

"Organizing the Unorganized" Revisited

An Analysis of the Efficacy of Labour Legislation in Facilitating Collective Representation in the Canadian Banking Sector

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FOREWORD

The Industrial Relations Centre is pleased to include this study, "Organizing the Unorganized" Revisited, in its publication series School of Industrial Relations Research Essay Series. The series is intended to give wider circulation to selected student research essays, chosen for both academic merit and their interest to industrial relations practitioners and policy makers.

The research essay is a central requirement of the Master's Program in Industrial Relations (MIR) at Queen's, providing students with an opportunity to undertake independent research. The essay may be an evaluation of a policy oriented issue; a limited empirical project; or a critical analysis of theory, policy, or the related literature in a particular area of industrial relations. The author, Jane Bailey, received her MIR degree in October, 1990. I would like to express my appreciation to the author for granting permission to publish this excellent study and to Professor Sheila McIntyre of the Faculty of Law for her important contribution as faculty supervisor.

P. Kumar, Acting Director
Industrial Relations Centre and
School of Industrial Relations
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ABSTRACT

Concomitant with the expansion of the service sector as an increasingly large component of the Canadian economy, has been a growth in service related employment. In fact, 90% of new jobs since 1967 have been located in the service sector (Economic Council of Canada, 1990). Service sector employment, typified by nonstandard work forms, growing use of computerization and a pronounced segmentation between "good jobs and bad jobs" places a growing number of Canadian workers, many of whom are women, in an increasingly insecure financial and occupational position. Examination of the Canadian banking industry, a significant employer within the service sector, reveals that these general trends also apply specifically to the financial sector. In wake of the growing use of computerization, spurred on by competition, the employee relations climate in Canadian banks is characterized by employment restructuring emphasizing the use of part-time and temporary labour, comparatively poor average rates of compensation and extreme occupational segregation based on sex.

Despite circumstances which would seem to demand collective action, unionization in Canadian banks has met with limited success. While the organizational strategies of Canadian unions and such service sector features as the disparate location of tiny groups of employees, may provide a partial answer to this lack of success, the work of Lennon (1980) documents the effects of legislative inefficacy in dealing with a virtually unprecedented bank campaign against unionization. Indeed, examination of the case law subsequent to Lennon's 1980 analysis demonstrates a continued inability (or unwillingness) across the labour relations boards of Ontario and Canada to deal consistently and effectively with the power imbalance created by the concerted campaign of the Canadian banks against the attempts of their employees to achieve collective representation.

The purpose of this paper is to examine the jurisprudence surrounding unionization attempts in the Canadian chartered banks (supplemented by decisions of the Ontario Labour Relations Board dealing with trust companies and credit unions) and to analyze the efficacy of legislation in dealing with the intransigence of the banking counter-campaign in order to identify possible areas for resolution of the barriers to collective representation for bank and other service sector workers. Prior to examination of the jurisprudence, the paper focuses on the nature of employment in the banking sector in order to provide a contextual framework for analysis of the efficacy of labour board decisions.

GLOSSARY OF SHORT FORMS

| | |
|--------------|--|
| BANK OF CAN. | BANK OF CANADA |
| C.I.B.C. | CANADIAN IMPERIAL BANK OF COMMERCE |
| C.L.C. | CANADA LABOUR CONGRESS |
| C.L.R.B. | CANADA LABOUR RELATIONS BOARD |
| C.S.N. | SYNDICAT DES EMPLOYES DES BANQUES NATIONALES |
| C.U.B.E. | CANADIAN UNION OF BANK EMPLOYEES |
| C.U.U.B. | CANADIAN UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS |
| F.C.W.I.U. | UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION |
| I.U.O.E. | INTERNATIONAL UNION OF OPERATING ENGINEERS |
| M.C.D.S.B. | MONTREAL CITY AND DISTRICT SAVINGS BANK |
| M.F.C.W. | MANITOBA FOOD AND COMMERCIAL WORKERS OF THE UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION |
| N.U.P.G.E. | NATIONAL UNION OF PROVINCIAL GOVERNMENT EMPLOYEES |
| O.L.R.B. | ONTARIO LABOUR RELATIONS BOARD |
| O.P.E.I.U. | OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION |
| O.T.E.U. | OFFICE AND TECHNICAL EMPLOYEES UNION |
| R.C.I.U. | RETAIL CLERKS INTERNATIONAL UNION |
| R.C.U. | RETAIL CLERKS UNION |
| S.E.B.E. | SYNDICAT DES EMPLOYES DE LA BANQUE D'EPARGNE |
| S.O.R.W.U.C. | SERVICE, OFFICE AND RETAIL WORKERS UNION OF CANADA |
| T.D. | TORONTO DOMINION BANK |
| U.B.E. | UNION OF BANK EMPLOYEES |
| U.S.W.A. | UNITED STEELWORKERS OF AMERICA |

I. INTRODUCTION

The service sector is an increasingly important component of the Canadian economy and employs 70% of all workers (Economic Council of Canada, 1990) and 84% of Canadian working women (Statistics Canada, 1990). However, the quality of employment in this growing sector of the economy has become an area of concern. Employment in this sector is characterized by a growing trend toward the use of nonstandard work forms such as part-time, temporary and short-term assignments, associated with lower pay and benefits than full-time employment in the same occupations and industries. These factors, in combination with marked segmentation between "good" and "bad" jobs within the service sector, create job and income insecurity for the growing number of Canadians, especially women, employed in this expanding sector (Economic Council of Canada, 1990).

Whereas poor working conditions and job insecurity have often been labelled underlying causes of unionization, the insecurity which typifies employment in the service sector has generally not been dealt with through collective action, such that by 1986 only 10.7% of the employees of private sector service operations were unionized (Meltz, 1990). One of the largest remaining pools of non-unionized workers in this private service sector is found in Canadian banks where less than 1% of all workers are unionized and women represent more than 75% of the total workforce. Organization of these workers may not only be crucial in the pursuit of economic equality for the women who comprise the vast majority of the banking workforce, it is of increasing importance to the survival of the Canadian labour movement as jobs in traditional union strongholds decline and more and more Canadian workers are employed in the service sector.

