[The committee adjourned at 5:31 p.m. and reconvened at 5:39 p.m.]

[Mr. Clark in the Chair]

Alberta School Trustees' Association

MR. VICE-CHAIRMAN: I call the committee to order, please. Members of the committee, we have before us the Alberta School Trustees' Association. Making representation on behalf of the association are Mrs. Iris Evans, president; Mr. Don Wares, first vice-president; and Mr. Philippe Gibeau, past president. As you are aware, you have 40 minutes to make your presentation. A bell will be rung with five minutes remaining. You may utilize the time in the way you deem most effective. Would you please proceed.

MRS. EVANS: Thank you. Mr. Chairman, Mr. Vice-Chairman, and members of the committee, we are pleased to be here this afternoon to make our presentation on behalf of school trustees throughout the province of Alberta. I will read in part from the submission you have received. I will introduce the submission, then introduce,

to my immediate right, Don Wares, first vice-president, who will comment on proposed amendments to sections 1 and 75 and, finally, Mr. Philippe Gibeau, past president of our association, will address trustee policy and perspective relative to arbitration awards in the education sector.

As you know, we are a voluntary association of 150 operating school boards in this province. At the outset, I would like to establish that while the Association of School Trustees speaks on behalf of this group collectively, it does not preclude boards addressing subjects individually as they require or see fit.

It is recognized that a large part of Bill 44 addresses the labor relations environment in the hospital, municipal, and civil service sectors in this province. However, there are significant changes proposed for sections of the Labour Relations Act that bear directly on education. Accordingly, our brief centres on some of the specifics, as well as apparent trends indicated by the Bill.

Let me start with the compliments. This government is to be commended for tightening up the bargaining process in section 87(2), by permitting only one strike or lockout vote to take place with respect to a dispute. Conceivably, the parties' representatives will be very cautious, perhaps even hesitant, to elevate negotiations to an adversarial level. Collective bargaining can only benefit by this amendment. It may be useful to add some clarification so it is clearly understood that one vote implies one vote to strike, one vote for lockout, and does not preclude either vote being taken, yet does not explicitly mandate that either should be taken.

We are particularly pleased with the proposed amendment that requires the Labour Relations Board to supervise a vote by the employees or employers affected by the dispute on the acceptance or rejection of a Disputes Inquiry Board recommendation, if the representatives fail to notify the board of their acceptance. It is our view that the membership is often removed from the process by their representatives and does not always enjoy the opportunity to express their position on issues that directly affect them. This amendment will reaffirm the democratic rights of the membership in collective bargaining and will prevent institutions from unilaterally rejecting possible solutions to a dispute.

Finally, it is also acknowledged that an attempt has been made in Bill 44 to make existing labor statutes more workable by streamlining and providing several small but important changes. Mr. Chairman, I cite section 117.8 as an example. We support the direction to arbitrators indicated in this section. May I caution, though, on the following points. Number one, this section defines a number of variables to be addressed but does not identify local economic circumstance as one of these. Number two, the arbitrator, while directed to consider these variables, is not required to reflect these issues in the final award. This may strengthen the government's intent. Number three, the arbitrator in the final award drafts a circumstance which deals with both the present and future, and to the extent that conditions may change dramatically, we foresee a potential for difficulty.

Now, addressing the next section, Mr. Wares, please.

MR. WARES: Thank you. The Alberta School Trustees' Association does, however, have some concerns regarding the proposed amendments to section 1(1)(w.1) and section 75 that provide the mechanism for trade union organizations to determine the appropriate bargaining group by identifying the number of union locals and advising the employer or employers. It appears that a trade union organization can be formed without reference to whether a community of interest exists. We feel this is extremely important.

For school boards, the most prevalent employee representatives are the Alberta Teachers' Association and the Canadian Union of Public Employees. Bargaining certificates are issued to a unit of employees of an employer pursuant to section 38 and provision of division 3 of the Labour Relations Act. We have listed section 3(2) in our brief. One of our concerns about this proposed amendment is: does it not call into question the jurisdiction of the Labour Relations Board? Section 1(1) of the Labour Relations Act reads: " 'unit' means any group of employees of an employer". The operative phrases in these provisions are: "unit . . . is an appropriate unit for collective bargaining" and "of an employer". Since most school boards are corporate entities created by statute and entrusted with the public interest, only they can decide how best to discharge their mandate. Recognizing that school boards do not negotiate with their own employees, who are often represented by a certified bargaining agent, it is unacceptable that representatives of a bargaining unit could force a school board to bargain collectively in an organization of other school boards or perhaps even with municipalities, counties, and hospitals, as proposed.

