
**The Manitoba Labour
Management Review
Committee**

**Annual Report
2008-2010**

January 1, 2008 – December 31, 2010



THE MANITOBA LABOUR MANAGEMENT
REVIEW COMMITTEE

July 6, 2011

Honourable Jennifer Howard
Minister of Labour and Immigration
Province of Manitoba
Room 317 Legislative Building
Winnipeg MB R3C 0V8

Dear Minister Howard:

On behalf of the Manitoba Labour Management Review Committee, I have the honour to submit to you the Committee's Report for the period ending December 31, 2010.

The Committee hopes the report will be informative and useful to members of the Legislative Assembly.

Yours sincerely,

Michael Werier
Chairperson

REPORT OF
THE MANITOBA LABOUR MANAGEMENT REVIEW COMMITTEE

JANUARY 1, 2008 TO DECEMBER 31, 2010

HISTORY

The Labour Management Review Committee (LMRC) was established in 1964 by a unanimous resolution of the Legislature. In its original form, the Committee's mandate was to undertake a continuing and comprehensive review of labour legislation and labour-management relations in the Province of Manitoba.

The LMRC, with equal representation from labour and management, came into being as the culmination of a process which began in 1963. Several labour-management seminars were held over a 12-month period to examine the main aspects of industrial relations in Manitoba. Labour and management representatives attended these sessions, and a consensus developed that the establishment of a permanent committee representing both parties would make a valuable contribution to labour-management relations. In the Speech from the Throne of February 1964, the government announced its intention to establish such a committee. The LMRC was formed shortly thereafter.

STRUCTURE

In a review of the LMRC conducted in 1999, committee members examined their role and function and developed a new structure and mandate to improve committee effectiveness in providing timely advice to the Minister of Labour. From 1989 to 2000, the LMRC was guided in its activities by a Steering Committee (6 members), which coordinated the work of the Full or Main committee (26 members). The Steering Committee was responsible for setting the direction and focus of sub-committees and performing much of the policy review work of the LMRC. It then reported back to the Main committee for final review and approval of various policy issues.

In April 2000, the structure of the Committee was changed. The membership of the LMRC currently consists of five labour and five management representatives (decided as appropriate by the labour and management constituencies), a chairperson, a vice-chairperson, a government representative and a secretary (appointed by the Minister of Labour). The length of term and conditions of appointment are determined by the respective caucuses. Each caucus co-chair is responsible for ensuring that there are processes in place for obtaining input and representation from their broader constituencies and for keeping them informed on committee developments.

The Arbitration Advisory Sub-Committee was retained but the other standing committees (Health Sector Working Group and Construction) were disbanded. It was decided that new sub-committees or working groups would be created as needed with the membership to be determined by each caucus.

Another change that took effect in 2000 was the addition of alternate members to the LMRC. Each caucus has named one individual to attend those meetings where there are not enough regular members to meet a quorum of three representatives each for labour and management.

Please see Appendix A for membership of the LMRC and its sub-committees as of December 31, 2010.

METHODS OF OPERATION

The LMRC has felt, since its inception, that open and frank discussions would best be facilitated if attendance was restricted to committee members only.

The minutes of committee meetings, are produced for the benefit of the members and their respective caucuses. Members are generally not identified in the proceedings.

In addition, a communications' guideline has been developed for dealing with questions from the media or stakeholder groups. Generally, the guideline states that members are free to express their own opinions on issues as long as it is understood that these comments are those of the individuals and not that of the LMRC. Only the Chairperson, or individuals designated by the Chairperson, can speak about matters before the committee. A copy of the guideline is contained in Appendix B.

When the LMRC arrives at a decision which has majority support from each side, the recommendations for action are then forwarded to the government or the appropriate body.

The Chairperson of the LMRC communicates regularly with the Minister of Labour Immigration and departmental officials to update them on the current and planned activities of the committee.

From time to time, the LMRC decides to examine issues of broad interest to labour and management. When appropriate, seminars or conferences are organized to which a variety of interested individuals and groups may be invited. The proceedings of these conferences are published when they are felt to be of lasting value and interest to a wide readership.

The LMRC is assisted in its work by the research facilities of the Manitoba Department of Labour and Immigration. A staff person of the department also functions as the LMRC's secretary.

