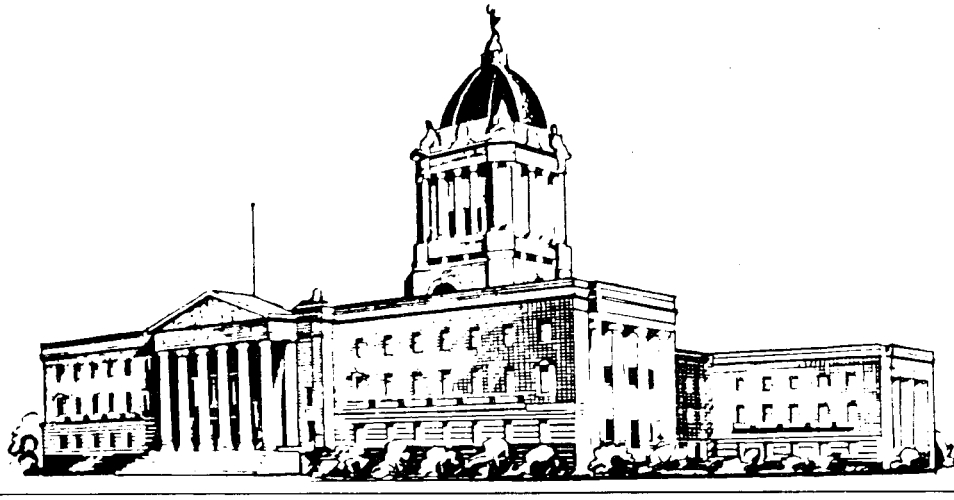
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

Chairman
William Jenkins, M.L.A.
Constituency of Logan



10:00 a.m., Tuesday, March 2, 1976.

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THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON INDUSTRIAL RELATIONS
10 a.m., Tuesday, March 2, 1976

CHAIRMAN: Mr. William Jenkins

MR. CHAIRMAN: Order please. Members of the committee please come to the table.

The next delegation is Mr. John Huta, Injured Workers Association. Do you have copies of your brief?

MR. JOHN HUTA: Yes, I gave them to the Clerk yesterday.

MR. CHAIRMAN: I am having them distributed, fine, thank you. Proceed, please.

MR. HUTA: Mr. Chairman, first of all I would like to refer that I am not only a one-man organization as it has been stated but in order to prove, I am filing cards of our membership.

Mr. Chairman, Honourable Members of the Industrial Relations Committee, Hon. A. Paulley and guests. The Injured Workers Association of Manitoba, Inc. thanks the government for realizing that amendments to the Workers Compensation Board are drastically in need to update the Act of 1916, and also we thank those who support this.

Upon opening of our presentation to this committee which the government has called to discuss the proposed changes to the W.C. Act, which Mr. Paulley feels that some changes of a technical nature are required, we would like to extend our appreciation of having this opportunity to express our concern to those whom we represent.

Mr. Paulley is talking of only technical changes; this Association feels that not only technical changes are needed but a complete overhaul of the W.C. Act is drastically needed. When we say drastically needed, we don't only say to look at them but something should be done in the very very near future. We have lived long enough on technicalities. We cannot no longer abide by the 1916 Act which were the "dark ages", we have to live and abide by the "modern day society" and not the days of 1916.

We appreciate some of the changes that were brought forth through legislation but that is not adequate enough. We appreciate that Mr. Paulley is thinking and states that changes are required. Talking and thinking is not good enough, something must be done to improve the living conditions and the unjust treatments which the injured workers are receiving; these changes are long overdue. We must think of the present day and let us forget the days of 1916.

We wish to comment on the attitude of the unions in Manitoba towards the type of legislation brought in by our government. Just as Mr. H. L. Stevens, president of the Manitoba Federation of Labour told before 300 unionists at a convention held in Thompson, Manitoba on Friday, September 27, 1974, quote, "It makes us wonder what kind of a government we have." We are of the same opinion because the injured workers have been forgotten completely.

It certainly isn't enough that we should rest satisfied with the present legislation relating to the W.C. Act. We give full credit for the legislative improvements to date but we must continue to apply pressure on the government for more and more adequate changes. Our comment to Mr. Hans J. Whittick of the United Steelworkers who has brought to the attention of all unions before the convention in Thompson, Manitoba that when Mr. Schreyer spoke in the 1970 convention he received a standing ovation and when the Premier said, "Don't think you are going to get everything you want. You're going to have to stand up and fight for it." Well, Mr. Schreyer and Mr. Paulley, we are going to stand up and fight for what we feel is right. We support the Manitoba Federation of Labour 100 percent and we will continue to work hand in hand with the union locals and the Manitoba Federation of Labour for any changes that are required.

In spite of the legislation, the most critical aspects have not received their due. These are:

1. Permanent partial disabilities under 10 percent are not entitled to any increases, Section 31.1.;
2. Access to claimant's own complete file;
3. Medical reports are privileged communication, Section 52.2;

(MR. HUTA cont'd) . . . . .

4. Pre-existing conditions prior to July 1, 1972 not covered under the Act, Section 34.1(1), should be retroactive;

5. Appeal procedure;

6. Access to courts similar to New Zealand and Great Britain upon point of law and jurisdiction;

7. Civil rights similar to Ontario in March 1972;

8. Neurosis and psycho-neurosis to include emotional distress which is caused by a direct result of the injury;

9. Retraining and rehabilitation program similar to Ontario;

10. W.C.B's decision should not be final and conclusive but should be open to question and review;

11. Advisory Board as promised;

12. Handicapped should organize and bargain for themselves. Lack of financial assistance.

Mr. Paulley has brought in legislation in 1972 and 1974 in regard to the disability pensions. He feels that he has done wonders for those who have been injured through industrial accidents but let's face it, on paper it looks terrific, and just at this time I would like to bring to Mr. Paulley's attention that in May, 1974, the MLAs received 50 percent increase to a range of $14,000 from $9,600 and an additional $2,400 for expenses. Here he gives 8 percent to 25 percent increase to injured workers to whom the board feels merit due. Certainly it is in the right direction but let us be a little more realistic, we all know it is far from being adequate. If the workman received nothing from the body corporate (WCB) and 25 percent of nothing is still nothing. But at the same time, Mr. Paulley has completely forgotten about those injured persons who received under 10 percent, they are not entitled to any increases whatever, how could this be justified. The cost of living for partially disabled persons is getting higher and higher. We feel that their pensions should be increased on the same scale as others so that their income may remain stable instead of getting smaller and smaller as the pay scale rises. If Mr. Paulley wishes to bring in proper legislation to rectify this serious situation, then he will have to be bold enough to accept the criticism.

Whenever the workman asks the board to review his/her case, the board always states the workman needs new medical evidence. In 1972 by changing Medical Board of Reference to Medical Review Panel, this has not helped the situation, it has only made matters worse, because now we could not use the old medical evidence which were in our favour supporting the worker. Now the board will not review the case unless new medical evidence are produced each and every time we want a case reviewed. We believe Mr. Paulley does not realize the end result. This starts the bad doctor-patient relationship. The doctors do not appreciate the worker bothering him for new medical evidence. They are too busy to make new reports each time. It is our contention that there be a better liaison between the W.C.B. and the medical profession in respect to claims of the injured workers.

Also, we would like to bring to the committee's attention the Section 52.2 of the Act which describes medical reports are privileged communication of the person making or submitting the same and unless it is proved that it was made maliciously is not admissible as evidence or subject to production in any court. At the same token, it would be most difficult to prove that the report was made maliciously unless the workman was permitted to see it. Therefore, we feel that the Manitoba Government should introduce and pass legislation to allow the claimant or his/her designated representative to have access to the complete file when preparing appeals to unfair settlements and decisions of the board.

I would like to quote Mr. McRuer's recommendation on the administration of the Workmen's Compensation in Ontario on the Right to Know: "Under the current appeal system information regarding the case is not made freely available to all who need it. A 'Summary of Evidence' including a medical summary is made available to parties involved in each case. On an informal basis, in fact a selective basis, the complete file including medical reports may be made available to an appellant's representative (his union, representative, doctor or lawyer) if W.C.B. personnel feel the privilege will not

(MR. HUTA cont'd) . . . . . be abused, that is if the representative is deemed to be a responsible person. In our opinion, selectivity is indefensible.

"In addition, in Regina vs. Workmen's Compensation Board, ex parte Kusyk (1968) 2 o.r. 337, the Ontario Court of Appeal observed at Page 340 of the report that the board advised counsel for a claimant 'that it was its policy to make medical reports available to the injured workman's attending doctor' and if he sees fit to make that available to the man of course that is beyond the board's jurisdiction and some doctors do this. But this is another example of selectivity which depends on chance and on who the appellant happens to know.

"We believe it is a matter of basic right that each appellant in the words of Mr. McRuer should be entitled to know on what material a decision involving his right is based. The current practice of keeping the appellant ignorant of relevant facts regarding the case cannot in our opinion be sustained on any justifiable grounds. We agree with Mr. McRuer's opinion that the section of the Act which describes medical reports 'to be a privileged communication of the person making or submitting the same, and unless it is proved that it was made maliciously, is not admissable as evidence or subject to production in any court in an action or proceeding against such person,' is unclear.

"Mr. McRuer goes on to say, 'if it was only intended that physicians, hospitals, nurses, dentists, drugless practitioners, chiropodists, and optometrists should be safeguarded against actions for malpractice the statute could well have been framed to say so in clear terms.

"We do not question the right of a professional man making a report to the board without negligence and in good faith to the protection the law affords him. But we ask the question: Why should a member of the enumerated professions be protected against actions based on negligence with respect to reports to the board while they are not protected in making a report to the patient or his insurance company? The exception in this section 'unless it is proved that it was made maliciously' is not very meaningful. It would be most difficult for a workman to prove that a report was made maliciously unless he was permitted to see it.

"Mr. McRuer goes on to say, 'We agree that it fails to effect the intention of the McGillivary Report. Medical reports should be made available and the section should be redrafted to give the protection to the authors of the reports that against vexatious claims but that otherwise they be made available to the affected parties'."

The board instead of dealing with the original injury and the recurrence of the injury have formed a habit of assigning new claim numbers so that the worker, the attending physician and everyone concerned is confused over the whole situation and the body corporate takes advantage of the situation by claiming it has no bearing on the original injury and claim it is a "pre-existing condition". Certainly it is pre-existing as far as the recurrence of the injury is concerned, because it has arisen from the original injury which the board had originally approved.

If the man was injured through an automobile accident, crimes accident, or even armed forces, in case of back injury or some other injuries which would lessen his earning capacity, the man would receive and be recognized as an impairment of earning capacity and would receive 100 percent pension or pension which would assist him in his financial burden. Therefore, we strongly recommend that when a worker sustains a permanent disability all these factors should be taken into consideration and recognized as an impairment of earning capacity and should receive 100 percent of wages paid to all injured through industrial accidents.

Where a worker has been injured and is later awarded a permanent partial disability pension, the mere fact of the disability existing discriminates against him in all cases, in advancing to positions which would normally be awarded regardless of the nature of employment. Therefore, we feel that this is an area in which the worker also suffers from loss of income.