After an initial flurry of organization within Canadian banks during the late 1970's, a series of demoralizing defeats ensued. The work of Lennon (1980) and Lowe (1980, 1981) focused upon both the underlying motivation for unionization within banking and the factors which caused these initiatives to fail. Although both identified factors such as occupational segregation based on sex, low levels of compensation and feelings of alienation from centralized decision making as key elements in the initiation of union organization, each arrived at markedly different conclusions as to the reasons for failure. While Lowe emphasized that the marked aversion of women toward unionization kept organizational attempts from making significant headway¹, Lennon focused on the inefficacy of current labour legislation in wake of the challenges presented by this new organizational territory.

Indeed, Lennon's work emphasized the inability (or unwillingness) of the Canada Labour Relations Board to deal with several factors which make service sector unionism significantly different from the industrial unionism with which the Board had dealt primarily in the past. The disparate locations which typify service sector operations are complicated by a widespread use of part-time or casual labour and small numbers of employees at each location. These tiny, fragmented groups of employees have little hope of organization in a system designed and administered to accommodate free collective bargaining in an industrial union setting. "Free" collective bargaining is dependent upon an element of equality in bargaining power which service sector groups have not been able to achieve to any significant degree, despite organizational attempts over the past decades. If anything, current economic restructuring has worsened their access to unionization. As such, it is essential that current legislation and its administration

¹ The weakness of this explanation will be demonstrated in Chapter 2.

be re-examined in the context of the emerging service sector in order to ensure that workers experiencing an increasing element of job insecurity are able to access collective representation.

The purpose of this paper is to explore the nature of employment in Canadian banks and to trace the role of labour legislation and the impact of labour board jurisprudence in making collective bargaining accessible to employees in Canadian banks. Chapter 2 focuses on the effects of accelerated computerization and competition on employee relations within the banks in order to identify the power imbalance between employee and employer created by the economic resources and poor employment conditions of Canadian banks. Chapter 3 discusses the jurisprudence arising out of organizing attempts within Canadian banks, highlighting the inability (or unwillingness) of labour boards to deliver decisions which consistently take into account either the power imbalance between employees and employer or the concerted nature of the banks' counter campaign against unionization. Chapter 4 focuses on the possibility for reforms designed to enhance bank workers' (and other service workers') access to improved conditions of employment, either through legislative facilitation of unionization or other protective measures.

II. THE CANADIAN CHARTERED BANKS

The study of employee relations and the history of organization attempts in Canadian chartered banks is topical in the context of today's industrial relations scene since they are the largest component of the Canadian financial sector and they employ one of the greatest remaining pools of non-unionized service sector workers in Canada. The nature of employee relations and unionization efforts must be understood in the context of the impact of several key factors within the present industrial climate on employee relations within Canadian banks. In turn, the employment strategies and policies used by the Canadian banks in response to contextual challenges have an important, and often adverse, effect on the ability and desire of employees to become organized in an effective manner.

The Canadian banking system is comprised of the central bank (the Bank of Canada), eight large domestic banks and fifty-eight smaller foreign banks (Employment and Immigration, 1989:13). This federally regulated sector is made up of over 7100 branches, with total assets of \$508 billion in 1987 (Employment and Immigration, 1988:13) and net income of \$328 billion in 1988 (Canadian Bankers Association, 1989:1). With total assets constituting 1.1% of Gross Domestic Product in 1987, it is by far the largest of the "four-pillar" financial system in Canada which also consists of trust companies, insurance firms and the securities industry, the latter three provincially regulated (Employment and Immigration, 1988:13). The distinction between these pillars is becoming increasingly blurred, and competition is growing as provincial and federal legislative amendments permit banks to become involved in the high risk business of buying and selling securities. Competition is expected to heighten due to anticipated further deregulation designed to permit trust companies to expand into insurance, banking and securities activities (Employment and Immigration, 1988:14).

Net income within the Canadian chartered banks has followed a pattern of increase over the period from 1983 to 1988, with the loss declared in 1987 resulting from massive increases in provisions for loss against the \$25 billion in loans made to third world countries. Before these special provisions profits stood at \$2.9 billion (Employment and Immigration, 1988:13). (See Table 1)

Salary expenditures consistently represented the single largest non-interest expense in the banks from 1983 to 1988. However, salaries, pension contributions and other staff benefits represent a declining proportion of net interest and other income, falling from 49.9% in 1983 to 37.6% in 1988 (Canadian Bankers Association, 1989:16). (See Table 2)

In an effort to process the growing number of items which pass through the Canadian clearing system more efficiently and to maintain or reduce labour costs as a proportion of operating costs, Canadian banks are turning increasingly to automation. In fact, the nearly two billion items which passed through the system in 1988, were handled increasingly by automated means, especially automated banking machines. From a total of 1,230 machines in 1983, the number of automated banking machines in Canadian banks rose steadily to a total of 4,122 by 1988 (Canadian Bankers Association, 1989:6).

Table 1

Net Income in Canadian Chartered Banks, 1983-1988

| Year | Net Income (in millions) | Annual % Change |
|------|--------------------------|-----------------|
| 1983 | 1298.3 | |
| 1984 | 1544.4 | 18.96 |
| 1985 | 1960.2 | 26.92 |
| 1986 | 1825.0 | -6.90 |
| 1987 | -516.1 | -128.28 |
| 1988 | 3288.6 | 537.20 |

Source: The Canadian Bankers' Association, "Bank Facts," Special Insert, 1989 Canadian Banker, p.16.

Note: 1987 losses represent write-off of losses against loans made to third world countries.