Labour and management members serve voluntarily on the LMRC without remuneration for the time they devote to its work.

MANDATE AND GUIDING PRINCIPLES

The mandate of the LMRC is as follows:

MANDATE

MISSION

The LMRC's mission is to promote a harmonious labour relations climate and to foster effective labour-management cooperation in support of the economic and social well-being of Manitobans.

OBJECTIVES

1. To provide leadership in promoting labour-management cooperation and fostering a stable labour relations climate in Manitoba.
2. To provide the Manitoba Government with an ongoing review of proposed labour legislation with the intent of reaching consensus between labour and management whenever possible.
3. To respond to problem areas in labour-management relations and to develop policies/initiatives to resolve them.
4. To discuss, on an ongoing basis, emerging issues of common concern towards a better understanding of each other's point of view.

GUIDING PRINCIPLES

- Take leadership in promoting effective labour-management relations.
- Provide objective and independent advice to government and others.
- Identify and address emerging labour-management relations issues.
- Seek consensus on issues and where honest differences occur, identify the differing views of labour and management.
- Communicate with the labour-management community on relevant issues.
- Act as an effective sounding board for proposed government policy.
- Operate as an autonomous but responsive entity in relation to the provincial government.

COMMITTEE ACTIVITIES – 2008, 2009, 2010

2008

Section 87.1-87.3 of *The Labour Relations Act*

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

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

During its review, the Committee focused on two issues:

1. Extending term of collective agreement;
2. Time period for determining if parties are bargaining in good faith.

After extensive discussions, the LMRC recommended that consideration be given to lengthening the extended term of an arbitrated collective agreement to one year, however, for the second issue no consensus was reached.

2009

Comprehensive Review of Manitoba's Minimum Wage

On May 14, 2009, the Minister of Labour and Immigration requested the assistance of the LMRC in conducting a review of Manitoba's minimum wage provided for under *The Employment Standards Code*. The Committee considered all factors that they determined relevant in developing new minimum wage recommendations.

The Committee reviewed historical trends in the purchasing power afforded by the legislated minimum wage here and in other jurisdictions, as well as trends in the proportion of the labour force working for wages at or near the minimum wage. In assessing the minimum wage level, the Committee remained sensitive to both the needs of workers and the ability of the economy to remain competitive in the Canadian and global marketplace.

Labour and management caucus members consulted extensively with stakeholders and members of their respective organizations throughout the process. The LMRC has been able to reach consensus on a number of significant issues in recent years, and the desire was apparent from both caucuses to find common ground on which to build a consensus recommendation. However, the minimum wage issue presents its own unique challenges. Committee members noted that among their constituents there are wide-ranging opinions on how to address minimum wage adjustments going forward.

While there was no consensus recommendation on this issue, members of each caucus agreed on fundamental aspects of the minimum wage and the role it should play in the province. Both sides acknowledged that the minimum wage is not the only mechanism by which the welfare of low-income workers can be improved. There was agreement that the cost of living should be taken into consideration to ensure that the incomes of minimum wage earners are not eroded by general price increases. Also, each side agreed that the minimum wage has not historically been the predominant factor causing unemployment in the province.

2010

The Employment Standards Code Review – Non-Profit Camps

As requested on January 12, 2010, the LMRC convened to review the issue of clarifying the status of volunteer camp counsellors under *The Employment Standards Code* (the Code). Following a detailed discussion of the issue, both caucuses agreed to recommend a change to the Code respecting camp counselors.

Section 2 of the Employment Standards Regulation states that the Code does not apply to an individual who works as a volunteer for a charitable or political organization, and does not receive a wage. Due to the religious or otherwise charitable nature of the majority of organizations that engage camp counsellors, they have until now been considered volunteers, and therefore exempt from the Code. Members recognize that while counsellors at non-denominational camps may also continue to be regarded as ‘volunteer(s) for a

charitable organization and therefore exempt from the Code's provisions, an amendment should be made to provide clarity under the Code.

The members of the LMRC also agreed that the regulations under the Code should be amended to provide clarity, while not altering the current status of volunteers in general in Manitoba. It is recognized that the regulation should not act to draw wage earners into the volunteer sector, nor should it restrict other non-profit organizations from engaging volunteers as is currently practiced.