In July 1972, Mr. Paulley had introduced and passed legislation to cover the "pre-existing conditions" but this legislation does not go far enough in order to cover all "pre-existing conditions" which the board has ignored to recognize prior to this legislation Section 34.1(1) of the Act should be amended so that all claims become retroactive to the date of the original compensable injury and benefits be based upon potential earning

(MR. HUTA cont'd) . . . . . capacity at the time of the original injury taking into consideration the present earnings of the individual with cost of living adjustments considered.

The provisions for appeal within the Act are inadequate and legislation does very little to rectify the problems. Dissension of the board arises out of the medical advice received from the medical officers of the W.C.B. Often this advice is taken in evidence as expert opinion whether or not it is supported by the attending physician, by data or is in agreement with general medical knowledge. The W.C.B. thus circumvents the Intent and Spirit of the Act by being both prosecutor and judge. Ultimately, the medical opinion, such as it may be, ricochets back for review and ruling to the board that perpetrated in the first instance.

There is a need for fairness. This suggests that an appeal system should be flexible and ensure equitable treatment to all claimants. There should be assurance that all evidence are available to the claimant and his representative and that it is properly reviewed and examined. The complete file should be made freely available to the claimant. This also applies to information regarding both appeal rights and procedures, and the availability of the complete file. The matter of basic rights that each claimant is entitled to know on what material a decision involving his/her rights is based. The current practice of keeping the appellant ignorant of relevant facts regarding the case cannot be sustained on any justifiable grounds. We feel that the "burden of proof" is the board's responsibility to show contrary and not the claimant, and if there is any doubt, the benefit of the doubt should be given in favour of the injured person.

This is what Mr. McRuer has to say in regard to the appeals. "We are aware of a number of instances in which the rights of appeal have not been completely understood by appellants. This is not necessarily the result of any negligence on the part of the W.C.B. but is perhaps symptomatic of the poor quality of the W.C.B.'s external information program. Form letters, which do not always reach the potential appellant, containing standard phrases are insufficient to meet all information needs in this area. No time limitations should be placed on the launching of appeals. The objective of appeal hearings should be in a satisfactory and fair settlement.

"In the case of the initial adjudication of claims, we emphasize that fairness in the appeals process demands the recognition of the cosmopolitan nature. Appellants whose first language is other than English should not be subject to penalty or mistreatment. The board now has exclusive jurisdiction under the Act."

We feel that the case should be dealt on the real merits and justice of the case. Section 51(4).

Section 51(1) of the Act gives the board exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this part and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the board, and the action or decision of the board thereon is final and conclusive and is not open to question or review in any court. We feel that the decision of the board thereon should not be final and conclusive but should be open to question or review in any court and the proceedings by or before the board should be restrained by injunction, prohibition or other process or proceedings in any court, and is removable by certiorari or otherwise into any court.

This is what Mr. McRuer has to say in respect to courts: "The board now has exclusive jurisdiction under the Act. The section states in part: '. . . and the action or decision of the board thereon is final and conclusive and is not open to question or review in any court and no proceedings by or before the board shall be restrained by injunction, prohibition and other process or proceeding in any court or be removable certiorari or otherwise into any court.' The only exception to this as McRuer has pointed out is that statutory provisions of this sort we have just quoted do not necessarily prevent access to the courts to determine questions of ultra vires.

"Administrative tribunals are clearly effective and low cost delivery mechanisms but equally clearly their power should not be absolute. We believe the courts should play a role in the areas of law and jurisdiction.

"We support Mr. McRuer's recommendation which stated, 'Where compensation is refused on the grounds other than a question of disability, the board should be empowered to state a case for the opinion of the Divisional Court of the High Court of Justice on any

(MR. HUTA cont'd) . . . . . question of law. The claimant should have the right to apply to the court for an order directing the board to state a case if it refuses to do so.'

"We note the opportunity to seek the opinion of the high court on troublesome questions of law or jurisdiction is one that has been conferred very widely upon Canadian tribunals. It is, however, usual to provide in addition an alternate means of obtaining the court's opinion to provide for cases in which the tribunal refuses to state a case and one or the other of the parties feels strongly that the opinion of the court should be sought. We believe that the McRuer recommendation should be expanded to provide for an appeal to the divisional court of the high court of justice at the instance of a party against a decision of the board upon a point of law or jurisdiction. The board should be authorized to state a case for the opinion of the court either at the request of a party or on its own and furthermore an appeal is provided against a decision at the instance of a party on a question of law or jurisdiction.

"The provision of this kind of access to the courts is, of course, contradictory to clauses such as the one providing that the decisions or action of a tribunal shall not be open to challenge or review in the courts. The 'privative' clause should accordingly be amended so as not to contradict opposed sections of the Act that would provide for access to the courts either by way of a stated case or an appeal on the restricted grounds that have been previously stated."

In March of 1972 the Province of Ontario introduced and passed new civil rights to protect all people of Ontario and that they may appeal any decision of any board, tribunal or commission in any court of law.

New Zealand and Great Britain have provisions available through the W.C. Act to claimants that they can appeal decisions of any board, tribunal, commission in any court of law. Furthermore, the claimants are paid full compensation benefits during the court procedure. Therefore, we feel that Manitoba should follow same and update their W.C. Act and the civil rights program to meet the needs of our modern day society.

Neurosis, psycho-neurosis and emotional distress usually results after an injury affecting the worker and family problems result because the W.C.B. denies the claimant compensation benefits, unable to find or hold a job due to physical disability which is all contributed by the accident and the three factors mentioned above play a very large role in the claimant's life.

We feel that provisions within the Act should include neurosis and psycho-neurosis as diagnosed, caused by the anxiety of being physically injured, unemployed and unable to support the family. It should also apply to situations where the mental disorder has been caused by job tensions, family problems, and the inability to obtain or maintain employment due to a physical disability.

There should also be consideration given to a worker's life expectancy, general damages, pain, suffering, loss of wages, chances of advancement he would normally have had had he not been injured, disrupting his normal everyday activities.

Furthermore, mental, emotional and physical ailments are so closely interrelated and it is very difficult to differentiate among them. Such claims should be made retroactive to the date of the original compensable injury and the compensable rate based upon potential earning capacity of the present time.

The fact remains that just because the doctors cannot find the cause of a problem, particularly in the area of back injuries, does not mean that there is nothing wrong or there is no injury. Medicine, as a profession, does not have the answer to all the ailments that people bring before them. Advances are being made in medicine as in other fields every day and someday they may have the answer and find the causes of the medical problems that the injured workers come to them with only to be told they could find nothing wrong or that it is all in your head.

What really distresses us is the fact that a worker can produce a whole body of evidence and yet he cannot prove it - "so he's like the other unfortunate gentleman in that his diagnosis will be proved on the autopsy table." We contend that the mental, emotional and physical ailments are so closely connected that we are sure that most doctors would find it difficult to be able to separate them and these three factors have a relation to the injury.

We feel that there is no reason on this earth in this day and age, democratic

(MR. HUTA cont'd) . . . . .country, high cost of living, why the worker who has been injured through industrial accident, that they should be discriminated. We feel that every worker who has been injured should receive similar cost of living adjustments as federal and provincial employees who are still active in the labour field.

In our opinion most injured workers are unable to return to their former type of employment after an accident due to physical impairment. They lack the skill, education and command of English language which would enable them to function effectively in a less menial job. This association supports the right of each injured worker to be truly rehabilitated so that they can obtain employment wherein they can function at their maximum capacity.

We hereby request the Manitoba Government to approach the Research Department of the Department of Education together with the Rehabilitation Department of the Workers Compensation Board, to study the educational needs of injured workers with a view to recommending, if deemed advisable, the creation of practical jobs and language training programs which would upgrade the skills of injured workers and enable them to function effectively in our society. And may I add to this that they have this program in Toronto, Ontario and it has been proven very effective.

The Trade and Labour Unions are in full support that the handicapped be encouraged to organize and bargain for themselves. In order to organize properly and work efficiently, we need financial assistance to help those who depend on our services, which are unique and not done by any other organization.

We feel that the Manitoba Government should help us organize properly and work efficiently by supporting us financially in order we may fulfill our endeavours by helping those who depend so much on our service.

Upon conclusion of our submission, we would like to mention that the Injured Workers Association feels that it is very important to injured workers, as well as to the whole labour force in this Province of Manitoba, to have the Minister of Labour examine all aspects of the working conditions, the recourse to appeals, periodical payments on permanent partial disability during lifetime of the workman as though he had not been injured, and to see that the body corporate carries out the proposed Act, consider the workers life expectancy, general damages, pain, suffering, and emotional distress, recurrence of an injury and permanent partial disability discriminates against advancing to positions which would be normally awarded, pre-existing conditions which do not go far enough to be retroactive to the date of the original compensable injury, access to medical evidence and complete file at the W.C.B., the right of action to courts, and the cost of living bonus, plus assistance (financial) to the handicapped so that we may fulfill our endeavours by helping those who depend so much on our unique service. Also, we would like to mention that we feel we have many legitimate grievances and we believe that the Minister of Labour has a responsibility to sit down with us and listen to our grievances and try to help us work out our problems.

Also, that the Minister of Labour should equally represent the employer and employee and to equally consider the injured workers who have been in the labour force but now are physically disabled as well as those who are presently in the labour force, and the public must keep in mind the relative insignificance of the amount paid to the injured workers of industry.

We strongly emphasize that something should be done in the very very near future, if not in the coming session, to alleviate the serious problems which the injured workers have to face and cope with in this day and age. Keep in mind we are not living in the dark ages. We appreciate your effort and concern but the time has come where the complete overhaul of the Compensation Act is drastically in need. Let us be in step with other provinces and countries. This association feels that if other provinces and countries can have why cannot Manitoba have it. Don't have them call us "Sleeping Manitoba."

In reference to the article in the Winnipeg Free Press of October 12, 1974 on Page 17 made by Mr. Stanley Knowles, quote: "Also the escalation formula should be tied to a measurement of the standard of living rather than just costs, to ensure that the standard of living of older people rises rather than remaining at the level it was at the time of retirement." We feel that similar escalation formula should be implemented in the W.C. Act to ensure that the standard of living of injured people rises rather than remaining at the level it was at the time of the accident. Thank you.

MR. CHAIRMAN: Thank you, Mr. Huta. There may be some questions some of the members of the committee may wish to ask. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, through you to Mr. Huta. Mr. Huta, you have placed quite an emphasis in your presentation on the lack of a right of appeal from decisions of the board as you see it and you request access to the courts in an appeal procedure of that kind. I would like to ask you, do you not think or suspect that perhaps that kind of freeing up of the appeal procedure might work as much to the disadvantage of a compensation claimant as to his advantage; in other words, would not the parties opposing the injured worker's claim be in a position also to seek that kind of recourse of appeal and be able to bring to bear perhaps because of their financial position a stronger legal advice and a stronger battery of legal support than the injured workman could do.