Table 2

Salaries and Benefits as a Percentage of Net Interest and Other Income in Canadian Chartered Banks, 1983-1988

| Year | Net Interest & Other Income (in millions) | Salaries & Benefits Expense (in millions) | Salaries & Benefits as % of Net Interest & Other Income |
|------|---|---|---|
| 1983 | 8258.0 | 4122.6 | 49.92 |
| 1984 | 9073.9 | 4273.0 | 47.09 |
| 1985 | 10622.1 | 4702.0 | 44.27 |
| 1986 | 11031.8 | 4941.5 | 44.79 |
| 1987 | 14072.7 | 5247.5 | 37.29 |
| 1988 | 15892.2 | 5979.6 | 37.63 |

Source: The Canadian Bankers' Association, "Bank Facts," Special Insert, 1989 Canadian Banker, p.16.

In 1987, six Canadian banking institutions accounted for more than 85% of all bank assets in Canada and employed almost 95% of the people employed in the Canadian banking industry (Employment and Immigration, 1988:13). The so-called "big 6" includes the Canadian Imperial Bank of Commerce, the Bank of Montreal, the Bank of Nova Scotia, the Toronto-Dominion Bank, the National Bank and the Royal Bank of Canada. Of these, the Royal Bank is the largest accounting for almost 25% of all bank assets and bank employment in Canada in 1987 (Employment and Immigration, 1988:13). The significance of this concentration of employment should not be underestimated. In 1988, the Canadian banks reporting under the Employment Equity Act employed 174,778 full- and part-time employees (Employment and Immigration, 1989:35) which represented 1.4% of total full-time and part-time employment nation wide.² Over 75% of all banking employees in 1987 and 1988 were women (Employment and Immigration, 1988:30, 1989:35).

The wealth of the Canadian banking industry assures both economic and political power for this sector, granting its representatives significant leverage to lobby effectively against legislative change which threatens to interfere with the independent governance of employees. Furthermore, the economic resources of the banking industry set the stage for a markedly imbalanced power relationship between employee and employer. This acts as an impediment to employee self-help in either establishing contracts of employment which sufficiently protect individual employees, either through personal action or collective bargaining. As well, the multi-branch structure and rapid expansion of automated banking machines within the industry make unionization difficult and virtually guarantee the ineffectuality of the strike weapon by assuring that alternate locations and means for continuation of banking business are always available.

1. Employee Relations Climate in Canadian Chartered Banks

Growing competitive pressures, automation and poor working conditions shape the employee relations climate in Canadian chartered banks. As competition grows, "cost control and operating efficiency will become the most important cornerstones of successful bank management" in the 1990's (Rose, 1989:54). Driven by consumer demand for improved and cheaper banking services, Canadian banks have invested significant amounts of energy and resources in the automation of banking functions. Significant informatic achievements include the nationwide installation of 4,122 automated teller machines by 1988 (Canadian Bankers Association, 1989), the complementary development and distribution of the personal access card and point of sale electronic funds transfers which permit direct transfer of funds from a customer's account to that of the business involved in the transaction (Menzies, 1981).³ While other representatives of the banking industry have denied allegations that automation will result in job losses, Rose (1980:57) acknowledges the escalation of job insecurity resulting from the growth of informatics in the following passage,

² This calculation was made based upon the employment figures shown in Statistics Canada, Catalogue 71-201 and the total banking work force reporting under the federal Employment Equity Act in 1989. % Employed by banks – $(174,778)/(12,245,000) \times 100 = 1.4\%$

³ Electronic funds transfer systems are often employed at supermarkets or in selected retail stores, where the customer pays for the items by credit card and the funds are immediately transferred from the account of the customer to that of the business by direct link to the central banking computer system.

"And much of new technology is designed to reduce labour and paper costs. This factor may account for the recent slow-down in banking employment. And even if it is not the true cause right now, changes in technology certainly will have a powerful impact upon banking employment in the coming years."

Coincident with the growth of informatic achievements in the banking industry is significant employment restructuring, including a growing trend toward the use of part-time and temporary employees who are generally slotted into lower occupational categories with concomitant lower pay and benefits (Milkovich, et al, 1988:49). In 1988, there was a net loss of 1,622 full-time banking jobs and a net gain of 1,655 part-time positions (Employment and Immigration, 1989:37). Part-time hiring in banks represented 37.4% of new hires in 1988 (Employment and Immigration, 1989:37), such that 17.44% of bank workers were employed on a part-time or temporary basis, leaving part-time bank employees representing 49.05% of all part-time employees in the federally regulated sector (Employment and Immigration, 1989:13).

The occupational status associated with part-time employment is on average well below that of the full-time category. In 1988, 96.4% of all part-time bank workers were employed in clerical occupations with only 1.3% employed in a managerial capacity. In contrast, in the same year, 26.48% of full-time bank workers were employed in managerial positions while clerical occupations represented 53.7% of full-time employment (Employment and Immigration, 1989: Tables 4.3 and 4.4). The lower occupational status (as well as a reduced number of working hours) of part-time employees in banks translates into much lower average annual earnings, such that in 1988, 99.5% of part-time bank employees earned less than \$20,000 per year while 70.1% of full-time workers earned more than this amount (Employment and Immigration, 1989: Tables 6.4 and 6.5).

Additionally, the benefits afforded part-time employees are generally very poor. Although almost all permanent part-time employees in the financial sector in 1985 had short-term disability benefits, less than three-quarters were covered by life insurance, extended health or dental plans and only 24% were part of a pension plan (Labour Canada, 1985). The benefit situation for casual part-time workers in the financial industry was even worse, with 46% covered by short-term disability plans, 2% covered by extended health or dental plans and none covered by long-term disability, life insurance or pension plans (Labour Canada, 1985). The benefit coverage reported in the financial sector was below the average coverage of four federally regulated industries in four of the six benefit areas surveyed for permanent part-time workers and five of the six benefit areas surveyed for casual part-time employees (Labour Canada, 1985).