While we acknowledge that employers enjoy the option to form employers' organizations pursuant to section 75(1), it is objectionable that this mechanism be provided to a private interest group, thereby effectively nullifying the autonomy of locally elected officials. The possible alliances that could be precipitated by the proposed amendment to section 75(2) are: union locals from several school boards, union locals with locals of other unions — in other words, the ATA, CUPE, Steelworkers, support staff, et cetera — or union locals of school boards with locals from municipalities, counties, hospitals, and others. The question here is, does a community of interest really exist?

Additionally and perhaps of most immediate concern is the possibility that by serving notice on a group of employers, a trade union organization could effectively dismantle an existing and workable employers' organization. Conceivably, a group of locals, including some but not all of the teacher locals, which are participating in an existing school authority's association — for example, Battle River — could join with several other locals and serve notice to bargain as a trade union. The notice would then affect some but not all of the school boards in the employers' organization and would add several new boards, thereby redefining the bargaining group.

Eight employers' organizations presently exist, which cover 68 school boards, that have successfully conducted negotiations in this fashion for approximately 15 years. In our sector, then, the proposed amendment could create an unworkable situation which strikes at the very essence of local government, especially when one considers the diversity of needs, goals, and objectives of school boards in this province, which range in size from 200 students to over 80,000 students. This proposed amendment could possibly create a bargaining environment which would be impossible.

I now ask Phil to speak on the organization's position on collective bargaining.

MR. GIBEAU: Thank you, Donald.

I think what's very appropriate is that we have policy on our books, particularly one that deals with binding

arbitration. Perhaps you have it before you. If not, I'll read it:

> The Association shall advocate opposition to the concept of compulsory arbitration as the only means of settling teacher school board interest disputes.

I suppose that stems from our great belief that everything done in education must be done in a gentle way. We really believe that head-bashing teachers, trustees, parents, and students is out. If we are to be consistent, then we have to use the gentle approach. While the right to strike of employees in the education sector has not been altered by Bill 44, our association perceives a possible trend developing that describes all public-sector and quasi public-sector employees as essential. Additionally, the decision-making powers in collective bargaining disputes are being given to an independent arbitrator.

With respect to the collective bargaining process, let me refer to an article in *How Arbitration Works.* It's by Frank and Edna Asper Elkouri, from the George Washington University law school:

> . . . compulsory arbitration is the antithesis of free collective bargaining. Each party will be reluctant to offer compromises in bargaining for fear that they may prejudice its position in arbitration. . . . both sides may list many demands and drop few in bargaining . . .

through a fear of being left out by the arbitrator. Shall we put everything on the table? — one of the disadvantages. The second one is that:

> Compulsory arbitration means an imposed decision which will often fail to satisfy either party, rather than an acceptable settlement upon a meeting of the minds.

Again, we refer to education. Finally,

> compulsion generates resistance and is a source of further conflict.

We maintain that that's not acceptable in our schools.

To further illustrate and come a little closer to home, in 1979 in Pennsylvania they had a strike that lasted about 15 days. As a result, the state of Pennsylvania proposed legislation that compulsory arbitration would take over if strikes cut the school year by less than 180 days. Some of the comments are that the Pennsylvania School Boards Association

> strongly opposes any proposal which grants a third party, who is not accountable in any way to the general public and who is not fiscally responsible to the local community, the power to make . . .

these kinds of decisions. It goes on and finally says:

> This concept not only removes decision-making from elected officials, but it is both time-consuming and costly. A study conducted in Michigan concluded that arbitration has promoted significantly higher wages and fringe benefits — at the taxpayers' expense . . .

I just got back from San Francisco, where I attended a conference of 20,000 American trustees. I had the honor and privilege to bring greetings to them from the Canadian school trustees. There were two resolutions. The NSBA, National School Board Association of America, is opposed to binding interest arbitration at the federal, state, or local level of government. Again, this pertains to education. Another one says about the same thing, then a super study on the effects of binding arbitration in the area of education.