Therefore, it was proposed that the current exemptions under section 2 of the Employment Standards Regulation, covering volunteers for charitable or political organizations, remain unchanged. It was also recommended a new provision be added that would clarify that the Code does not apply to volunteers who work as camp counsellors at a charitable or religious residential camp, except that the Code would allow these individuals the ability to file a complaint with the Executive Director of Employment Standards.

The proposed amendment will provide clarity to well over 30 charitable camps in Manitoba, ensuring they can operate confidently in Manitoba. The majority of Canadian jurisdictions currently have similar provisions under their employment standards legislation.

The Employment Standards Code Review – Unpaid Organ Donor Leave

The LMRC was tasked with conducting a review of a proposal to provide for unpaid organ donor leave under *The Employment Standards Code* similar to provisions currently in the Code for unpaid compassionate care leave and unpaid reservist leave. Following significant discussion of the issue, the desire was apparent from both caucuses to find common ground on which to build a consensus recommendation. The LMRC, in recognizing the unique sacrifice of employees undergoing surgery for purposes of organ donation, achieved consensus on recommendations to provide leave for these individuals under the Code.

The Firefighters and Paramedics Arbitration Act

The LMRC considered proposed amendments to *The Firefighters and Paramedics Arbitration Act*. This addressed expanding coverage under the Act to all unionized firefighters employed by municipalities, both full-time and part-time, and the municipalities that employ them. This was agreed to unanimously by the LMRC.

The Employment Standards Code Review – The Retail Businesses Holiday Closing Act

The LMRC was given an opportunity to review a proposal to amend *The Retail Businesses Holiday Closing Act* (the Act) to expand shopping hours on Boxing Day when it falls on a Sunday. The amendment to the Act would allow for unrestricted shopping when Boxing Day falls on a Sunday, as it did in 2010. This change would also give municipalities the right to establish their own shopping hours in those particular years as well it would protect stores from being forced to open due to lease provisions or other agreements. The LMRC reviewed the issue and unanimously agreed on the appropriateness of such legislation.

Section 87.1-87.3 of The Labour Relations Act

As required under Section 87.4 of *The Labour Relations Act* (the Act) the Minister of Labour and Immigration requested that the LMRC review the operation of procedures contained in sections 87.1 to 87.3 of Act, respecting the settlement of subsequent agreements during a work stoppage that has continued for at least 60 days. After lengthy discussions, the Committee was unable to achieve any recommendations based on their review. Both labour and management caucuses have strong opinions on these sections. Management felt very strongly that this legislation is an intrusion in the collective bargaining process. It can be noted, however, that both the labour and management caucuses agreed the conditions for ordering the settlement of a dispute should remain in the legislation. These conditions are: work stoppage must have continued for over 60 days; determination by the Manitoba Labour Board (the Board) of good faith/bad faith bargaining; and determination by the Board that the applicant has bargained seriously and sufficiently.

Extensive Review of The Employment Standards Code

1. Proposal - Individual Flex-time Agreements

Currently, *The Employment Standards Code* provides for standard hours of work of eight hours per day or 40 hours in a week. These hours can be modified by collective agreement or by the employer applying to the Director of Employment Standards for an averaging permit. The legislation does not currently allow for flex-time arrangements for individual employees.

A significant number of collective agreements provide for standard hours of work that differ from the Code (ex: 10 hours for four days per week with three days off - 40 hours per week total). This reflects the wishes of many workers to have more flexible hours to deal with work/life balance.

The LMRC unanimously recommended that the Code be amended to provide for individual flex-time agreements as follows:

- At the request of an employee, who regularly works at least 35 hours per week, a written agreement can be entered into allowing the employee's standard hours of work to be altered to a maximum of 10 hours a day and 40 hours a week (instead of 8 hours a day and 40 hours a week).
- The agreement would set out the revised work schedule for the employee, agreed to by the employer and employee, in writing.
- Either the employee or the employer can cancel an agreement by providing 2 weeks notice, unless the parties agree to a shorter period. Upon cancellation, the normal standard hours of work will begin to apply again (8 hours a day and 40 hours a week).
- Approval of the Executive Director of Employment Standards would not be required. However, the Executive Director could revoke the ability of entering into these agreements if they are deemed to be misused upon investigation, or if there is a pattern of past non-compliance with the Code.
- The individual agreement cannot become a condition of employment or be related to the organizational needs of the employer. The Code currently provides that an employer wanting to alter standard hours of work as a condition of employment, or to meet organizational needs, may apply to the Executive Director of Employment Standards for an averaging permit.