The data clearly demonstrates the demarcation between full-time and part-time employment within the banks, but it is also important to evaluate bank pay levels and employment structures through external comparison. In 1988 employment in Canadian banks showed a much higher concentration of clerical and middle managerial positions than did any other federally regulated sector, but paid the lowest average full-time and part-time salaries in that sector (Employment and Immigration, 1989:23). In fact, full-time bank employees were more than twice as likely to be paid less than \$25,000 per year than were full-time employees in any other federally regulated sector (Employment and Immigration, 1989:13). Thus, the comparatively large number of managerial titles within banks are not reflected in higher average salary levels.

2. The Status of Women in Canadian Chartered Banks

Occupational sex segregation was documented in detail in 1971, when the Royal Commission on the Status of Women in Canada published a report prepared by Marianne Bossen entitled "Manpower Utilization in Canadian Chartered Banks" (Poole, 1989). The report revealed the extreme segregation of women in lower paid and lower status occupational positions relative to their male counterparts in the banking industry. In 1990, a full nineteen years after the Royal Commission reported its findings, many of the inequities between men and women in banking remain.

Since the passage of the Employment Equity Act, S.C. 1986, chartered banks have become one of four federally-regulated groups required to report on the position of four designated groups for the purposes of determining the equity of these employers' occupational grouping, hiring/termination, promotional, and earnings profiles. To date, two reporting years have passed, with annual reports filed for 1987 and 1988.⁴ Statistical analysis of the figures submitted in these reports verifies that women in banking continue to be segregated into lower occupational categories, experience greater fluctuations in employment duration, comprise a greater proportion of the part-time work force and are isolated at lower salary levels with fewer non-clerical promotional opportunities than their male counterparts.

In 1988, women represented 72.46% of the total full-time work force in Canadian banks reporting under the Employment Equity Act (Report (89):35), fully 33.7% higher than women's proportion of the national full-time labour force as a whole. (See Table 3) Although more than three-quarters of bank workers in 1987 and 1988 were women, women continued to be segregated in lower level positions. The occupational composition of banks in 1987 and 1988 respectively showed women to hold 2.9% and 4.44% of upper level management jobs, 38.3% and 42.67% of middle and other managerial positions, 54.2% and 56.4% of professional positions and 92% and 91.71% of clerical positions (Report (88) :33, (89):36).⁵ Despite the indication of slight growth in managerial positions occupied by women from 1987 to 1988, women continue to be segregated in the lower salary quartiles of all managerial and professional occupational groups. (See Table 4)

Additionally, women in banks also represent the largest share of full-time terminations, such that of the four federally regulated sectors reporting under the Employment Equity Act, in 1988, "(t)he banking sector had the largest single impact on the net effect of hirings and terminations for women"(Report (88):35). In 1987, there were 2,208 net full-time terminations, 2,106 of which (95.4%) were job losses born by women. In 1988, there were 1,622 net full-time terminations, representing the loss of 1,845 jobs held by women and a gain of 213 positions for men. In contrast, in 1987 and 1988, women in banks represented 82.4% and 80.1%, respectively, of the net part-time job increases (Report (88) :38, (89):37). Thus, the negative effects of net full-time terminations in banking are unevenly born by women, while women share a greater proportion of net part-time job increases.

⁴ The following discussion is based on statistics provided in Employment Equity Act Annual Report(s) and Tables for 1988 and 1989, as such references provide will refer to Report (88), Report (89), Tables (88) and Tables (89)

⁵ Note that the figures for 1987 are indicative of women's occupational status as a percentage of all employment status categories, while those for 1988 illustrate women's occupational positions as a percentage of full-time positions only.

Table 3

Men and Women by Employment Status in Canadian Chartered Banks as Compared to National Full-Time and Part-Time Figures for 1987 and 1988.

| Employment Status Average | Banking Sector | | | National Average** (000's) | | | Difference Between Banking Sector and National | | |
|------------------------------|----------------|--------|---------|----------------------------|-------|---------|--|--------|--------|
| | 1987 | 1988 | %Change | 1987 | 1988 | %Change | 1987 | 1988 | |
| Full-Time | All | 141747 | 144781 | 2.10 | 10057 | 10363 | 2.95 | | |
| | Men | 38931 | 39877 | 2.37 | 6199 | 6350 | 2.38 | | |
| | Women | 102816 | 104904 | 1.99 | 3858 | 4013 | 3.06 | | |
| | Women% | 72.53 | 72.46 | -0.11 | 38.36 | 38.72 | 0.94 | 34.17% | 33.73% |
| Part-Time | All | 27226 | 29997 | 9.24 | 1804 | 1882 | 4.14 | | |
| | Men | 1537 | 2017 | 23.80 | 510 | 527 | 3.23 | | |
| | Women | 25689 | 27980 | 8.19 | 1294 | 1355 | 4.50 | | |
| | Women% | 94.35 | 93.28 | -1.16 | 71.73 | 72.00 | 0.37 | 22.63% | 21.28% |
| Temporary | All | 534 | 591 | 9.64 | | | | | |
| | Men | 36 | 48 | 25.00 | | | | | |
| | Women | 498 | 543 | 8.29 | | | | | |
| | Women% | 93.26 | 91.88 | -1.50 | | | | | |
| Overall | All | 169507 | 175369 | 3.34 | | | | | |
| | Men | 40504 | 41942 | 3.43 | | | | | |
| | Women | 129003 | 133427 | 3.32 | | | | | |
| | Women% | 76.10 | 76.08 | -0.03 | | | | | |