Since its inception, this association has championed the cause of local governors of education; that is, that local lay control of education through locally elected school boards is the best way of ensuring that social goals are translated into local policy enactments in an acceptable and accountable manner. Such an approach becomes especially critical at a time when limited resources and self-serving union demands are forcing school boards to make hard choices between reducing, maintaining, or improving educational quality and other social priorities. In effect, the legitimacy of setting public policy through the collective bargaining process is at issue here. There's a quote which supports my statement, and I'll leave you to read it.

In summary, our association is of the firm belief that decisions which affect complex educational issues should only be made by local school trustees who are elected. This whole process of collective bargaining is very difficult on trustees. There are 900 of us throughout Alberta, and we are trying to improve the process of collective bargaining. This very government, through our dear minister behind me to my left, has made funds available for training trustees in how to do a good job at collective bargaining. It's not an easy task, but we believe that's how we can be accountable and responsible individuals.

Our association is on record as opposing the concept of arbitration as the only manner of resolving collective bargaining issues in public education. We are of the firm opinion that such matters be vested with elected representatives who are directly accountable to their electorate, rather than with independent third parties who are not similarly elected or accountable to the local electorate for their actions.

MRS. EVANS: At the conclusion of our remarks, I only stress that you may have heard trustees speak many times about local autonomy, about both the rights and responsibilities of parents and boards of education to determine at the local level the best education for their children. We respect this government and the initiatives being taken in Bill 44 to enhance, improve, and better identify the bargaining process.

We thank you for the opportunity to present today and would be available to answer questions. As I am wont to do, I must conclude that our basic premise as trustees is to serve children and needs at the local level. We thank you for the opportunity to represent that view to you today.

MR. VICE-CHAIRMAN: The committee is now open to questioning.

MR. ANDERSON: To the president or other members of the association: on the first page in your presentation, I note your brief supports the concept of one vote in a dispute, as well as the idea of having the Labour Relations Board supervise that vote. Could you give us any indication, by way of illustration or example, as to how this would assist in the deliberations of your organization?

MRS. EVANS: I would also permit my colleagues to respond, if I omit to identify what our perspective would be. First of all, anything that can expedite the process — in other words, not exacerbate any particular animosity between both parties — would seem to be useful. The responsibility of defining one vote seemed to be much more productive than permitting a continuation of votes from forthcoming periods or ensuing months. We saw that as reducing the time period.

MR. GIBEAU: At times we have that impasse at the bargaining level. This would enable going behind the trustee to the board itself or to the teachers, custodians, or support staff for their direct input. We like that process being amended, allowing it to occur.

MR. ANDERSON: Mr. Chairman, just one supplementary. Do any representatives here today have an example we could recall from past negotiations where this would have assisted?

MR. GIBEAU: No, not that I can recall specifically on that issue.

MR. WARES: In the odd jurisdiction, I think we have seen a strike vote being taken three or four different times. Having that flexibility, the meaning has lost some of its clout. With this, it would say that when you're taking it, it's meaningful. I think that's one thing we would look to.

MR. GIBEAU: Again, if I may, I know it's being done now. The bargaining team will go back to the local, but to a small group of the local, for a vote whether to approve or disapprove. This goes a step further: it's to the whole group and under supervisory staff of the government, which brings out the realities. Let's not play games; this is going to be effective.

MR. PENGELLY: Mr. Chairman, through you to the president, Mrs. Evans, or the other members. On page 2 of your brief, you have indicated that Bill 44 may force you into larger bargaining units and that you are not in favor of this. Could you indicate what the negative effects of larger bargaining units would be to your organization?

MRS. EVANS: Mr. Chairman, at the outset, my response to that question would be that larger bargaining units may not in fact serve the community of interests implied by local boards. If you were to take the example of counties, where the school board in a county jurisdiction is not a corporate entity, but assume that a union was serving a number of different sectors of that particular government, that cross section of jurisdiction could well prove to be an encumbrance in effective management and governance of schools. As well, when we talk about the Battle River association — the school boards that are bargaining collectively in that particular example — if the trade union were allowed to form a liaison with somebody external to that jurisdictional authority, it could well dismantle the credibility of that particular bargaining unit, as we state in our paper. So this particular section in fact creates some difficulty for us.