Additional Provision

- The LMRC also recommended that, at the employee's request, an employer may agree to alter the employee's work schedule under the agreement on an ad-hoc basis to accommodate personal matters/emergencies. The maximum of 10 hours a day and 40 hours a week would also apply in these situations.

2. Proposal - Workplace/Occupational Agreements – Averaging Permits for Hours of Work

The standard hours of work are 8 hours a day and 40 hours a week. Hours worked above these, are overtime. Employers may apply to increase the daily hours in a 40-hour work week or to average the hours across a longer period such as 80 hours in a two-week period, 120 hours in a three-week period, 240 hours in a six-week period, and so on. Permits are not given to workplaces where the majority of employees disagree with the proposal.

Currently under the Code, the Executive Director must consider criteria “relating to industry customs or practices” to determine whether hours of work, for a class of employees or a workplace, can be modified through an averaging permit. There are situations where such industry customs or practices do not exist. It is felt that this provision does not provide the flexibility to deal with evolving and modern work practices.

The LMRC unanimously recommended that the Executive Director have the ability to grant an averaging permit based on the following criteria:

- 75% of employees within the class or workplace under consideration agree to the new hours proposed.
- The work schedule is posted two weeks in advance, and any unscheduled work beyond 8 hours in a day would be paid at the overtime rate.
- No adverse effect on safety, health or welfare to the employee or the public as a result of the permit.
- Under Section 14(3) of the Code, criteria (a) relating to industry customs or practices will no longer be considered.
- A history of general compliance with the Code by the employer.

3. Proposal – Holiday Pay - Continuously Operating Agricultural Workplaces

Manitoba allows certain industries to require their workers to work on public holidays without paying a wage premium. However, workers who are required to work on public holidays in these industries must be given an alternate day off, with pay, within 30 days.

Under the Code, the exception applies to employees employed in a continuously operating business, seasonal business, place of amusement, gasoline service station, hospital, hotel or restaurant, or in domestic service.

The LMRC unanimously recommended that the exceptions to premium pay for work on a holiday also apply to climate controlled facilities operating in the agricultural industry.

Recommendations on Issues Raised by the LMRC

1. Proposal - Just Cause

Currently under *The Employment Standards Code*, an employer, when terminating an employee from employment, must provide the employee with a notice of termination, or pay in lieu, unless the employer can show evidence that the employee has acted in a manner that is not condoned by the employer and that

- (i) constitutes wilful misconduct, disobedience or wilful neglect of duty, or
- (ii) is violent in the workplace, or
- (iii) is dishonest in the course of employment.

The LMRC unanimously recommended that the Code be amended to provide for the “just cause” standard for termination of an employee in place of the “wilful misconduct” standard, consistent with other Canadian jurisdictions.

2. Proposal - Recovery of Overpayments to Employees

Under *The Employment Standards Code*, an employer may only deduct money from an employee’s pay for something that is a direct benefit; and only if the employee agrees. Other allowable deductions prescribed by the legislation are legal source deductions, recovery of pay advances, money for red light or photo radar tickets, and charges for board, lodging and meals.

The LMRC unanimously recommended that provisions be added to the Code that will clarify when an employer may deduct monies from an employees pay for reason of pay roll error or advances in pay that have not been repaid.

CONCLUSION

For over 40 years, the LMRC, together with its sub-committees, has been very successful in promoting a harmonious labour relations climate. The Committee remains a critical and valuable resource for labour-management consultation and cooperation across a wide range of issues of consequence to the province. The LMRC has a unique capability to give a balanced assessment of issues as they may impact both labour and business. Effective dialogue and cooperation between the labour market stakeholders and with government is recognized as a crucial step in building a strong and vibrant economy in Manitoba.