Table 4

Distribution of Men and Women by Occupational Group and Salary Quarter for All Employment Status Categories (1987) & Full-Time (1988) in Canadian Chartered Banks

| | Quarter | 1987* | | | | 1988** | | | |
|----------------------------------|---------|-------|------|-------|---------------------|--------|------|-------|---------------------|
| | | Total | Men | Women | Women as % of total | Total | Men | Women | Women as % of total |
| Upper Level Managers | 4 | 174 | 59 | 115 | 66.09 | 122 | 52 | 70 | 57.38 |
| | 3 | 1188 | 297 | 891 | 75.00 | 902 | 257 | 645 | 71.51 |
| | 2 | 3942 | 463 | 3479 | 88.25 | 3924 | 484 | 3440 | 87.67 |
| | 1 | 3883 | 377 | 3506 | 90.29 | 4183 | 387 | 3796 | 90.75 |
| Middle or other Managers | 4 | 585 | 530 | 55 | 9.40 | 687 | 633 | 54 | 7.86 |
| | 3 | 2329 | 2082 | 247 | 10.61 | 3222 | 2893 | 329 | 10.21 |
| | 2 | 11204 | 9165 | 2039 | 18.20 | 12497 | 9876 | 2621 | 20.97 |
| | 1 | 20536 | 9268 | 11268 | 54.87 | 20484 | 7950 | 12534 | 61.19 |
| Professionals | 4 | 116 | 91 | 25 | 21.55 | 62 | 53 | 9 | 14.52 |
| | 3 | 402 | 267 | 135 | 33.58 | 326 | 249 | 77 | 23.62 |
| | 2 | 1860 | 1358 | 502 | 26.99 | 2469 | 1809 | 660 | 26.73 |
| | 1 | 13444 | 5458 | 7986 | 59.40 | 13327 | 5023 | 8304 | 62.31 |
| Semi-Professionals & Technicians | 4 | 55 | 42 | 13 | 23.64 | 49 | 36 | 13 | 26.53 |
| | 3 | 254 | 183 | 71 | 27.95 | 133 | 90 | 43 | 32.33 |
| | 2 | 906 | 398 | 508 | 56.07 | 516 | 216 | 300 | 58.14 |
| | 1 | 1194 | 275 | 919 | 76.97 | 854 | 195 | 659 | 77.17 |
| Supervisors | 4 | 174 | 59 | 115 | 66.09 | 122 | 52 | 70 | 57.38 |
| | 3 | 1188 | 297 | 891 | 75.00 | 902 | 257 | 645 | 71.51 |
| | 2 | 3942 | 463 | 3479 | 88.25 | 3924 | 484 | 3440 | 87.67 |
| | 1 | 3883 | 377 | 3506 | 90.29 | 4183 | 387 | 3796 | 90.75 |
| Forepersons | 4 | 10 | 10 | 0 | 00.00 | 9 | 9 | 0 | 00.00 |
| | 3 | 6 | 6 | 0 | 00.00 | 7 | 7 | 0 | 00.00 |
| | 2 | 12 | 12 | 0 | 00.00 | 12 | 12 | 0 | 00.00 |
| | 1 | 29 | 27 | 2 | 6.90 | 36 | 34 | 2 | 5.56 |

| | | | | | | | | | |
|---------------------------------------|---|--------|-------|--------|-------|--------|-------|--------|-------|
| Clerical Workers | 4 | 604 | 136 | 468 | 77.48 | 461 | 125 | 336 | 72.89 |
| | 3 | 5587 | 729 | 4858 | 86.95 | 4932 | 774 | 4158 | 84.31 |
| | 2 | 44976 | 2952 | 42024 | 93.44 | 31282 | 2792 | 28490 | 91.07 |
| | 1 | 53240 | 3795 | 49445 | 92.87 | 41211 | 3289 | 37922 | 92.02 |
| Sales Workers | 4 | 38 | 29 | 9 | 23.68 | 26 | 20 | 6 | 23.08 |
| | 3 | 57 | 39 | 18 | 31.58 | 51 | 42 | 9 | 17.65 |
| | 2 | 170 | 109 | 61 | 35.88 | 159 | 102 | 57 | 35.85 |
| | 1 | 214 | 78 | 136 | 63.55 | 255 | 98 | 157 | 61.57 |
| Service Workers | 4 | 65 | 58 | 7 | 10.77 | 47 | 46 | 1 | 2.13 |
| | 3 | 121 | 112 | 9 | 7.44 | 109 | 105 | 4 | 3.67 |
| | 2 | 120 | 96 | 24 | 20.00 | 105 | 90 | 15 | 14.29 |
| | 1 | 162 | 101 | 61 | 37.65 | 156 | 111 | 45 | 28.85 |
| Skilled Craft & Trades Workers | 4 | 46 | 45 | 1 | 2.17 | 45 | 45 | 0 | 00.00 |
| | 3 | 87 | 81 | 6 | 6.90 | 93 | 84 | 9 | 9.68 |
| | 2 | 98 | 80 | 18 | 18.37 | 85 | 69 | 16 | 18.82 |
| | 1 | 81 | 63 | 18 | 22.22 | 72 | 56 | 16 | 22.22 |
| Semi-Skilled and Other Manual Workers | 4 | 64 | 61 | 3 | 4.69 | 59 | 54 | 5 | 8.47 |
| | 3 | 116 | 104 | 12 | 10.34 | 98 | 84 | 14 | 14.29 |
| | 2 | 217 | 203 | 14 | 6.45 | 166 | 154 | 12 | 7.23 |
| | 1 | 100 | 85 | 15 | 15.00 | 105 | 93 | 12 | 11.43 |
| Total Number Workers | | 276479 | 50182 | 226297 | | 144781 | 39877 | 104904 | |

*Source: Employment Equity Act Annual Report to Parliament, Tables, 1988, Table 5.4

**Source: Employment Equity Act Annual Report to Parliament, Tables, 1989, Table 5.4

The percentage of women employed part-time in banks fell slightly from 94.4% in 1987 to 93.28% in 1988 (Report(88):30,(89):35). However, in 1988, the proportion of women employed part-time in banks exceeded women's proportion of the part-time national labour force as a whole by 21.28%(Statistics Canada, 1990:83). (See Table 3) The disproportionate representation of women in part-time positions has a substantial impact on the earnings of women; the average annual salaries in part-time as compared to full-time employment for women in banks were \$10,876 and \$22,368, respectively in 1987 (Report(88):33) and \$11,455 and \$23,792 in 1988 (Report(89):30). In addition to lower pay, the disproportionate representation of women in part-time work in banks also results in women enjoying fewer fringe benefits (Labour Canada, 1985). A study by the Economic Council of Canada (1990) indicates that a majority of those employed on a part-time basis in the service sector would prefer full-time work if it were available to them. As such, those women working on a part-time basis may do so out of necessity rather than choice. So although part-time employment has been viewed as an opportunity to provide flexibility in the schedules of working women in order to allow time for family and other commitments, the low pay and benefits and limited chance for promotion outside of clerical ranks associated with part-time work in banking have fallen far short of this ideal goal.