MR. WARES: The worst example would be provincial bargaining, which our association is against.

MR. JONSON: Mr. Chairman, I'd better check this first. From Mr. Gibeau's concluding remarks, can I assume that you feel the public interest is adequately served by yourselves under the present procedures for collective bargaining?

MR. GIBEAU: We would like to believe it is. There could be some improvements as to the process in collective bargaining. It's difficult, but that's our challenge. By improving our own ability as negotiators and through the public negotiators we can hire, we believe we can provide a reasonable service to both our associations, the union and ATA.

MRS. EVANS: Mr. Chairman, in response to the Member for Ponoka, I might add that Roger Allen, a past executive director who had analysed collective bargaining for teachers throughout Canada, delivered a paper in Toronto. He indicated that it had been responsibly done from both sides, on behalf of teachers and school boards, and that by and large increased costs in the education sector could be attributable to special education programs and a number of other programs the public demands today. In fact, the trustee position — although often questioned, as you may know, on our convention floor — still maintains that local bargaining is the best way to settle a collective agreement to serve needs at the local level.

MR. JONSON: I wonder if I might ask one supplementary, Mr. Chairman. I wonder if you could elaborate a little bit more on how the current procedure would be superior to an arbitration process with experienced arbitration personnel.

MRS. EVANS: Mr. Chairman, with respect to either member on my left or right, I would indicate that our association has not held the view that arbitrators are better able to serve the education sector than people who are knowledgeable in the education field, and would be pleased to know there was evidence to support otherwise. I'm not sure I could totally comprehend in what way an external judge or arbitrator would better serve the needs in an education system, from either the teachers' or the trustees' point of view, when we are most cognizant of the issues.

MR. VICE-CHAIRMAN: Any other supplementaries? Do committee members have any other questions? At this juncture then, I invite the presenters to make any final remarks.

MR. WARES: One of the concerns we took a look at was to do with 117.8, the concept of the arbitrator having the ability to look forward in looking at government policy and at the conditions. In other words, he is to look at the scope of the arbitration period, rather than look at what we do as past history. This may be possible and an advantage when we're dealing with an economy which is going down. But once this economy turns around, you may find that you're asking the arbitrator to be an economist and pick what's going to happen two years hence. Also, what we may be dealing with is that the arbitrator may be setting the spiral for inflation. Rather than the private sector, we would find that the public sector is doing that — asking the arbitrator not to look at what the past performance has been but what the future performance is going to be. That is a concern we have in the proposed policy.

MR. GIBEAU: Mr. Chairman, in that connection, if the arbitrators are to be directed how to arbitrate, particularly in the area of money, then what will be left to give away to bring matters to fruition will be management rights. Again, that is an impingement on local school boards that we feel would be disastrous. It has happened in other provinces, it has happened in some of the states, and we believe that's not good for education.

MRS. EVANS: Finally, Mr. Chairman and Mr. Vice-Chairman, thank you very much for this opportunity.

MR. VICE-CHAIRMAN: On behalf of the committee, we thank you for making representation today. I declare this segment of the hearings adjourned.

MR. NOTLEY: On a point of order, before we adjourn the committee meeting — I don't want to hold up our guests, and I would like to join with you in thanking them for their appearance — I have a procedural motion for members of the committee, on behalf of my colleagues in the opposition.

Mr. Chairman, I note Citation 570 of *Beauchesne:*

> It is the duty of all committees to give to the matters referred to them due and sufficient consideration.

Mr. Chairman, I will argue the reasons for that in a moment. But for the benefit of members of the committee, I would like to circulate, through the pages, copies of this proposed amendment. If I could read it very briefly:

> Be it resolved that this committee request the Legislative Assembly to order the production and presentation to this committee of those documents prepared within the Department of Labour, on the basis of which Bill 44, Labour Statutes Amendment Act, 1983, was drafted; and,
>
> Be it further resolved that this committee request the Legislative Assembly specifically to order the production and presentation to this committee of those documents detailing the anticipated effects of the amendments proposed in the Bill; and,
>
> Be it further resolved that this committee request the Legislative Assembly specifically to order the production and presentation to this committee of those documents detailing the situation or conditions, current or anticipated, the effective addressing of which, in statute, is the intent of the amendments proposed in the Bill; and,
>
> Be it further resolved that this committee request the Legislative Assembly to order all documents ordered to be produced and presented to this committee be presented, with sufficient copies for all members of the committee, at the committee's next meeting, such meeting to be held at the call of the Chair; and,
>
> Be it further resolved this committee request the Legislative Assembly to make compliance with its order for the production and presentation to this committee of such documents subject to the general principles governing notices of motions for production of papers outlined in Citation 390(2) of *Beauchesne's Rules and Forms of the House of Commons of Canada*, fifth edition.