MR. HUTA: Well, Mr. Chairman, I believe that the right of appeal to the courts should be on the same basis as New Zealand and Great Britain where the compensation board is paying the claimant full benefits during this court procedure. We haven't heard - in fact we have the Act from New Zealand and nowhere in the Act it says. . . points that through wage the difficult appeal system is put in New Zealand and they claim that once this is set up in the Act that not too many cases go up to the fourth point of appeal. And the four points that they stress on are,independent appeal board that's the first one, and then access to the courts if aggrieved by the board's decision - no, pardon me, in New Zealand and Great Britain, they have, first of all, the hearing officer, then it goes to the accident compensation appeal authority, and if it is still not satisfactory then it goes to the appeal of the Supreme Court. And the fourth one is Court of Appeal, and that is final.

We here in Manitoba, we have nothing. Once it is turned down by the board we have got no place to turn. Their decision is final and conclusive and is not open to any review and all we feel that on cases such as this where law and jurisdiction comes in, this is where we should have access to courts; but on a very minor case, no, I feel that it shouldn't be, only on cases where there is no access to anything else, after you have used all your avenues, there is nothing else left.

MR. SHERMAN: One other question, Mr. Chairman. You emphasize, Mr. Huta, the seriousness of problems of neurosis and psycho-neurosis developing after a man or woman is injured industrially. Are you suggesting in your brief that you believe that the injury - providing the injury is compensable - that the injury should be compensable and then that over and above, on top of that, that any psycho-neurosis developing as a consequence of that injury should be additionally regarded as . . .

MR. HUTA: No, it should be included in the same . . . don't think that we are asking for something that we are not entitled to. All we are asking is for justice and have the case dealt with upon the real merits and justice of the case. And if it comes that neurosis and psycho-neurosis are as a result of that injury, no, I don't think that the claimant should receive additional; all these factors should be taken into consideration and the pension based upon those factors as diagnosed by the doctors.

MR. SHERMAN: Okay. Thanks, Mr. Chairman.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: I have a couple of questions, Mr. Chairman. Mr. Huta, how many members have you . . .

MR. HUTA: Over five hundred.

MR. McKENZIE: Five hundred? And do you meet regularly or . . .?

MR. HUTA: We have general meetings four times a year.

MR. McKENZIE: In the Speech from the Throne, it was mentioned in there that there would be certain changes to the Act this session, have you had any input into it, have you any knowledge of what these proposed changes would be?

MR. HUTA: No.

MR. CHAIRMAN: Any further questions? Hearing none, thank you, Mr. Huta. I call on Mr. Morley Vinsky, private citizen. Mr. Vinsky here? Mr. William Ridgeway. Mr. Ridgeway from the Manitoba Government Employees Association.

If all the briefs have been distributed, would you proceed, Mr. Ridgeway, please.

MR. RIDGEWAY: Very good. Mr. Chairman and gentlemen, we have to make a submission to you regarding the situation of collective bargaining affecting the largest bargaining unit in the Province of Manitoba, which is the employees of the Province of Manitoba.

(MR. RIDGEWAY cont'd)

In presenting this brief at this time, we are cognizant of the fact that you have requested interested parties to present submissions concerning all aspects of existing legislation in the area of labour relations. In particular, you have requested that interested parties express their particular concerns with regard to problems, as they see them, in the existing legislation and changes that should be made thereto. As the recognized bargaining agent for a majority of the employees in the Civil Service, the Association wishes to put forward for your consideration a number of proposals for changes in existing legislation as it affects collective bargaining in the public sector in Manitoba.

For the reasons that will be hereinafter set forth, the Association respectfully submits the following:

(1) That the Civil Service Act and amendments thereto be repealed in its entirety, thereby making all terms and conditions of employment in the Civil Service negotiable and subject to the normal collective bargaining process.

(2) Concurrent with but not before the repeal of The Civil Service Act, Section 4(3) of the Labour Relations Act and amendments thereto be amended by deleting the reference therein to the Civil Service Act.

The purpose of recommending these changes is to bring labour relations in the Civil Service completely under the Labour Relations Act. In other words, the same law that governs labour relations in the private sector and in some areas of the public sector would now apply to the Civil Service in its entirety.

By implementing these proposed amendments, the following results would be achieved:

i) Employees in the Civil Service would continue to bargain through the Association which would retain the status of bargaining agent as long as its membership included a majority of employees within the scope of the bargaining unit. Of course, if the majority of eligible employees ceased to be members of the Association the provisions of the Labour Relations Act would apply and a new bargaining agent could therefore be certified, if it was the wish of the requisite number of employees.

ii) Compulsory arbitration would no longer be the only method open to government and its employees bargaining agent to resolve contract disputes, but the full range of rights under the Labour Relations Act would be made available. This would include the right to seek the assistance of a conciliation officer during negotiations, the right to choose voluntary arbitration for mutual agreement of the parties, and the right to strike and/or lockout.

iii) The numerous restrictions contained in the Civil Service Act as to the items which are not considered negotiable in the present collective bargaining procedures would be removed. This would allow for full collective bargaining on behalf of the Civil Service as is now the case in the private sector, with the result that the bargaining process would become meaningful and realistic.

Where basic changes are sought in legislation they usually result, for the most part, from a dissatisfaction with the status quo. The changes that are proposed by the Association in this brief are no exception and it is therefore important at the outset to review and understand the present structure of collective bargaining between the Association and the Government and what are, in the view of the Association, the deficiencies in that process.

At the present time, the Association represents most employees in the Civil Service under and by virtue of the provisions of the Civil Service Act. Section 2(1)(c) of the Act provides as follows:

Association means the Association commonly known as the Manitoba Government Employees Association as long as its membership includes a majority of those persons

i) to whom the Civil Service Superannuation Act applies; and

ii) who are employed under this Act; or, are employed other than under this Act in or under a department or branch of the executive government of province, not including any agency of the government; or, where the membership of the Association commonly known as the Manitoba Government Employees' Association does not include a majority of such persons, means that association or such other associations or organization representing the members of the Civil Service.

(MR. RIDGEWAY cont'd)

For the past number of years the Association and the Government have entered into agreements now known as the Government Employees Master Agreement and with attached occupationally related sub agreements. This agreement and its sub agreements cover all employees of the executive Government of Manitoba who are regular, term or departmental employees but does not cover any contractual employees due to the fact that they are not employed under the Civil Service Act. With respect to a number of crown agencies and crown corporations, the Association is either the certified bargaining agent or is the voluntarily recognized bargaining agent. These crown agencies include: Certified under The Labour Relations Act, The Manitoba Liquor Control Commission, Manitoba Public Insurance Corporation, The Agricultural Credit Corporation, Manitoba Centennial Centre Corporation, Winnipeg Regional Housing Authority, The Manitoba Crop Insurance Corporation, Milk Producers Marketing Board. And voluntary recognition, as the bargaining agent for The Manitoba Vegetable Producers Marketing Board.

The Government Employees Master Agreement covers approximately 13,000 employees. Therefore, the Government of Manitoba is the largest employer within the province and the Association is the bargaining agent for the largest bargaining unit in Manitoba.

While the Association and the government have been able to conclude collective agreements covering employees in the Civil Service in the past few years, the Association wishes to emphasize that The Civil Service Act does not guarantee that employees in the Civil Service will be granted the protection of a collective bargaining agreement. Section 47(2) of The Civil Service Act provides that the government may carry on negotiations with the association with a view to entering into a collective agreement. The legislation is therefore permissive and not mandatory. Section 47(2) of The Civil Service Act reads as follows: "With a view to entering into a collective agreement between the government and the association, the person authorized may carry on, for and on behalf of the government, negotiations with the association or members thereof authorized to carry on the negotiations for and on behalf of the Association, respecting compensation for employees, including the establishment of pay ranges for new classes of employees and the adjustment from time to time of pay ranges for existing classes of employees, and respecting working conditions of employees."

Accordingly, under the legislation as it presently exists, it is open to any government in power not to enter into negotiations with the association or any other bargaining agent that may be recognized at that time. While the political ramifications of a decision of this nature might deter any government taking that position, the fact remains that employees in the Civil Service cannot compel their employer to bargain as can employees covered by The Labour Relations Act. Under The Labour Relations Act, once a union is certified, the union has the exclusive right to bargain on behalf of the employees in the bargaining unit and upon being given ten clear days notice the employer must negotiate in good faith with the union in the attempt to reach a collective agreement. Why should employees within the Civil Service not be afforded this right as, for example, their confreres who are employees of the Manitoba Public Insurance Corporation.

Perhaps one of the most serious defects in the present collective bargaining relationship between the government and the association is the severe restrictions contained in the Civil Service Act as to what items are negotiable between the parties. Many important matters affecting the terms and conditions of employment of civil servants are not subject to the collective bargaining process but remain in the exclusive discretion of management - the government. The application of the merit principle in the appointment, transfer, promotion, lay-off or release of employees, the establishment of a classification plan for all positions in the Civil Service, and the selection of personnel are all matters that come within the exclusive discretion of the employer. These matters are subject to negotiation in normal collective bargaining relationships. Specific mention should be made of the following items: Classification and Pay Plan - Section 7(1) of The Civil Service Act provides that the Civil Service Commission shall make regulations establishing a classification plan for all positions in the Civil Service and may amend the plan from time to time. In establishing the classification plan the Civil Service Commission is to have regard to the duties and responsibilities for each title or classification. Section 8(2) of The Civil Service Act provides that the standards for the classification of positions is to be

(MR. RIDGEWAY cont'd) . . . . determined solely by the nature of the duties and responsibilities in each position and shall not be altered for the purpose of adjusting rates of compensation. While the establishment of a classification structure may have traditionally been regarded as a management right, more enlightened employers and unions are negotiating this particular area and we submit that government should recognize this trend.

At the present time, unless the matter goes to binding arbitration, the association and the government mutually agree to a pay plan which is incorporated into the Government Employees Master Agreement. There is no protection given to civil servants that their bargaining agent will, at all times, be able to bargain wages. This ultimately depends on the willingness of the government of the day to enter into such negotiations, but if the government chooses to do so, it may establish a pay plan unilaterally. Section 10(1) of The Civil Service Act provides that: "The Lieutenant Governor in Council may make regulations establishing a pay plan for employees in the Civil Service; and may likewise make regulations amending the pay plan as may be required." Section 10(2) provides that: "The commission may make, may amend, regulations covering the administration of the pay plan established under subsection (1)."

More importantly, the pay plan is negotiated after the government appointed Civil Service Commission has determined the classification structure. In this particular matter, the association has no say. The government may also amend the classification plan at any time by changing job descriptions for an existing classification or by adding a new classification. Accordingly, the particular wage structure that the association and the government mutually agree upon at the time of negotiations for an existing position in the classification structure may become meaningless in view of the fact that the government may amend the job description, duties or responsibilities of such positions during the term of the collective agreement. In other words, the basis upon which the wage rate for a particular classification was negotiated is undermined and becomes rather meaningless in view of the fact that such an important matter as job classifications and job descriptions may be amended at any time by the government - the employer. Such issues clearly should be bargainable at the outset of negotiations.

Appointment, Promotion and Transfer. Section 13(2) of The Civil Service Act provides in part as follows: "Selection for appointment, promotion or transfer to a position shall be based on merit, with a view to developing a civil service comprising well qualified personnel with abilities, skills, training and competence required to advance from the level of initial appointment through a reasonable career consistent with the type of work in the classes of positions pertinent thereto."