As a result of women's under-representation in the upper echelons of the banking hierarchy and their concentration in the lower occupational ranks (as demonstrated in Table 4), women in banking tend to be concentrated in the lower levels of overall salary distribution. In 1987, only 10,043 or 23.19% of the 38,993 men employed full-time in Canadian banks earned less than \$27,500 annually, while 85,772 women, fully 83.37% of the 102,881 women employed full-time in banks earned less than this amount (Tables (88):6.4). (See Table 5) Overall, in 1987 women in banks earned on average 51.5% of males (Report(88):33) and this figure improved marginally in 1988 to 52.44% (Report(89):30). Moreover, the wage gap between men and women is considerably larger than that found in the national economy as a whole. In 1987, the man/woman wage ratio for full-time employment in banking was 51.5% (Report(88):33), while the national average ratio was 66% (Statistics Canada, 1990:77). Of four other federally regulated industries surveyed in 1987, banks paid the highest average man's salary and the lowest average woman's salary (Report(88):33).

In 1987, women in banks received 68.3% of all full-time promotions and 93.3% of all part-time promotions, while the figures in 1988 were 71.9% and 92.9% respectively (Report(88):39, Tables(89):102-103). However, most promotions for women tended to be in the lower earnings levels of the banking hierarchy, such that in 1987, 40% of the full-time promotions went to clerical workers and 33% went to middle and other managers, while almost all of the part-time banking promotions were in the clerical worker category (Report(88):24). This trend continued to be reflected in the 1988 promotional figures supplied. (See Table 6)

Thus, despite the fact that they constitute the vast majority of the banking workforce, women continue to be segregated in the lower occupational and salary categories, with the representation of women in clerical occupations in banking substantially higher than all other sectors reporting under the Employment Equity Act (Report(89):30). In addition to this, women occupy the vast majority of part-time positions (thus enjoying fewer benefits) and experience substantial job insecurity (reflected in the high proportion of terminations that are comprised of women). Thus, the internal and external inequities confronting women in banking which were first documented by the Royal Commission on the Status of Women in Canada in 1971, remain evident in 1990.

Table 5

Salary Distribution of Men and Women, By Full-Time Status in Canadian Chartered Banks, 1987 and 1988

| Salary Range | 1987* | | | | 1988** | | | |
|---------------------|--------|-------|--------|---------------------|--------|-------|--------|---------------------|
| | Total | Men | Women | Women as % of Total | Total | Men | Women | Women as % of Total |
| Under \$10,000 | 4 | 1 | 3 | 75.00 | 0 | 0 | 0 | 0.00 |
| \$10,000 - \$14,999 | 2876 | 280 | 2596 | 90.26 | 774 | 91 | 683 | 88.24 |
| \$15,000 - \$17,499 | 22574 | 1812 | 20762 | 91.97 | 15065 | 1445 | 13620 | 90.41 |
| \$17,500 - \$19,999 | 27706 | 1956 | 25750 | 92.94 | 27409 | 2105 | 25304 | 92.32 |
| \$20,000 - \$22,499 | 20101 | 1899 | 18202 | 90.55 | 22917 | 1991 | 20926 | 91.31 |
| \$22,500 - \$24,999 | 12850 | 2023 | 10827 | 84.26 | 15282 | 2113 | 13169 | 86.17 |
| \$25,000 - \$27,499 | 9704 | 2072 | 7632 | 78.65 | 10735 | 1950 | 8785 | 81.84 |
| \$27,500 - \$29,999 | 6944 | 1984 | 4960 | 71.43 | 8188 | 1852 | 6336 | 77.38 |
| \$30,000 - \$34,999 | 10519 | 4536 | 5983 | 56.88 | 11691 | 4113 | 7578 | 64.82 |
| \$35,000 - \$39,999 | 8025 | 4908 | 3117 | 38.84 | 8391 | 4462 | 3929 | 46.82 |
| \$40,000 - \$49,999 | 10704 | 8436 | 2265 | 21.16 | 12058 | 8746 | 3312 | 27.47 |
| \$50,000 - \$69,999 | 7665 | 6972 | 693 | 9.04 | 9329 | 8224 | 1105 | 11.84 |
| \$70,000 & Over | 2202 | 2111 | 91 | 4.13 | 2942 | 2784 | 158 | 5.37 |
| Total No. Employees | 141874 | 38993 | 102881 | | 144781 | 39876 | 104905 | |

*Source: Employment Equity Act Annual Report to Parliament, Tables 1988, Table 6.4.