Mr. Chairman, in arguing the point of order as to why this motion would be in order, first of all I ask members to refer to section 37 of the Legislative Assembly Act:

> The Legislative Assembly may at all times command and compel before it or before any committee of the Legislative Assembly the attendance of any persons, and the production of any papers and things, that the Legislative Assembly or committee considers necessary in any of its proceedings or deliberations.

Mr. Chairman, I further refer hon. members of this committee to the fifth edition of *Beauchesne*, Citation 620:

> Standing committees have the power to examine matters that are referred to them by the House, reporting from time to time and sending for persons, papers, and records . . .

Mr. Chairman, in the consideration of this matter, I also ask members to look at Citation 625:

> Committees may send for any papers that are relevant to their Orders of Reference. Within this restriction, it appears that the power of the committee to send for papers is unlimited.

Mr. Chairman, I also ask members to look at Citation 626(2):

> The committee can obtain directly from the officers of a department such papers as the House itself may order, but in case the papers can be brought down only by an Address, it is necessary to make a motion on the subject in the House through the [committee] Chairman.
>
> 627. When a committee requires special information it will report to the House requesting that the necessary papers be referred to it forthwith.

Finally, Mr. Chairman, on page 470 of the fourth edition of Bourinot's *Parliamentary Procedure and Practice:*

> Sometimes when a committee requires special information it will report to the House a request for the necessary papers, which will be referred to it forthwith. . . . in case the papers can be brought down only by Address, it is necessary to make a motion on the subject in the house through the chairman.

Mr. Chairman, on behalf of both the Official Opposition and the Independent members, the motion I put before the committee today is to release information, working papers, which in our judgment are necessary for members of the committee to properly comply with the mandate set out in the motion passed by the Legislature. As I read the parliamentary precedents, it is clear that such a motion would be in order. I hope hon. members on the government side of the House, in the interests of full and total discussion of this important matter, will comply not only with the spirit and intent but in fact will join us in supporting this resolution.

MR. COOK: Mr. Chairman, I wonder if I could speak to the point of order and urge the Chairman and hon. members to reject this proposal. I think it's more relevant for members to pay attention to Citation 569, not 570, where it sets out the responsibilities of a committee. It clearly says in subsection (2):

> Committees receive their authority from the House itself and that authority of the House overrides that of any committee.

Secondly, if we refer to the mandate of the committee as provided by the House in Motion 13, it's very clear that the authority of this committee is to meet only on the days and in the time provided. More than that, it provides that that period of time must be divided into 40-minute blocks. The motion basically set out the number of groups that could be accommodated. That motion was agreed to by this House, and I suggest that the suggestion by the hon. Leader of the Opposition is entirely out of order.

MR. R. SPEAKER: Mr. Chairman, speaking to the point of order just raised, I think it is a misinterpretation of that section of *Beauchesne*. Certainly the Legislature established this committee by motion and set its terms of reference, but it did not limit the committee's terms of reference by which other actions can be taken. It does not say in the motion that this committee cannot request information or that it only sits and hears but doesn't ask relevant questions or raise relevant issues. In no way it says that type of thing in the motion that established this committee and its operating base.

So, Mr. Chairman, I think you should totally disregard

the remarks and the suggestion made a few moments ago. If what the hon. member suggests is true, the charade we've gone through is true. Because then this committee was only limited to a position of sitting and listening, then moving back into the Legislature. The Bill is bulled through the House, and we have to take what comes. I don't think that's the function of the committee. I think it has a little more credibility and certainly a little more responsibility than that.