Section 13(3) provides that, with regard to appointments, promotions or transfers, the employer appointed Civil Service Commission shall determine merit through competitive examinations which may take one or more of the forms enumerated in that section. The question of promotions and transfers within a bargaining unit is regarded as one of the most important items by bargaining agents in negotiating a collective agreement. The extent to which seniority should be a governing factor in such matters as transfer or promotions should be an issue that is completely bargainable.

Terms and Conditions of Employment. Section 57(1) of the Act provides that the Civil Service Commission may make regulations for carrying out the provisions of The Civil Service Act. In this regard, the Commission is empowered to enact regulations relating to:

(a) Hours of work of employees in the Civil Service;

(b) Prescribing holidays and regulating vacation, sick leave and leave of absence that may be granted to employees;

(c) Establishment of a classification plan and specifying the qualifications for and the duties and responsibilities of each class of positions set out in the plan;

(d) The administration of pay plans;

(e) Prescribing forms to be used for appointment, transfer, promotion or reclassification of employees;

(f) Payment of additional remuneration to employees and the granting of compensatory leave or other benefits to employees for work done beyond normal hours of work;

(g) Safe working conditions for employees;

(h) Programs providing for incentive awards for employees;

(MR. RIDGEWAY cont'd)

(i) Prescribing the amount and nature of leaves of absence that an employee may be granted for educational purposes and the nature and amount of expenses and remuneration therefor;

(j) Respecting the reimbursement of employees for loss of or damage of personal effects lost or damaged as a result of their employment in the Civil Service.

While many of the items enumerated in Section 57(1) are already covered by the collective agreements in force between the government and the association, there is no question that any statutory enactment or regulation supersedes the provisions of the collective agreement as it presently stands. All of the items enumerated above are clearly subject to collective bargaining between the employer and the bargaining agent, under The Labour Relations Act.

Section 32 of The Civil Service Act provides:

"(1) Where, in the opinion of an employing authority, it is necessary, the employing authority may require an employee under his jurisdiction to work beyond the prescribed working hours.

(2) The commission, with the approval of the Lieutenant Governor in Council, may make regulations setting out the conditions under which an employing authority may authorize payment of additional remuneration, compensatory leave, or other additional benefits to employees for work done beyond the prescribed working hours."

Thus the right to negotiate the matter of all overtime being voluntary and the compensation to be paid therefor is denied to civil servants and their bargaining agent.

Personal Disposable Income. Notwithstanding the provisions of The Civil Service Act that matters respecting working conditions of employees may be the subject of negotiations between the government and the association, there has been a consistent refusal on the part of the government to negotiate these items.

The rates for which civil servants are to be reimbursed for such items as meals, car mileage or moving expenses are dealt with not in the respective collective agreements but by government directive. The government's position that these items are non-negotiable is a denial to its employees of fundamental bargaining rights and without the rights granted to employees under The Labour Relations Act, the Association due to The Civil Service Act Section 57(1) is virtually powerless to force government to negotiate these conditions of employment.

Let us deal for a moment with the matter of the use of automobiles. Government recognizes that a large number of their employees must travel if their work is to be completed. Some employees who drive their own vehicles in the course of their employment with government are paid a rate which is occasionally adjusted upward, but which is set by government, without the benefit of negotiations. If an employee because he is dissatisfied with the rate paid refused to use his own automobile he would likely be terminated.

Other related charges deducted from an employees salary are made without benefit of the bargaining process, for example, rentals of government housing. A classic example of adjustments outside the usual negotiating procedure is that effective April 1, 1973, rents charged to government employees for government owned accommodations were increased severely. In many cases these rates were doubled, and in some increases were even greater than that. Government did in fact advise the association prior to implementing these increases, but despite the association's protests the rates were adjusted as originally determined. This is just one example of a unilateral decision made under the Act, without the consideration of the collective bargaining process.

The matter of uniforms and protective clothing has caused the association a great many problems. Despite the fact that the directives on this subject states quite clearly that employees in certain occupations or types of work shall receive one or more of these items, government does not always live up to the directives, and the association has no way of ensuring that they are enforced.

Another example of unilateral action on the part of government is the current situation on the denial of salary increment where an employee has been promoted or reclassified since January 1, 1975. Past practice has been that merit increases have been granted to employees in recognition of satisfactory service without restraint. If an

(MR. RIDGEWAY cont'd) . . . . employee was deemed to have the ability and/or qualifications to receive a promotion or reclassification they were also considered to merit a merit increment on their anniversary date. This does not now appear to be the case. This decision to deny the increment was made by Order in Council action to change the regulations to the Civil Service Act with no regard to negotiations or past practice.

As collective bargaining has developed in recent years management agrees to a document that is restrictive in nature in those areas it regards as its prerogatives. The consequence of collective bargaining is that management's rights are diminished only to the extent that the bargaining agent's challenge has been successful. The only limitations to the process should be the power that each party to the bargaining can bring to bear and the overall common interest of both parties to reach an agreement in the interests of stability. The association submits that the same pattern of bargaining should be applicable to the Civil Service in Manitoba.

In essence, The Civil Service Act is restrictive in nature insofar as it relates to rights of employees and their bargaining agent, while The Labour Relations Act is permissive in nature and is in fact enabling legislation, allowing all terms and conditions of employment to be the subject of compulsory collective bargaining.

Technique of Conflict Resolution. Under The Civil Service Act as it is presently worded, the only method by which the parties can resolve an impasse in contract negotiations is by resorting to compulsory binding arbitration (Section 48(1)). Under these provisions, either party may request the Minister to appoint an arbitration board in order to settle the dispute concerning matters upon which agreement cannot be reached. Each party nominates one person to the board and a chairman is chosen by the nominees or, if they cannot agree to a choice, by the Chief Justice of the Province. A majority decision of the Arbitration Board is final and binding.

The first resort to binding arbitration was in 1973 and both parties have expressed dissatisfaction with the award. The problems were further compounded by a disagreement between the parties over the interpretation of some provisions of the award resulting in the Arbitration Board having to be reconstituted to clarify the meaning of some of the terms of the award. In March of 1974, at a convention of the association this matter was fully discussed and a resolution was passed by the delegates to the effect "that the association proceed to move under The Labour Relations Act."

At present the only employees in Manitoba who do not have complete free collective bargaining are firemen, teachers and civil servants (see Sections 4(2)(iii) of The Labour Relations Act). All other employees have complete bargaining rights and are governed by the provisions of The Labour Relations Act. This includes municipal employees, municipal policemen, hospital employees and employees of such provincial crown agencies as Manitoba Hydro, Manitoba Telephone System, The Workmen's Compensation Board, The Liquor Control Commission, and The Manitoba Public Insurance Corporation. It is interesting to note that in Manitoba those employees in the public sector who have the right to strike are not restricted in any way from exercising this right as has been the case in other jurisdictions. In other words, the right to strike and/or lockout is available to the parties immediately upon termination of a collective agreement and there is no compulsory conciliation procedure that must be followed prior to work stoppage. When the government enacted the present Labour Relations Act in 1972, the necessity of going through compulsory conciliation was abolished. Thus, with the exception of the three categories noted above, all employees in Manitoba covered by a collective agreement have this right.

It has been the consistently expressed position of the present government that all employees should have the right to free collective bargaining, without limitation. The association feels that the time has come when employees in the Civil Service be given this right.

It should be emphasized The Labour Relations Act does not preclude the parties from including in a collective agreement a procedure for final settlement, without stoppage of work, of any dispute arising while renegotiating a collective agreement. In other words, the parties can agree to voluntary binding arbitration as a method of resolving disputes without resorting to strike or lockout action, but this is a matter of negotiation between the parties and not forced upon them by statute.

(MR. RIDGEWAY cont'd) . . . . .

The Labour Relations Act offers a wider range of alternatives to the parties to resolve their differences than is offered under the Civil Service Act. This range of alternatives includes:

1. Voluntary binding arbitration.

2. Voluntary "conciliation" where one party may request the assistance of a conciliation officer to assist the parties in collective bargaining.

3. The parties may jointly request the minister to appoint a mediator selected by them to assist the parties to bring about an agreement.

4. At the discretion of the Minister, in any case, a conciliation officer or board may be appointed; and

5. Recourse to the work stoppage, be it either strike or lockout.

We feel that the employees of the Government of Manitoba deserve the same access to the methods of dispute settlement available under The Labour Relations Act as are now available to the employees of all of the boards, agencies and commissions of the Government of Manitoba.

Under The Civil Service Act as it is presently constituted, the Association has its rights as bargaining agent guaranteed so long as it retains a majority of the employees in the Civil Service in its membership. This legislative provision has often lead to the allegation that the association has been given favoured status and is not subject to the same risks as bargaining agents which have been certified under The Labour Relations Act. In seeking to have The Civil Service Act repealed and having labour relations in the Civil Service entirely under the terms of The Labour Relations Act, the Association is clearly rejecting the idea that it should have any favoured status. The association recognizes that if it does not have the support of the requisite number of employees in the Civil Service, then its rights to bargain on their behalf would be terminated. The Association or any bargaining agent that may be certified for a unit composed of civil servants should be subject to the provisions of The Labour Relations Act in the same manner as other bargaining agents.

The present government has often stated that it has no objection to the employees in the Civil Service being covered by The Labour Relations Act and has stated that it would be willing to remove the restriction in The Labour Relations Act whereby that Act is subject to The Civil Service Act. In essence, the government has advocated it would be willing to allow civil servants the right to strike. The association wishes to stress that this right cannot be considered in isolation and that the right to strike would be meaningless if the existing limitations on the scope of issues that are subject to collective bargaining contained in The Civil Service Act continue. As previously stated, The Civil Service Act removes certain matters from the area of negotiations altogether. The Association's position is that the right to strike is conditional upon and must be coupled with the right of the civil servants' bargaining agent to bargain on behalf of civil servants on all their terms and conditions of employment.

It is important that employees in the Civil Service have the benefit of the same job security provisions which employees in the private sector and in other areas of the public sector enjoy.

Section 31(1) of The Civil Service Act provides:

"(1) Subject to any other provisions of this Act relating to appeals and subject to the regulations, an employee may appeal to the commission, a decision made by an employing authority that is subject to appeal and the decision of the commission thereon is final." Under this section an employee has a right of appeal to the Civil Service Commission, a body which is appointed solely by the government and on which the association has no representation. On the other hand, under The Labour Relations Act the manner in which disputes are to be resolved is a matter for negotiation between the parties and where there is no provision in the agreement the statutory clause is deemed to be included whereby each party appoints a nominee and the parties' nominees choose the chairman.

This in our minds is a much more equitable method of dealing with grievances and appeals than to take cases to a totally management oriented body. In the case of an appeal on an appointment to a position you are taking the appeal to the body that made the appointment in the first place. This is an unfair practice that we cannot tolerate.