** Source: Employment Equity Act Annual Report to Parliament, Tables 1989, Table 6.4.

Table 6

Distribution of Promotions of Men and Women by Employment Status and Occupational Group in Canadian Chartered Banks, 1988

| Occupational Group | Full-Time | | | | | | | |
|------------------------------------|-----------|-------|-------|---------------------|-------|-----|-------|---------------------|
| | Total | Men | Women | Women as % of Total | Total | Men | Women | Women as % of Total |
| Upper Level Managers | 239 | 216 | 23 | 9.62 | 0 | 0 | 0 | 0.00 |
| Middle or Other Managers | 11870 | 5804 | 6066 | 51.10 | 95 | 5 | 90 | 94.74 |
| Professionals | 4697 | 1883 | 2814 | 59.91 | 47 | 1 | 46 | 97.87 |
| Semi-Professionals/ Technicians | 436 | 133 | 303 | 69.50 | 6 | 1 | 5 | 83.33 |
| Supervisors | 2912 | 418 | 2494 | 85.65 | 46 | 7 | 39 | 84.78 |
| Forepersons | 6 | 6 | 0 | 0.00 | 0 | 0 | 0 | 0.00 |
| Clerical Workers | 16088 | 1648 | 14440 | 89.76 | 2490 | 173 | 2317 | 93.05 |
| Sales Workers | 113 | 66 | 47 | 41.59 | 3 | 2 | 1 | 33.33 |
| Service Workers | 21 | 19 | 2 | 9.52 | 0 | 0 | 0 | 0.00 |
| Skilled Craft & Trades Workers | 26 | 21 | 5 | 19.23 | 0 | 0 | 0 | 0.00 |
| Semi-Skilled Manual Workers | 9 | 9 | 0 | 0.00 | 0 | 0 | 0 | 0.00 |
| Other Manual Workers | 13 | 12 | 1 | 7.69 | 1 | 1 | 0 | 0.00 |
| Total Number Employees | 36430 | 10235 | 26195 | 71.91 | 2688 | 190 | 2498 | 92.93 |

Source: Employment Equity Act Annual Report to Parliament, Tables 1989, Table 10.4 and 10.5.

As might be expected, the negative effects of job dissatisfaction associated with employment restructuring and job segregation, are evident in a turnover rate in banks estimated at over 30% (Beckett, 1984). This dissatisfaction is dealt with through programs designed to encourage employees to internalize the paternalistic ethics of the industry, including extensive rules structures, inter-employee contests and pay-for-performance schemes based on "impartial" evaluation. These "unbiased" systems have time and again been used misleadingly to suggest to women in banking that their fate is in their own hands. So, despite the fact that consultants such as Leighton (1981:17) label the banks at the managerial level as "surely ... one of the most chauvinistic in existence" (and statistical evidence clearly supports this view), women in banks have consistently been told that a lack of assertiveness and low work force commitment among women inhibits them from being promoted (Reid, 1977, Wallace, 1978, Beckett, 1984). This stance indicates little willingness on the part of the banking industry to recognize any organizational "obligation to alter their attitudes toward women" (Reed, 1977:42) or to acknowledge responsibility for, let alone substantively redress the patently inequitable gender stratification of the workforce. Despite long-standing bank representative claims to a commitment to equality in employment, minimalist responses to the inequitable position of women in banks have surfaced only recently.⁶ These initiatives include the adoption of special measures such as employment equity training for managers, reimbursement of tuition fees for advanced training and specialized recruitment initiatives designed to accommodate the disabled, visible minorities, women and native Canadians (Employment and Immigration, 1989:14). As well, several of the banks offer "grievance" procedures, none of which permit access to third party resolution. Most of the large banks continue to provide annual increases based on merit and maintain "promote from within policies" (which do not appear to be significantly effective for women in the industry except in the case of clerical promotions). (See Table 6)

While some of these initiatives seem indicative of a progressive attitude in banking personnel policies, paternalistic attitudes remain evident, even to the extent of the introduction of employee dress codes. The Royal Bank, Bank of Montreal and Lloyd's Bank of Canada, in an attempt to "dress bank employees as is the custom in the fast food industry," have made recent decisions to institute a uniforms policy designed to "enhance morale" and create a team-oriented customer appeal (Thompson, 1989:31).

Additionally, many of the banks continue to publish and distribute extensive lists of rules covering everything from expected employee behaviour both at work and outside of work to personal deportment and grooming.

3. Reflections on Employee Relations Outcomes

Although bank employees in the period between 1976 and 1980 began to unionize in response to dissatisfaction with their working conditions, by 1990, only 40 bargaining units remained, representing less than 1% of bank employees. (See Table 7) So despite the persistence of growing job insecurity and relatively low wages which appear instrumental in many unionization attempts, and of occupational sex segregation at a time when women's expectations of employment equity have risen, organization of the

⁶ More detailed information on these special projects can be found in the executive summaries of the [Employment Equity Reports](#) filed by each of the banks concerned in 1989.

Canadian banks has been largely unsuccessful. Much energy has been expended in an effort to explain this puzzling phenomena.

Lowe (1981) and other traditionalists purport that the predominance of women in the banking sector is a primary reason for the lack of unionization in that sector. The explanation is that women are socialized into a passive role and are thus resistant to unionization with its prospects of militancy. In addition, Lowe claims that women are more interested in becoming first line supervisors rather than top managers and thus, may not be as dissatisfied with the promotional system in Canadian banks as others have assumed (1981:874).

However, this sort of explanation is unable to account for recent evidence. While the percentage of union members comprised of women rose by 290% between 1962 and 1984, only a 75% increase was experienced in male membership over the same period. Largely as a result of the organization of the public sector, women are now a majority in 43% of unions in Canada (Anderson, et al, 1989:131). Women are not only numerically present they are also increasingly active in the Canadian labour movement. The para -public strikes of 1989 which involved nurses in Quebec, Alberta and British Columbia are indicative of the willingness of women to participate in extremely militant industrial action. As well, Fiorito and Greer (1986) substantiate the view that observed differences in gender preference for unionization can be attributed to factors such as exposure to unions and industrial or occupational distributions rather than gender per se. Thus, the supposition that women's passivity is a leading factor in the low level of unionization in the predominantly female Canadian banking industry is suspect at minimum.