MR. NOTLEY: Mr. Chairman, I'd like to provide a little additional information to clear up what may be a trifle confused assessment offered by the Member for Edmonton Glengarry. In looking at this matter, I ask you, sir, to refer to *Bourinot's Rules of Order*, Rule No. 20, page 33. It's very clear, because it directly deals with the issue raised by the Member for Edmonton Glengarry and pointed out so well, I think, by the hon. Member for Little Bow. It says:

> Unless contrarily ordered by the House they may send for persons, papers, and records . . .

So there is clearly no question that the motion is in order. The Member for Edmonton Glengarry would be correct if the motion striking this committee had said: we shall not order papers. Unfortunately, the government fumbled the ball, and it wasn't stuck in the motion. That's the government members' problem, not the responsibility of the Chairman or Vice-Chairman. Of course, the Chairman or Vice-Chairman have to rule consistent with the practices of our parliamentary system. Therefore, in our submission as members of the opposition, the motion is clearly in order. If the government wishes to vote against it, of course they will have to take the responsibility of doing so. But from a procedural point of view, it is clearly in order.

MR. VICE-CHAIRMAN: If I could respond as Vice-Chairman, it's my understanding that the motion was passed by the Legislative Assembly. It outlined the intent, procedures, and manner in which the hearings were to be conducted. Written submissions were filed and handled according to the motion. The Chairman and Vice-Chairman have basically fulfilled the objectives set out in that motion. Insofar as the comments made by the Member for Spirit River-Fairview, I suggest that a motion for a return on the Order Paper might be appropriate or that the whole matter be reverted to the Legislative Assembly because this committee, under our chairmanship, has really fulfilled its mandate.

MR. NOTLEY: Mr. Chairman, again on the point of order . . .

MR. CHAIRMAN: I recognize the hon. Member for Calgary McCall.

MR. NELSON: Mr. Chairman, I think the matter before us by the hon. Member for Spirit River-Fairview is totally out of order in the respect that prior to his rising, the meeting was adjourned by the Chairman and the bell rang. As far as I'm concerned, Mr. Chairman, I'd like a ruling on that. I feel the committee was adjourned prior to the hon. member rising.

MR. CHAIRMAN: No, the committee was not adjourned.

MR. NELSON: The gavel was raised onto the piece of wood on the table, and the bell was rung. I would like to get a ruling on that, Mr. Chairman. I think it was adjourned.

MR. CHAIRMAN: As Chairman, I rule that I had not yet adjourned the meeting.

MR. ANDERSON: Mr. Chairman, if I could speak briefly with respect to the point of order and the motion that's now ostensibly before the committee, as best as I could I've tried to follow the citations the hon. Leader of the Opposition indicated in *Beauchesne*. I don't have the other documents to which he referred. He may well have a case with respect to whether or not the committee could have called for papers at some time during its deliberations. To that judgment, I leave your greater knowledge of parliamentary procedure. But in the motion that established this particular committee, I think it's very clear that we were to sit until a particular time of day, which is seven o'clock, that indeed the ordering of papers would require more time than is possible, that in fact the committee was structured for a very specific purpose and that was hearing the presenters who so ably brought their cases before this Legislative Assembly in committee. Now it's our responsibility to report to the Assembly and debate the provisions of Bill 44, as the procedure of the House so adequately allows for in second reading, Committee of the Whole, and third reading.

So, Mr. Chairman, regardless of whether or not it is legitimate for this committee to call for papers, I think the specific positions placed in the motion establishing this committee preclude that being a possibility whatsoever.

MR. MARTIN: On the point of order, I think we have to make it clear that this committee can do it. If the government wants to take the political flak of not giving out these papers, that's their choice. But clearly — and I repeat, clearly — Rule 20, found on page 33 of *Bourinot's Rules of Order*, third edition:

> Standing committees are empowered to examine and enquire into all matters referred to them by the House and to report from time to time. Unless contrarily ordered by the House they may send for persons, papers, and records, sit while the House is sitting or while it stands adjourned, publish papers and records, summon witnesses, and delegate any or all of their powers except the power to report directly to the House.

Contrary to what the Member for Calgary Currie says, this committee can be called back. It doesn't have to happen by seven o'clock. We'd be glad to come to another committee meeting. I'm sure the opposition will, if the government members will. So clearly, the motion is in order, and that's all we have to rule on at this time.

MR. CRAWFORD: Mr. Chairman, we are all learning a great deal; there is no doubt of that. It may be that the motion is, in parts, in or out of order. I want to acknowledge the relevance of raising such a matter, but to speak to the merits of the motion as it stands, because I don't perceive that a final ruling has yet been given on it.