Unfair Labour Practices. When the present Labour Relations Act was enacted in

(MR. RIDGEWAY cont'd) . . . . . 1972 the list of unfair labour practices was substantially extended. Some of the more significant provisions in the Act are as follows:

1. Employers will be guilty of unfair labour practice if:

(a) Following a legal strike or lockout, a collective agreement is concluded and the employer refuses to reinstate the employees in accordance with their seniority as work becomes available or as provided in the collective agreement;

(b) The employer discharges, lays off, suspends or otherwise disciplines or alters the status of an employee who refuses to perform the work of another employee who is lawfully on strike or locked out;

(c) The employer discharges or otherwise disciplines an employee who, while working under a collective agreement, refuses to do the work that would directly facilitate the work of other employers in Canada whose employees are lawfully on strike or locked out;

(d) The employer denies to any employee pension rights that the employee would have been entitled to but for the cessation of work due to a lawful strike or lockout or but for a dismissal of the employee contrary to the Labour Relations Act;

(e) The employer discharges, refuses to continue to employ or discriminates against any person because that person is a union member, has made a complaint under the Labour Relations Act, has participated or is participating in union activities, or has made a complaint or otherwise participated in any proceeding under the Labour Relations Act;

(f) The employer discharges, or refuses to continue to employ, or refuses to re-employ or lays off, or transfers, suspends or alters the status of an employee who is a member of a union or has applied for membership in a union; and

(g) The employer uses pecuniary threats or promises or alters any term of employment as a means to compel or induce a person to, among other things, refrain from exercising his rights under the Act.

Employees in the Civil Service are not entitled to the full protection of these and other provisions with respect to unfair labour practices.

Other Statutes in the Area of Labour Relations. The Vacations with Pay Act, The Human Rights Act, are all applicable to the Crown but for some inexplicable reason The Employment Standards Act and The Construction Industry Wages Act are not applicable to the Crown. This is another illustration of civil servants being denied rights enjoyed by other employees in the Province of Manitoba; overtime pay after a fixed number of hours in a day or week, statutory holidays with pay, minimum wages, maternity leave, notice of termination of employment, and time for payment of wages are but some examples. Civil Servants should enjoy the same minimum guarantees prescribed by these statutes as do employees covered by The Labour Relations Act.

And in conclusion, and in summary, the association urges the government to enact legislation to:

(1) repeal The Civil Service Act and make The Labour Relations Act applicable to all civil servants; and

(2) amend The Employment Standards Act and The Construction Industry Wages Act, to have the Crown bound by the provisions of the said Acts.

Thanks, gentlemen.

MR. CHAIRMAN: Thank you, Mr. Ridgeway. There are some members, I believe, that want to ask some questions. Mr. Green.

MR. GREEN: By way of clarification, I want to indicate that I am fully in accord with the fact that civil servants should be able to bargain collectively with full freedom. I do not agree with you that such is provided for under the Labour Relations Act and that it is not provided for under the Civil Service Act. I would like to ask you where in the Civil Service Act can you point to me a section prohibiting a group of civil servants from collectively withdrawing their services in support of demands for better working conditions.

MR. RIDGEWAY: I cannot point to a section, sir, but there is no section which says you can or cannot, it is silent on that point.

MR. GREEN: Well I would suggest to you that you go to the lawyer who drew this and tell him that what is not prohibited by the law is deemed to be permitted.

MR. RIDGEWAY: A very good point, thank you.

MR. GREEN: Now, I would ask you what gives you the impression that under the Labour Relations Act, as distinct from the Civil Service Act, that people are entitled to a collective bargaining agreement.

MR. RIDGEWAY: They are entitled to bargain collectively.

MR. GREEN: Yes.

MR. RIDGEWAY: Now whether they reach an agreement or not . . .

MR. GREEN: So you are aware the Labour Relations Act does not entitle or commit the bargaining process to the conclusion of a collective agreement.

MR. RIDGEWAY: But it does permit them to bargain.

MR. GREEN: Yes. Now what the Labour Relations Act does as distinct from the Civil Service Act is that under the Labour Relations Act the employer is required to enter into bargaining to make every reasonable effort or to - I'm trying to recall the words exactly - to enter in negotiations with a view to the signing of a collective agreement. Under the Civil Service Act, as distinct from that, a collective agreement is guaranteed.

MR. RIDGEWAY: Well can you point that section out to me?

MR. GREEN: Yes. Under 56(1) it says, that an agreement shall be arrived at and will be binding on the party, by arbitration.

MR. RIDGEWAY: Oh, yes, by arbitration.

MR. GREEN: Right. But an agreement is guaranteed as distinct from the Labour Relations Act where only bargaining is guaranteed. Now have you been able to point out any occurrence when the representatives of the public have refused to negotiate with the Government Employees' Association?

MR. RIDGEWAY: Refused to negotiate?

MR. GREEN: Negotiate, right. Refused to sit down and discuss a collective agreement.

MR. RIDGEWAY: Not refuse to sit down and discuss, no.

MR. GREEN: Well that is all, that is all, I assure you, that a union can request of an employer by virtue of the Labour Relations Act. Are you aware that our Labour Relations Act, that our Labour Board has found that requesting a 25-year agreement, that the employer demanding a 25-year agreement and also demanding a $250,000 performance bond to be filed by the union that the agreement will be fulfilled by their membership, has been held by our Labour Board to be bargaining in good faith on the part of the employer?

MR. RIDGEWAY: I've heard that.

MR. GREEN: Now is that what you think is legislation which entitles you to more, which is more guaranteeing of a collective agreement than 56(1) which says that a collective agreement will be effected?

MR. RIDGEWAY: Well, Mr. Green, you can play with words if you wish to; my point is that under the Civil Service Act, which, I agree with you, under 56(1) says that you can reach a collective agreement by binding arbitration. Right? However. . .

MR. GREEN: I have no intention of playing with words, I want to hear what you are saying.

MR. RIDGEWAY: However, the Civil Service Act all the way through gives management in many cases exclusive rights.

MR. GREEN: Are you aware that under the Labour Relations Act any employer who chooses to do so during the course of negotiations - and I assure you they do do so - say that we are not going to discuss that, we reserve that for management rights.

MR. RIDGEWAY: Yes, I'm sure.

MR. GREEN: How is that different than the Civil Service Act?

MR. RIDGEWAY: The difference being that then it depends on whether the union membership has enough strength to change the management's mind.

MR. GREEN: Well, Mr. Ridgeway, I have conceded that point to you at the beginning. I have said to you from the very outset that I am willing to have you, the employees of the Province of Manitoba, have the right to say that they won't work if they don't get better working conditions. But you have, in your brief - and I don't blame you, because you didn't write this - but the person who wrote this is trying to

(MR. GREEN cont'd) . . . . . pretend that the Labour Relations Act gives you the right to an agreement, which it doesn't, contains a whole bunch of provisions which assists you in your bargaining, which it doesn't, as distinct from the Labour Relations Act. That's the only point that I'm making. Under the Labour Relations Act management has a right to say we will not discuss this point, do they not?

MR. RIDGEWAY: They have the right to say it.

MR. GREEN: They have the same under the Civil Service Act.

MR. RIDGEWAY: The Civil Service Act gives them the legislated right to do it, not just their intent to do it and not just the management standing there and saying, I am management, I will not negotiate.

MR. GREEN: Can you tell me, Mr. Ridgeway, what is the difference between the two situations; between the government saying we have the legislative right and we're not going to do this, and the employer saying this is my plant and I am not going to do this? In practice, what is the difference?

MR. RIDGEWAY: There is a difference in that -- (Interjection) -- the difference is that in that the management who says this is my plant, he knows that if the employee refuses to work, so on and so forth, he is going to lose on it, right?

MR. GREEN: Not at all. Not at all. The employer may say, as the public may say, that we are the trustees of the public, of the operations of the government, we are going to sustain this position and if you don't want to work for us, we will do what any private employer will do, we will see whether we can get some people to whom these conditions are acceptable.

MR. RIDGEWAY: So in other words you are saying that you would bring in strikebreakers?

MR. GREEN: I am saying that if you want to be under the Labour Relations Act and engage in free collective bargaining and somebody has advised you that your employer will then not be able to try to get people to work for him, then that somebody has misled you greatly, because there is absolutely no doubt that if you are engaged in free collective bargaining and you don't wish to work, the public has a right not only to cancel your seniority, to cancel your pension rights, to cancel everything else and to try to get people to work. And there is no doubt that if I had a just case and that you were trying to push me to the wall, that I would do exactly that, yes, no doubt at all.

MR. RIDGEWAY: And no doubt you would, Mr. Green.

MR. GREEN: Well you should be aware of that.

MR. RIDGEWAY: I am aware of it.

MR. GREEN: And the suggestions in your brief that free collective bargaining entitles you to force a collective agreement out of the public is not your mistake, but the mistake of the solicitor who no doubt prepared this brief.

MR. RIDGEWAY: Now, if I can answer a few of those comments.

MR. CHAIRMAN: Proceed, please.

MR. RIDGEWAY: The legislation where it says that the employer may enter into collective bargaining is one thing that bothers us. Nothing says that he has to enter into collective bargaining. When the commission is allowed to make regulations which are not subject to bargaining, that bothers us.

MR. GREEN: May I deal with that? Are you aware that there are numerous unions who have gotten certificates who have never received a collective agreement?

MR. RIDGEWAY: Yes, I am aware of that.

MR. GREEN: And are you aware that the employer is not required by the Labour Relations Act to bargain on anything? He is required to sit down and make an effort.

MR. RIDGEWAY: That's right.

MR. GREEN: And I have already indicated to you what is an acceptable effort. Now, under the Civil Service Act, you are entitled to take every single grievance to an arbitration board and if you are successful - and I am not advocating this - but if an agreement is what you are looking for, a guaranteed agreement, then that is now provided for in the Civil Service Act, and not under the Labour Relations Act.

MR. RIDGEWAY: And if you read that section, it says that "either party" may request an arbitration board.

MR. GREEN: Right.

MR. RIDGEWAY: Okay. And a dispute arises and management calls for an arbitration board. We have got to go and defend ourselves before that arbitration board. Is that bargaining in good faith?

MR. GREEN: Mr. Ridgeway, I am not suggesting to you that it is a better form of bargaining, I don't happen to believe in compulsory arbitration. I am suggesting to you that if the end result desired is a guaranteed agreement, compulsory arbitration gives it to you and the Labour Relations Act does not give it to you. And your brief seems to say the contrary.

MR. RIDGEWAY: You know what we want. You know that . . .

MR. GREEN: I've read this brief. You know, what I think you want is the right to strike and the right to compulsory arbitration if you don't get it.

MR. RIDGEWAY: No, sir, that is not.

MR. GREEN: Well you appear to say that the Labour Relations Act gives you an agreement and that the Civil Service Commission Act does not give you an agreement; and the law is the reverse.

MR. RIDGEWAY: We quite know what the law is, and as far as we are concerned what we want is the right to bargain all working conditions and not be subject to legislated control.

MR. GREEN: Mr. Ridgeway, I don't deny that to you for a moment, but if there is somebody who is misleading you that that is available under the Labour Relations Act and not under the Civil Service Act then I suggest to you that you rethink that position.

MR. RIDGEWAY: You can make that suggestion.

MR. GREEN: That's all I'm doing. I am suggesting to you that with regard to the Civil Service Act an agreement has always been arrived at and is required by law; under the Labour Relations Act it is, many times, not arrived at and is not required by law.