The Committee therefore urges the Government of Manitoba to utilize the LMRC for feedback and advice on all labour relations matters. This would ensure that proposed regulatory and policy changes benefit from reviews that balance the perspectives from both business and labour. In turn, this would help promote commitment as well as a positive working relationship among the key stakeholders.

APPENDIX A

COMMITTEE AND SUB-COMMITTEE MEMBERSHIP

AS OF DECEMBER 31, 2010

MANITOBA LABOUR MANAGEMENT REVIEW COMMITTEE
MEMBERSHIP
AS OF DECEMBER 31, 2010

Labour Representatives

Kevin Rebeck
Manitoba Federation of Labour

Bill Comstock
Manitoba Government and
General Employees' Union (retired)

Dave Martin
Manitoba Building and Construction
Trades Council

Robert Ziegler
United Food and Commercial Workers
Local 832

Pat Isaac
Manitoba Teachers' Society

Alternates

Jim Murphy
Operating Engineers of Manitoba

Chairperson

Vice-Chairperson

Government Representative

Secretary

Management Representatives

Peter Wightman
Construction Labour Relations
Association of Manitoba

William Gardner
Pitblado

Ed Huebert
Mining Association of Manitoba

Darcy Strutinsky
Winnipeg Regional Health Authority

Jim Witiuk
Canada Safeway Limited

Graham Starmer
Manitoba Chambers of Commerce

Michael D. Werier

Vacant

Victor Minenko

Karen Lockhart

**ARBITRATION ADVISORY SUB-COMMITTEE
MEMBERSHIP
AS OF DECEMBER 31, 2010**

Labour Representatives

Kevin Rebeck
Manitoba Federation of Labour

William Summerlus
Canadian Union of Public Employees

Tom Paci
Manitoba Teachers' Society

Bruce Buckley
Manitoba Government and General
Employees' Union

Alternates

David Lewis
Manitoba Government and General
Employees' Union

Management Representatives

William Gardner
Pitblado

Darcy Strutinsky
Winnipeg Regional Health Authority

Vacant

Jim Witiuk
Canada Safeway Limited

Chairperson

Michael D. Werier

Government Representative

Victor Minenko

Secretary

Karen Lockhart

APPENDIX B

COMMUNICATIONS' GUIDELINE

PUBLIC INFORMATION GUIDELINE

THE MANITOBA LABOUR MANAGEMENT REVIEW COMMITTEE

Information on labour management issues should generally be publicly available, not only because of its importance to the public, but because of the openness required by "right-to-know" legislation at both the provincial and federal levels.

The general guideline will be followed by the members of the LMRC and its sub-committees under the following parameters:

1. The Chairperson of the LMRC will act as the spokesperson for the Committee on all matters under consideration by the Committee. Notwithstanding this procedure:
 - a) Another person(s) may be designated by the LMRC for a specific matter(s); or
 - b) Another person(s) may be designated by the Chairperson in the absence of the Chairperson.
2. Matters under active consideration by the LMRC may be commented on in general terms, but not specifically, unless so considered and agreed to by the Committee.
3. Matters concluded by the LMRC may be commented on specifically, provided they do not require further decision by government. In the case that they require further decision, members' comments should so indicate and information should be sought from those required to make the further decisions.
4.
 - a) Members of the LMRC are free to comment on their principal's positions on matters under consideration by the Committee as long as it is made clear that the position is that of the principal and not that of the LMRC; and
 - b) Members of the LMRC may keep their principals apprised of various matters under consideration to the degree appropriate.

PUBLIC INFORMATION GUIDELINE

THE MANITOBA LABOUR MANAGEMENT REVIEW COMMITTEE

(cont'd)

5. Since the LMRC is not a public body, its meetings are closed, except as decided by the Committee. This does not preclude the LMRC from having persons other than members in attendance to facilitate the deliberations of the Committee.
6. Minutes, once approved by the LMRC, will be distributed to all members of the LMRC. (Commentary to follow the procedure outlined in 1, 2 and 3).
7. Materials used in assisting the LMRC in its deliberations should remain within the Committee unless decided otherwise by the Committee:
 - a) If these are the property of groups outside the LMRC, they are under the control of these groups.
 - b) If these are the result of the work of the Department, they are under the control of the Department.
8. All members of the LMRC and its sub-committees are to be provided with a copy of these guidelines.