I want to speak briefly to the merits of the motion. Given the wording of Motion No. 13 — and I realize this point has been made, but it's surely relevant — anyone who looked at it in its total context would perceive that it had the purpose of allowing for the hearings we have

recently concluded. That's what's in it. That's really all it speaks of. For that reason, without quarrelling over the order or not of the motion that's now been presented, I simply take the position that the motion should not be passed if it is in order; the reason, of course, having been given.

Not so long ago, we had the debate with respect to production of documents and, at that time, outlined to the Assembly a position with respect to departmental and working papers, and the like. The motion has taken account of that by proposing that we waive that established policy which is of record.

Taken all together, Mr. Chairman, I simply suggest that the matter might be voted on and that it's not an appropriate motion to pass.

MR. NOTLEY: Mr. Chairman, I take it the motion is ruled in order, is it not?

MR. CHAIRMAN: Are you speaking to the point of order?

MR. NOTLEY: I would like to know whether the point of order has finally been concluded. I would certainly offer a couple of other points on the point of order. But with the Government House Leader's generous observation, I presume it will be concluded that the motion is in order and the government will either support it or not, as the case may be.

MR. MARTIN: All he was speaking to was the merits of the motion.

MR. NOTLEY: Fair enough. Mr. Chairman, on the question of whether the motion is in order, the point I remind hon. members of who are attempting to foil this motion on a procedural basis, is that the onus is on those who produced the motion that set up the committee to clearly say that we shall not obtain documents. It's very clear in *Bourinot's Rules of Order*. That being the case, we certainly have the right to request the information. Whether or not the government chooses to provide it will be a decision in this committee, I suppose, whether caucus discipline falls or not. But we certainly have the right to put the motion in committee.

That being the case, Mr. Chairman, I don't think there's any doubt that the procedural motion is in order. I urge that we get on with the debate. I recognize we have a seven o'clock time limit, as the hon. Member for Calgary Currie has properly pointed out. But we still have lots of time in which to carry on public debate on an important public issue.

DR. BUCK: Mr. Chairman, speaking on the point of order, having sat in on the committee meetings . . . [interjections] Did you jerks have 100 per cent attendance?

SOME HON. MEMBERS: Withdraw.

DR. BUCK: Never mind the withdraw. There are four of us here. We have obligations. If you had 100 per cent, we'd have 100 per cent. Let's not get funny. Where's the Premier? Where's the number one boy?

MR. CHAIRMAN: Would you get to your point of order, please.

DR. BUCK: Mr. Chairman, we have listened to representations to this committee. There have been representations supporting Bill 44; there have been representations on the opposite side completely. We have heard people making representations to this committee who said they had no opportunity whatsoever to consult with the Minister of Labour; they had no input whatsoever. We have heard that in this committee.

What we want to know is, will the minister produce the papers on which he made his decision? The rules are set down in the rules of this Assembly and the House of Commons. We are asking the minister and the government to follow those rules and present those papers. That's what we are asking. If the government wants to make rules because of its overpowering majority and not follow the rules of the Assembly that we operate under, they have that power. But they will have to explain to the people of Alberta and the people of Canada how they can circumvent the rules and bend them any way they want because of their overwhelming majority.

Mr. Chairman, the rules are very clear and obvious. The committee has the power to ask for those papers, and that's what we are asking for.

MR. KING: Mr. Chairman, I can't resist the opportunity to make a brief comment about this, if only to draw to the attention of hon. members the fact that while we certainly use common parliamentary authorities in one House or another, we are all supposed to remember that the standing orders and indeed the practice are not precisely the same in all houses, notwithstanding the fact that we use *Bourinot* or *Beauchesne*.

I would like to remind the hon. member that the annotation is very, very precise. It says:

> A committee, either select or standing, has no power to send for any papers unless authorized to do so by resolution of the House.

Personally, I think that's fairly straightforward. It also says:

> For this reason every motion for the appointment of a select committee provides that it will have power to send for papers or records

That's an interesting comment on the motion as it is made in the House of Commons in Ottawa. Unfortunately, the motion isn't quite the same in this House. I happen to have it in front of me, because I was the one who moved it:

> Be it resolved that the report of the special committee appointed March 10, 1983, under Standing Order 46, be received and concurred in and that the committees recommended therein be hereby appointed.