MR. RIDGEWAY: Okay. I am not arguing that point with you.

MR. GREEN: Well, it appears from your brief that you are saying the contrary.

MR. RIDGEWAY: Our brief - you are reading it one way, I read it another way - our brief is saying that we want the right to bargain collectively in the same manner as any other union bargains with their employer in this province; with the same rights, with the same limitations, with the same restrictions.

MR. GREEN: Well, Mr. Ridgeway, I have not suggested I will deny that to you. I have suggested that in your brief you imply that the Labour Relations Act does things which I suggest to you it does not do, that's all. You can re-look at it or you can discuss it with your lawyer.

You say on Page 8, I am reading 56(1): The award or order of an arbitration board is binding on the parties and the person authorized and the association - that means the government and the association. It is binding. Have you ever had any case where the government has passed a regulation which is contrary to the award of an arbitration board and has claimed that that regulation supersedes the agreement. Has that ever happened?

MR. RIDGEWAY: An award of the arbitration board?

MR. GREEN: Right. The award of the arbitration board becomes an agreement.

MR. RIDGEWAY: Right.

MR. GREEN: You are suggesting that the government could then pass a regulation and supersede that award. They could change the pay. Like you've negotiated for 20 percent and the government passes a regulation after the award of the board and says you're getting 10 percent.

MR. RIDGEWAY: Well I suggest to you that under the current legislation the Federal Government can do that through the Anti-inflation Board.

MR. GREEN: I didn't ask that. We can get to that later on if we want. You say here, while many of the items enumerated in Section 57(1) are already covered by the collective agreements in force between the government and the association, there is no question that any statutory enactment - and I will agree with that - or regulation supersedes the provisions of the collective agreement. Now you say there is no question that a regulation passed by the government after a collective agreement was signed would change that collective agreement?

MR. RIDGEWAY: Well, Mr. Green, I will ask you about a memorandum of agreement signed by the association at the time of bargaining regarding remoteness allowances, in which the intent of the memorandum of agreement was to remove the income tax test from the establishment of remoteness allowances, and as of July 1, 1975, the government went straight ahead and applied the income tax test.

MR. GREEN: Now can I ask you whether you, under your grievance procedure, received an award that the government's regulation superseded the collective agreement? I would deny that vehemently although some lawyer says there is no question that it supersedes the collective agreement.

MR. RIDGEWAY: Well if you say that some lawyer says, we also feel the same thing; that if an enactment will come in, how about the situation of merit increases that I mentioned previously.

MR. GREEN: Mr. Ridgeway, if you are saying to me that the government can legislate, go into the House and enact a statute which would then become the law as opposed to the agreement, I would agree with you. I don't think it has ever been done. I don't think it ever will be done. I think that the chance that this would occur with a private firm is much stronger than it would occur with the public. But you say that after we have signed an agreement that we can pass a regulation and undo the increase, and you say that there is no question that this is the law. I deny that there is no question. I am at least telling you that there is a big question in my mind that that is the law, and I would like to know whether you have ever had a case between the government and the association which substantiates your position.

MR. RIDGEWAY: Well I am going to have to ask Mr. Grant if he can give me a situation. He has been around a lot longer with the association than I have. With your permission, Mr. Chairman. . .

MR. GREEN: I'm willing to find out from anybody.

MR. CHAIRMAN: Would you come forward please, Mr. Grant.

MR. J. GRANT: Mr. Chairman, with your permission, the matter of remoteness allowance, as I understand it, was changed by an order of one, Mr. Ian Turnbull, and we have had some discussion with one Harry Taylor, and we now understand that there has been some different agreement on it. The other matter that we could point out is the matter of increment that Mr. Ridgeway was talking about wherein there is provision for a promotional increment and that does not harm anyone's regular increment. There is now an order out, as we understand it, that the regular increments will not be granted.

MR. GREEN: But have you aggrieved these, have you followed them through and had a decision . . .

MR. GRANT: We are going to take you to court, Mr. Green . . .

MR. GREEN: Absolutely, and if you have a decision - you're going to take us to court because you believe we can't do this. If you thought there was no question that we could do it, which you say in your brief, you wouldn't be taking us to court.

MR. GRANT: We are going to try you, because it is happening.

MR. GREEN: Well, is it not correct, that if there was no question that we had the right to do this, then why would you be wasting your money on courts and lawyers.

MR. GRANT: Well, we would have to agree with you; we have some damn difficulty, if I might use that word and I apologize for it, understanding what our rights are and what they aren't. You are telling us with respect to you, Mr. Green, a whole bunch of things that you believe and I think we should have had you as a lawyer and we might not be in this difficulty, but we are; we can't understand what we've got and we would like it cleared up.

MR. GREEN: You know, politics being what it is, I'll take a rain check. May I suggest . . .

MR. GRANT: Could I answer that and say we will take that same rain check.

MR. GREEN: Absolutely. The only quarrel that I have with you is the words in your brief, and it's not a tough quarrel, I'm just pointing out that the statement, there is no question that any regulation supersedes . . . if you really believe that, you wouldn't be spending money on going to court. If we've undone a collective agreement, then we have to be sued and we have to be brought to task for it, and I assure you that we accept that.

MR. GRANT: That's exactly what we're doing, Mr. Green.

MR. GREEN: Okay. So then you agree that there is some question?

MR. GRANT: I will agree with you that there is some question; there's a whole bunch of questions about that piece of legislation.

MR. GREEN: You won't let me go to the court now and say, well, the association's case is lost by their own words; they say there is no question we have the right to do this.

MR. GRANT: If you wish to do that, Mr. Green, go ahead. . .

MR. GREEN: All right. Now there is only one point - you should excuse sort of my emotion on the subject but I have been involved with it for some time and I hear so many things which are just not correct, at least in my view, that I want to try and clear them up.

You say that the Labour Relations Act is permissive legislation. Can you tell me what the Labour Relations Act entitles a group to do which it couldn't do if there was no Labour Relations Act. You are saying that it permits them something. I want to know what it permits them to do that they couldn't do if it didn't exist.

MR. GRANT: We said also that it is a form of enabling legislation.

MR. GREEN: What does it enable them to do that they couldn't do if the legislation did not exist?

MR. GRANT: It enables them, it enables the union to bargain with the employer and it enables to the extent of forcing the employer to come to the table and bargain with a certified union.

MR. GREEN: So the one thing that it enables is it enables them to meet somebody. But the other thing, the right to get together to say that they are going to meet with the employer to ask him to withdraw their services, all of those things exist in less restrictive form if there was no Labour Relations Act.

MR. GRANT: That's possible. You have to receive notice and bargain but that section says you may bargain.

MR. GREEN: But the practical effect of this is that the government always has bargained whereas employers under the Labour Relations Act on many occasions have not bargained. You know what happens, you know what happens when you file a complaint against the employer on the grounds that he refused to bargain, do you know what happens, what the result of that is?

MR. GRANT: No, you tell me.

MR. GREEN: The board says bargain, that's all. They don't get an agreement. And if the employer then refuses again to bargain, it goes to the board and they say bargain. You could lay a prosecution, in which case the magistrate could fine him, but nothing requires him to negotiate in such a way to come to a collective agreement. Without that mandatory provision, you have bargained with the government on every occasion, which indicates that the statute doesn't confer a great deal of rights.

MR. GRANT: Bargained with the government, yes, but under very restrictive situations. Mr. Green, I will ask you one thing. You are telling me that this Civil Service Act allows us to bargain a whole bunch of things. I am going to ask you to come to the bargaining table on the master agreement and sit there on the government's side.

MR. GREEN: Let me say to you that I have people whose authority I have to follow different than your own, not that I wouldn't do it if I had to; but when you say that the Labour Relations Act provides a better sort of atmosphere for bargaining than the Civil Service Act, I'm merely going to advise you that the reason you think that is that you have probably never bargained with a stubborn private employer under the Labour Relations Act.

MR. GRANT: Well we've bargained with some pretty damn stubborn government employers under the Labour Relations Act.

MR. GREEN: I suggest you ask the Winnipeg Free Press employees whether their employer has been forced to bargain by the provision of the Labour Relations Act.

MR. GRANT: Well I'm not going to get into an argument over that point.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I hesitate to intrude and interrupt the interesting exchange. I would like to ask a question that may appear to you, sir, to be repetitive, though,

(MR. SHERMAN cont'd). . . . . for clarification. It was the basic question that I wanted to ask Mr. Ridgeway before Mr. Green commenced his questioning. And that is, Mr. Ridgeway, for clarification and for the record, would it be fair to say that I am correct when I suggest that this complete brief really boils down to a request on the part of your Association for the right to strike?

MR. RIDGEWAY: No, sir, it does not boil down to very simplistic request of the right to strike. We have had that offered to us previously by the Honourable Minister of Labour.

MR. PAULLEY: Rejected by your association on these points.

MR. GRANT: A long time ago, Russ.

MR. PAULLEY: Two years ago.

MR. GRANT: Right. The situation as it boils down here, and as we point out, that the right to strike cannot be taken into consideration without the right to bargain totally all areas of employment, which is restricted under the Civil Service Act. The areas of restriction, for example, and you say no, Mr. Paulley, but . . .

MR. PAULLEY: There's no restriction against you going on strike or withdrawing your services at any time. It's not contained in the Civil Service Act, and you know it.

MR. GRANT: Mr. Paulley, again, I make the same comments to you as I made to Mr. Green. Will you gentlemen come to the bargaining table and sit across from us in bargaining, because the word we get from the people that you put at the table as negotiators is totally different from what you tell us.

MR. PAULLEY: Mr. Chairman, I believe Mr. Sherman was asking questions.

MR. RIDGEWAY: I'm sorry, Mr. Chairman.

MR. PAULLEY: I can ask some and I will be prepared to answer the proposition just raised by Mr. Ridgeway.

MR. SHERMAN: I thank the Minister, Mr. Chairman, and my basic question, and again I say at the risk of being repetitive, but I want to understand this. In view of the fact that you have most of these other rights I think in the view of most of us on this committee, I ask you what else does this brief ask for other than the right to strike.

MR. RIDGEWAY: We ask for the right to negotiate without having the statutory limitations, where we have a commission who is allowed to make job classifications, change job classes, change job specs after a salary is negotiated,which would tie it down, which would make the negotiations meaningful, which would mean that you aren't going in and negotiating something today which can be changed tomorrow without us having any control over it. We are asking for the right to be able to negotiate within negotiations at the bargaining table. And I know that the Minister of Labour has told us that we can and so on and so forth as long as we can force the employer to do so. But the problem with the Act is that when we go into bargaining we are told constantly by the government representatives at the table that under Section 57(1) of the Act, that regulations are made, or can be made by the Commission - may be made by the Commission.

MR. PAULLEY: Subject to the Lieutenant Governor in Council.

MR. RIDGEWAY: Subject to the Lieutenant Governor in Council, I agree with you; but that subject to those regulations should not be the unilateral right of Lieutenant Governor in Council but should be subject to the negotiations at the bargaining table at the time of negotiating a collective agreement. That really is what we are after; we want the right to negotiate completely all forms of disposable income, of working conditions at the time of bargaining without legislative restrictions placed on them. Tied in with that, and I agree with you, that under the Labour Relations Act is the right to strike; but there is also the right under the Labour Relations Act for conciliation, mediation. There is the right for the two parties at the table to jointly agree to the method they are going to use for final settlement without having it legislated to us. And I'm not saying that we might not sit down with the government and agree to some method of settlement. I'm not saying we would either, but at least it's two people meeting as equals at the table, not having something imposed upon them by legislation. And that's really what we are after.

MR. SHERMAN: Do you not feel that in your unique position that you're in as public servants and government employees that you have automatic recourse to a guarantee and assured line of communication with your employer that private employees never have. It seems to me demonstrably obvious that any government, no matter who it is occupying the office of government is necessarily going to have to be in communication on a continuing basis with its

(MR. SHERMAN cont'd) . . . . . employees, with its servants, with the people who are members of your association to a much greater extent even than a private employee can expect. As a consequence you have a kind of a built-in safeguard that private employees do not have when it comes to communication and continuing negotiation. Is that not fair to say, to suggest?

MR. RIDGEWAY: Well I'm going to ask you what is the difference - and I'm maybe going to answer your question with a question - but what is the difference between the employees of the Province of Manitoba dealing with an elected body as the Government of Manitoba, than the employees of the City of Winnipeg dealing with an elected body as the City Council; or the employees of Manitoba Hydro, which is a Crown corporation, dealing with the management of Manitoba Hydro as a Crown corporation, or the employees in the Manitoba Public Insurance Corporation dealing with their management.

MR. PAULLEY: No difference at all.

MR. RIDGEWAY: Well if there is no difference then . . .

MR. PAULLEY: Except a seven week strike so far as the transit is concerned.

MR. RIDGEWAY: Yes, that's a situation all right. . .

MR. SHERMAN: Well I think that there is the whole question of perhaps some intangibles such as job security which enter into it. I have a colleague who wanted to ask a question or two on that point and I'll leave that to him, but I suggest there are some advantages that probably outweigh the disadvantages that you see in your present situation.

Let me ask you one other question, Mr. Ridgeway, through the Chairman. You made reference to the favoured status allegation with respect to the Manitoba Government Employees' Association under the Civil Service Act, or the allegation that the association may enjoy favoured status. Are you suggesting in that section of your brief that in your view the Civil Service Act in the way it's worded is discriminatory against other bargaining agents who might seek certification and that if you were removed from the Civil Service Act and placed under the Manitoba Labour Relations Act that there might well indeed be another bargaining agent speaking for your employees?

MR. RIDGEWAY: I'm not suggesting that. What I am saying is this, that any union that does not have the support of its membership is useless as a union, and if the membership of any union wish to have another bargaining agent - and I'm talking about a legitimate choice on the part of the membership of the union - then that union isn't doing their job, and by having any favoured status under any form of legislation a union can become pretty lax, they can sit back on their duff and do nothing really, because they are guaranteed their rights. I don't really feel that, this is a personal feeling of mine, I don't really feel that any union should be guaranteed anything that is not supported by the majority of its members.

MR. SHERMAN: Under the Act, it has to be supported by the majority. Right.

MR. RIDGEWAY: Again it's permissive because it says, "any other organization that may be recognized."

MR. PAULLEY: In the event of you not having a majority. That's the important part.

MR. RIDGEWAY: Right, that's right. If we don't have the majority, the Minister in charge of the Act "may" recognize another bargaining agent, or he may not. And that bothers us too, it bothers me as a government employee, because it leaves the total control in the hands of the Minister and the Executive Council as to whether they "may" recognize another bargaining agent, and the government of the day just might turn around and say, well hell, we would be a lot better off in the Civil Service if we didn't have a union involved, and the Manitoba Government Employees Association doesn't have 50 percent of the membership and therefore we can get rid of them but we are not going to recognize any others. And that bothers me. The "may" in there bothers me.

MR. SHERMAN: Well I don't see how you can retain a majority of the employees in the Civil Service unless you are meeting some kind of need, unless you are serving some kind of purpose in the view of that majority. You know, this is where I have difficulty in understanding your difficulty with this particular provision.

MR. RIDGEWAY: It is really not a difficulty that we have as an organization, but by the fact that we are named in legislation makes us different than any other union in the province. We don't want that, we don't want to have any favoured status, we don't want any favoured rights, we feel that we're a union that can stand up on our own hind feet and serve the people that are members.

MR. SHERMAN: Well that's an interesting perspective. I have no more questions, Mr. Chairman.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: I don't know if Mr. Patrick was ahead of me, Mr. Chairman. . .

MR. PATRICK: Thank you, Mr. Chairman. I have a question for Mr. Ridgeway. You indicated in the brief,and indicated quite strongly, and you've elaborated a little bit since somebody else asked a question, you make it quite strong that the appointment of personnel promotions and transfers is, you know, one of the things that is regarded one of the most important items and should be part of the bargaining; and you also stated that at the present time the Civil Service Commission is composed of all government appointed people and that's an indication, or the way I read it, that you are very much unsatisfied with that area. I'm sure many members in the Legislature, MLAs have got complaints about not getting appointed to a job after they have been promised but maybe everyone that applies complains because he didn't get appointed.

MR. PAULLEY: We can only kick him out with two-thirds of a majority of the House.

MR. PATRICK: My point is, I'm sure there is a problem. Can you elaborate and explain just what is the problem because I know as an MLA, I've received letters and complaints from people, "Well, I was promised a job by the Civil Service Commission and I'm waiting now for four months and I haven't got the job. I phoned,so they said no, somebody else was chosen."

MR. PAULLEY: Go to the Ombudsman, get him to work for you.

MR. PATRICK: I'm sure that this goes on all the time, but is there a problem and can you elaborate on that?

MR. CHAIRMAN: Mr. Ridgeway.

MR. RIDGEWAY: Well the problem on appointments, promotions, transfers and so on and so forth, our concern is with the people who are our members, our concern is not with the people who are applying from outside the Service.

Now if you have an appointment, let's say that I applied for another job and I felt I was qualified for that position and so on and so forth, and maybe I have six years more seniority than the other person, maybe I have qualifications that are better than the other guy but the other guy got appointed here. Who are they appointed by? They are appointed by the Commission. Now when I take my appeal, I take my appeal right back to that same body that made the appointment in the first place so I am, for all intents and purposes, going to a kangaroo court, and our people can't see how these people can turn around and say, well, heck, we had all this put before us in the first place, now we are going to change our minds and you're elaborating on different points. We feel that it would be a much fairer method - that okay, fine, the Commission may make an appointment, but any appeals on their appointment is taken to another body, you don't take it back to the same guy that made the appointment in the first place. That's where the big problem comes in, and we feel that the method of getting around that is to set up a tribunal, set up an appeal board which has equal representation from both sides and with a mutually agreed upon chairman or somebody that's appointed by the Chief Justice or something like that if the two parties cannot agree, and in that way you have got an independent body sitting outside that can . . . you've got a check and a balance there, whereas right now, you neither have a check nor a balance.

And from the civil servant's point of view I could lay before you cases but I won't because there are names involved and so on and so forth, of where this situation has come about, where an appointment has been made and the appeal has been taken, the appeal for all intents and purposes should have won - by the evidence that was presented should have won, but is denied.

MR. PATRICK: You feel there should be a separate appeal board of some kind?

MR. RIDGEWAY: Most definitely.

MR. PATRICK: What about transfers and set promotions and so on, is that a . . . ?

MR. RIDGEWAY: Well that's included in the same type of thing.

MR. CHAIRMAN: Any further questions, Mr. Patrick? Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I would just like to make one comment to Mr. Ridgeway of his last statement. That there is a final appeal agent apart from the Commission where an individual feels that he has been declined promotion or somebody has been given a position on a basis of other than merit; and that is the Minister responsible for the Civil Service Commission. It may not meet with your approval that that is an

(MR. PAULLEY cont'd) . . . . .avenue of a further appeal. But I just want to correct your statement that this is like a kangaroo court in that an appeal from a decision of the Commission is back to the Commission without any recourse, at least in one respect, that a political appointment was made or an appointment was made based on other than merit. There is legislation which I believe was just passed last session to accommodate that. It might be that the Minister in charge of the Civil Service is the type of an individual who would not receive any acclaim or accolades from the President of the Manitoba Government Employees' Association because of his final decisions, in which I have made three or four already, but there is, I just want to correct that point, there is at least an avenue on the question of appointment on other than merit which was never there before.

MR. RIDGEWAY: Right. But only on the basis other than merit.

MR. PAULLEY: That's right. And may I ask you if you know in private industry where a person is appointed to a position, he's appointed, or she is appointed on the basis of the judgment as to management, as to their capabilities and qualifications of performing service in the interests of that employer? I don't think you will find that in, to my opinion at least, any precise collective agreement that says that management can only promote an individual that is satisfactory to the bargaining agent.

I would like to pursue one or two points in your brief, Mr. Ridgeway. I agree with you, I agree with you that the legislation at present states and gives you preferred status. I've always objected to that. But the point of the matter is, has your organization or has there ever been taken a vote, to your knowledge, within the Civil Service to ascertain whether or not in fact the Manitoba Government Employees' Association represents the majority of the employees in the Civil Service?

MR. RIDGEWAY: A vote?

MR. PAULLEY: Yes, to your knowledge. You are president of this organization and I say in all due respect, that even though I may be the Minister of a poor employer, I say in all due respect to you, you should know as the president of the organization whether there has ever been taken a vote to ascertain the fact or otherwise that the Employees' Association do represent a majority of the members of the Civil Service.

MR. RIDGEWAY: Mr. Paulley, in answer to your question, the method that we use to ascertain whether we have 50 percent of the membership or not depends upon how many signed membership cards we have. As you know, there is nothing mandatory in our agreement that says somebody must sign a membership card.

MR. PAULLEY: I'm not talking of that, Mr. Ridgeway.

MR. RIDGEWAY: There also is a procedure by which membership can withdraw their cards. Now if they withdraw their cards, it's the same thing as taking a vote in my mind.

MR. PAULLEY: I am not talking of your internal operation, Mr. Ridgeway, what I am asking, in your opinion, in the history of your organization, as to whether or not there has been a vote taken, as is a requirement under certain conditions under the Labour Relations Act, to justify that the precise organization has the support of a majority of the employees, and all I am asking you is, do you know whether or not this has been done in respect of the civil servants.

MR. RIDGEWAY: To the knowledge that I have, Mr. Paulley, no, we haven't taken a vote.

MR. PAULLEY: Then because it's statutory it has been presumed that you've got the majority, and of course, under the Labour Relations Act, the employees would have the right to challenge on every anniversary date as to whether or not the Manitoba Government Employees' Association did in effect, in fact, represent the majority. At the last time of the bargaining a change was made in the approach in collective bargaining, I'm sure as you are aware, in that there was a master agreement and I believe eight component units. Under the present legislation there all members can recognize the bargaining agent for the Civil Service or the Manitoba Government Employees' Association. Under the Labour Relations Act, each and every and all components, I would suggest, would be eligible to change their bargaining agent. Would you agree with that?