You will notice that resolution fails to provide that the committees can order documents or compel the attendance of witnesses. [interjections]

MR. NOTLEY: So we'll have useless committees.

MR. KING: I'm only making the observation . . .

MR. NOTLEY: This should be 1984, not 1983.

MR. KING: . . . that the resolution in this House is not the resolution of the House of Commons in Ottawa, upon which *Beauchesne* and *Bourinot* comment. No resolution gave that direction to this committee.

Another annotation is equally explicit, I think.

MR. NOTLEY: Give the number. Have you got the right issue of *Beauchesne* this time?

AN HON. MEMBER: It wouldn't make any difference to you, Grant.

MR. NOTLEY: Let's all have the same one. [interjections]

MR. CHAIRMAN: Order please. Would you please direct your remarks through the Chair.

MR. KING: The annotation, in the fifth edition of *Beauchesne*, is 621:

> (1) A committee can only consider those matters which have been committed to it by the House.
>
> (2) A committee is bound by, and is not at liberty to depart from, the Order of Reference.

And it goes on.

As the hon. Government House Leader has made the point, the directions of the House to this committee were to provide an opportunity for representative, province-wide organizations and groups in existence to make written submissions to the standing committee, and subsequently to make oral presentations.

I might argue that if this resolution had been made on the first day of hearings as an aid to asking questions, it might more arguably have been in order at that time. But I'd argue that it is clearly out of order when the entire terms of reference of the committee have been fulfilled. There are no more written submissions or presentations to consider or people of whom to ask questions. I'd argue that it's out of order.

Nevertheless, I might also make the observation that if somebody asked for unanimous consent to vote on the resolution, notwithstanding the fact that it appears to be out of order, we could dispose of it quickly that way.

MR. NOTLEY: Mr. Chairman . . .

MR. CHAIRMAN: I hesitate to interrupt the hon. member, but this could go on for a long time. [interjections] Would the hon. member please take his seat.

MR. NOTLEY: On the point of order, Mr. Chairman. With respect to 621, I think we should read that very carefully, and members should have it in front of them.

> A committee can only consider those matters which have been committed to it by the House.

That's correct. We are not suggesting the mandate of the committee is going to be changed. What we are suggesting is that we solicit or order the production of papers from the government. That is quite a different thing from enlarging the mandate of the committee itself which is presented to the House. It is a request for additional information.

If the hon. Minister of Education wishes to observe, I note as well that that citation from *Beauchesne* makes particular reference to *Bourinot*. Because that is true, we then must look at the reference in *Bourinot*. It is very clear, Mr. Chairman:

> Unless contrarily ordered by the House, they may send for persons, papers, and records . . .

If one looks at 621, there is no question that the request for additional papers is in order. Now, whether or not the government wishes to comply with it is up to the government. But it is clearly in order.

MR. CHAIRMAN: I'm going to make a short statement. I've listened to both sides of this argument for some time. As Chairman, in my opinion the motion is out of order. I make the decision on the fact that we had our criteria laid down in Motion 13, that all documents that have been received by this committee have been tabled in the Legislature. Every appointment that was made with us and all the briefs have been tabled. Any material we have had has been tabled here to the members. As Chairman, I believe we have fulfilled all the criteria laid out in Motion 13, the only authority which we have. So I rule the motion out of order.

MR. R. SPEAKER: Mr. Chairman, I'd like to move that the decision just made be appealed to the Speaker of the Legislature.

MR. CHAIRMAN: There is no appeal to . . .

MR. R. SPEAKER: Mr. Chairman, I'm sorry. I amend my earlier motion to ". . . be appealed to the Legislature as a whole".

MR. CHAIRMAN: That appeal is acceptable. At that point, the Chairman and Vice-Chairman are to leave the Chair and recall the Legislative Assembly.

[The committee reconvened at 6:51 p.m.]

[Mr. Clark in the Chair]

MR. CHAIRMAN: First, I have to call the committee to order. Is there a motion for adjournment of the committee?

MR. NELSON: I move the adjournment of the committee, Mr. Chairman.

[Motion carried]

[The committee adjourned at 6.52 p.m.]