MR. RIDGEWAY: No, I wouldn't.

MR. PAULLEY: Why?

MR. RIDGEWAY: The reason I wouldn't agree with you, Mr. Paulley, is that those are component sub-agreements of the master agreement.

MR. PAULLEY: Then if we did not, if we changed the Act, if the Act was changed - I'm trying to protect you, believe it or not - if the Act were changed, and I've stated that I have no hesitation in doing it, but I want it perfectly clear, and I think it should be made perfectly clear, that the special status which you have at the present time would go out. And I would suggest, Mr. Ridgeway, in all due respect, even though I don't sit around the bargaining table any more than the councillors of the City of Winnipeg do, I would say in all due respect, however, that because of the set-up of various components it's quite conceivable that with the loss of a majority of the members in that particular component, the likes of the Public Service Alliance, CUPE, or any other organization, would have the right to come in under the Labour Relations Act, as I understand the Act.

Now, then, there is one or two other points that you raise in your brief, Mr. Ridgeway, that I just want to make a comment or two on. You dealt with the question, you say, for the past number of years the Association and the government have entered into agreements now known as the Government Employees' Master Agreement. Is it not a fact, though, Mr. Ridgeway, that this has only been in effect for one year or less than one year, instead of a number of years?

MR. RIDGEWAY: No. There have been collective agreements for a number of years.

MR. PAULLEY: Wait a minute. I didn't say that. Your brief doesn't say that. Your brief says, "for the past number of years the association and the government have entered into agreements now known as the Government Employees' Master Agreement with attached occupationally related sub agreements." That was established last year, I believe, Mr. Ridgeway.

MR. RIDGEWAY: Mr. Paulley, if you want to correct my punctuation in the brief you can go ahead.

MR. PAULLEY: Okay. I don't want to correct anything, I just want the record straight, that's all.

MR. RIDGEWAY: The record is that there have been agreements for a number of years, the current agreement is now known as the Government Employees' Master Agreement.

MR. PAULLEY: You further state here: While the Association and the government, on Page 4, have been able to conclude collective agreements covering employees in Civil Service. . . the association wishes to emphasize that the Civil Service Act does not guarantee that the employees in the Civil Service will be granted the protection of a collective agreement. I wonder if you would mind expanding on that.

MR. RIDGEWAY: What I would like to expand on that point is that, 47(2) Civil Service Act: With a view to entering into a collective agreement between the government and the association the person authorized "may" carry on for and on behalf of government, so on and so forth. Also . . .

MR. PAULLEY: But, Mr. Ridgeway, if you don't mind me interrupting, I want you to expand on the first part where you say that the Civil Service Act does not guarantee the employees will be granted the protection of a collective agreement. That's what I want, information of that . . . Where have you been denied that privilege?

MR. RIDGEWAY: All right. If at such time as the association did not represent 50 percent of the Civil Service and was deemed not to be the bargaining agent, then it is the decision of management as to whether they "may" recognize another bargaining agent. There is nothing there that says they will.

MR. PAULLEY: Mr. Ridgeway, such is not the case, at least since I have been the Minister responsible for the Civil Service Commission and Chairman of Joint Council for negotiations, at no time, since 1969, has any employee, in my opinion, been denied the fruits or the benefits of the collective agreement entered into. You make the statement, I would like some explanation of that because I think that the committee are entitled to know that if I, as the Minister responsible have in effect been a poor employer, I want to know and I want my fellow committee members to know where I have failed.

MR. RIDGEWAY: Mr. Paulley, we are not saying that you have not entered into a collective agreement. What we are saying, though, that under the Act and the wording of the Act is that at some time in the future, if at some time in the future the association

(MR. RIDGEWAY cont'd) . . . . . does not represent 50 percent of the people and we are decertified as the bargaining agent, then the Minister at that time "may" recognize or may not recognize. So therefore under the Act, it does not guarantee.

MR. PAULLEY: Mr. Ridgeway, I am not arguing that at all, all I'm asking, and apparently I am not going to get an answer, where any employee under the collective agreement has been prejudiced against by virtue of the Civil Service Act. Never mind this about whether it's your organization or some other organization, I'm referring to the contents of your brief.

Now I'd like to know, Mr. Ridgeway, you talk about, "the selection of personnel are all matters that come within the exclusive discretion of the employer," that's on Page 5. Is this not normal in private industry that the employer has the right to selection of people that he or she are going to hire in order to perform the functions of that particular industry?

MR. RIDGEWAY: The employer is given the right to hire, yes, but the collective agreement may limit or give an appeal procedure for the current employees to protect them --(Interjection) -- I said the collective agreement may allow, depends on what can be negotiated with that employer.

MR. PAULLEY: But you say in your brief, Mr. Ridgeway, that the Civil Service ... and terms . . . the exclusive discretion of management, that is the government, the appointment, transfer, promotion, lay-off or release of employees in the establishment of a classification system. Is not that management prerogatives in most collective agreements, or in most undertakings in any case? I ask you in fairness.

MR. RIDGEWAY: Well I tell you in fairness, Mr. Paulley, that I think that many of those items are negotiated in collective agreements - I'm saying many of them, not necessarily all in any one collective agreement - but in many of them those items are subject to negotiations between a union and the employer.

MR. PAULLEY: Again on Page 7, you refer, there is no protection given to civil servants that their bargaining agent will at all times be able to bargain wages. In your opinion, at any time at all since you're connected with the MGEA, have you been denied the right to bargain for wages?

MR. RIDGEWAY: For wages, no. I'm saying in my . . .

MR. PAULLEY: And, of course, you are aware of the fact that where you make reference here to arbitration as contained in the Civil Service Act, it has only been used once.

MR. RIDGEWAY: That's right.

MR. PAULLEY: And that on that particular arbitration board, the representatives of your organization and the representatives of the government joined with the chairman in an unanimous decision.

MR. RIDGEWAY: I know that.

MR. PAULLEY: You know that? And that didn't prejudice then the organization because it was agreed upon unanimously. And then further to that, of course, the only ex gratia change that was made was as a result of representations by the then president of your organization to consider a COLA agreement which went beyond the arbitration award.

I just point that out to try and offset some of the connotations contained in your brief, Mr. Ridgeway, that may in some people's opinions be construed that we have been pretty poor employers.

MR. RIDGEWAY: What we are trying to point out to you, Mr. Paulley, is methods by which you can become a better employer.

MR. PAULLEY: Yes, that's right. There's many questions in here, Mr. Chairman, that I could pursue and I will at a later date because we will be meeting, I believe, Mr. Chairman, on March 8th with the representatives of the organization to hear their demands and their requests for a new collective agreement.

MR. RIDGEWAY: That's correct.

MR. PAULLEY: We haven't had any difficulties in the past, we haven't had unanimity of opinions and arrived at all of the conclusions that have been requested by the association, that is true, but I doubt if we have been or entitled for anyone to consider that we have not bargained in good faith. And as far as conciliation officers are concerned and the input between management and labour, of course, conciliation officers are available. As a matter of fact,

(MR. PAULLEY cont'd) . . . . I believe, Mr. Ridgeway, I have a conciliation officer working insofar as you as an employer and some of your employees at the present time because you have not been able to arrive at an agreement.

I think, Mr. Chairman, I can cease on that for this morning.

MR. CHAIRMAN: Mr. Banman.

MR. BANMAN: Thank you, Mr. Chairman, through you. Mr. Ridgeway, on Page 8, the top of Page 9 you mentioned, "Thus the right to negotiate the matter for overtime being voluntary and the compensation to be paid therefor is denied the civil servants and their bargaining agent." When dealing specifically with people like highway employees, some are seasonal and that, is that not included in an agreement when you are bargaining with the government?

MR. RIDGEWAY: It is included in the agreement but the Act itself, if you read the Act, as is stated here, provides that the employing authority "may" require. And its Part II says, the Commission "can" set.

The whole situation there is that our collective agreement does provide for overtime, yes, it does provide for it, but due to the fact the Act states one thing and our collective agreement says another thing it can be confusion, and the confusion that can be caused by this can cause confusion in the minds of government but it most definitely can cause confusion in the minds of the employee, and what we are trying to get around here is to a point where if we negotiate a collective agreement which has overtime in it and allows for overtime clauses and payments and so on and so forth, that these overtime clauses will prevail as set out in the collective agreement.

MR. PAULLEY: Have they ever been set aside?

MR. RIDGEWAY: They haven't been set aside but they could be set aside.

MR. BANMAN: A final question, Mr. Chairman. I was intrigued by one statement, maybe many people are labouring under false information but it is important that the employees of the Civil Service have the benefit of the same job security provisions which employees in the private sector and in other areas of the public sector enjoy. Don't you feel that the civil servants do have one of the best job security positions of any working people right now?

MR. RIDGEWAY: Do we have the best job security? I wouldn't say that it's any better than what's negotiated in many other contracts.

MR. BANMAN: But as far as job security, working for the Government of Manitoba, to my way of thinking is probably one of the best jobs as far as job security goes, isn't it?

MR. RIDGEWAY: No, I wouldn't go along with that at all because in the Act it says that in layoffs seniority doesn't prevail; it's merit, ability and your assessment of previous performance is what prevails. That doesn't lead to job security.

MR. BANMAN: The only point I'm trying to make is there's no concern about government not doing well as far as business enterprise is concerned or anything like that. Traditionally governments have been growing and we're growing here, too, so that's the only point I was trying to make.

MR. PAULLEY: Before we adjourn, I consulted with Mr. Green, the House Leader; it seems to me that we won't be able to meet on Thursday and I'm wondering - it's my understanding, Mr. Green, that there may be consultation between the various members of the committee and the caucuses as to the desirability or otherwise of meeting on Saturday, and I would suggest that if there is a consensus along this line for meeting on Saturday, which would be a violation of my collective agreement to work six days instead of just five, we would give ample notice. But there is, I would suggest, Mr. Chairman, there is that possibility. Is that right, Mr. Green?

MR. GREEN: Yes.

MR. CHAIRMAN: Mr. Ridgeway had a point he wanted to make here.

MR. RIDGEWAY: Just one final point. I can tell you this, that there is a section in our collective agreement which we don't like but we wouldn't have had a collective agreement unless we had allowed that to go in there, and this is maybe the final point on the Civil Service Act that I want to make. That is in Section 3602 of the collective agreement currently in effect: "This agreement is subject to the terms of the Civil Service Act and where there is any conflict between the provisions of the said Act and this agreement, the provisions of the Act shall prevail." And that comes back to the point of why we were making the points regarding the discretionary powers; and I can assure you, gentlemen, we wouldn't have had an agreement unless we had allowed that clause to go in there.

MR. PAULLEY: That section doesn't make any difference.

MR. CHAIRMAN: Committee rise.

MR. SHERMAN: Just so there's no misunderstanding, at least a minimal amount of misunderstanding with respect to the subject raised by the Minister. Our group on the committee would not be prepared to sit on Saturday.

MR. PAULLEY: All right, we'll have to meet then at the call of the Chair.

MR. CHAIRMAN: We'll try and give as much notice as possible to the people. I have the names of the people that are here, I'll see that the Clerk's office . . .