Lowe (1980) also asserts that a greater identification with management among white collar workers has constrained unionization efforts. However, as "white collar" work becomes increasingly standardized, centralized and specialized, the assumption of its differentiation from blue collar work in terms of managerial identification is also questionable (Beckett, 1984:39). As such, others continue to examine the situation in an effort to reveal the underlying causes for low unionization levels in this sector.

Several factors interact to work against the unionization of bank employees, despite a seemingly fertile employee relations climate. The ability of workers in small, widespread geographic units to develop the collective sense necessary to organize and achieve bargaining power sufficient to impact on the conditions of banking employment is clearly limited. As well, many of the unionization efforts thus far have been made by unions employing a very traditional organizational style and representing interests not always apparently coincident with those of women bank workers (Beckett, 1984). Exacerbating these factors is a rich history of both legal and illegal employer initiatives to prevent or defeat unionization. This history indicates that against lawful oppositional employer conduct, individual employees and unions have extremely limited countervailing power. And against illegal conduct, bank workers secured little effective redress from the legal system (Lennon, 1980).

Table 7

Certificates Existing in Canadian Banks as of January 31, 1990

| Union | OPEIU | OTEU | UBE | USWA | CUBE | FCWIU | IUDE | CSI | RCU | SEBE | Total Units | Total Employees Unionized |
|---------------|--------|-------|--------|--------|-------|-------|-------|------|-------|---------|-------------|---------------------------|
| Bank | | | | | | | | | | | | |
| Bank of Can. | 1[130] | | | | | | | | | | 1 | 130 |
| Montreal | | 1[18] | 1[15] | 6[72] | 1[92] | | | | | | 9 | 197 |
| Nova Scotia | | | | 1[14] | 1[20] | 3[16] | | | | | 5 | 50 |
| Nationale | | | 2[105] | | 1[22] | | 1[26] | | 2[27] | | 6 | 180 |
| Commerce | 1[16] | | 1[8] | 6[464] | | | | | | | 8 | 488 |
| Royal | | | | 6[96] | 1[19] | | | 1[6] | 1[10] | | 9 | 131 |
| TD | | | | 1[12] | | | | | | | 1 | 12 |
| MCDSB | | | | | | | | | | 1[1122] | 1 | 1122 |
| Totals | | | | | | | | | | | | |
| Units | 2 | 1 | 4 | 20 | 4 | 3 | 1 | 1 | 3 | 1 | 40 | |
| Membership | 146 | 18 | 128 | 658 | 153 | 16 | 26 | 6 | 37 | 1122 | | 2310 |

Source: Canada Labour Relations Board, Bank Certifications Existing As of January 31st, 1990.

Scattered groups of bank workers with no form of collective empowerment have little hope of input into the massive employment restructuring and concomitant job insecurity generated by intensified competitive pressures and computerization in Canadian banks. However, where bank employees have been successful in developing a sense of collectivity despite barriers such as geographic fragmentation and small sized units, their organizational efforts have been largely unproductive. This raises a very fundamental question about the ability of present legislative regimes to accommodate the needs of today's unorganized workers. Today's labour law system is premised on the assumption of free collective bargaining which requires at least a rough degree of equality between workers and employers. Unfortunately, the inability of labour law tribunals to consider the reality of power imbalance between bank workers and a wealthy and powerful banking industry has resulted in a body of case law⁷ which reflects an inability to cope inconsistently and efficaciously with the banks' intense resistance campaign against unionization. Seemingly unaware of the much too coincidental development of human resource strategies designed to offset the perceived need for unionization, labour boards have often minimized and excused anti-union initiatives, or provided ineffective remedies for a variety of unfair labour practices devised to further chill support where human resource tactics have failed to do so.

III. THE LAW IN ACTION

Lowe (1981:866) outlines a history of organizational attempts in banking which begins in 1919 with the unsuccessful organization campaign of the Bank Employee Association in various locations in both Canada and the United States. Subsequent to this defeat, the Canadian Congress of Labour organized 840 office workers in a number of Canadian locations with its Office and Professional Workers Organizing Committee, but this movement also failed given the strength of bank tactics against unionization and the ineffectuality of strike attempts.

In 1959, a single branch of the Bank of Nova Scotia in Kitimat, British Columbia comprised of three employees was rejected as an appropriate bargaining unit for certification by the Canada Labour Relations Board.⁸ While the Kitimat, Terrace and District General Workers Union Local 1583 representing the employees asserted that the single branch was an appropriate bargaining unit, the bank argued that the only appropriate unit would be a single nationwide unit comprised of all Bank of Nova Scotia branches. Although the Board rejected the single branch unit as an appropriate unit, it did not attempt to define "the" appropriate unit. This created the assumption among potential organizers that the only acceptable unit for organization might well be the nationwide one proposed by the Bank. The apparent impossibility of such large scale organization effectively eliminated bank unionization attempts for nearly twenty years (Lennon, 1980:181).

At least one certification in the finance industry did occur in the decade subsequent to the Kitimat decision. In 1967, 1,122 employees in 75 branches of the Montreal and District Savings Bank formed a union. While this appears to demonstrate successful unionization efforts, in reality organizing this 75 branch bargaining unit was facilitated by the prior existence of an employee association which had

⁷ Because the banking sector is within the federal jurisdiction, the primary focus of this paper will be decisions made under the Canada Labour Code. However, this case law will be supported by decisions made under the Ontario Labour Relations Act, R.S.O. 1980 wherever suitable.

⁸ Bank of Nova Scotia, Kitimat, [1959] C.L.L.C., para. 18,152.

been recognized by the bank since 1920. This history stands in stark contrast to the fierce opposition to collective employee action documented in the chartered bank context in Canada.

Finally, in 1972, the Canada Labour Congress (C.L.C.) created the Association of Commercial and Technical Employees (A.C.T.E.) which was designed to organize white collar workers, but was able to unionize only a handful of insurance companies. Lennon attributes the limited success of this organization to "bureaucratic myopia and interunion squabbles" (1980:182). Thus, by 1976, the organization of bank employees remained a virtually uncharted territory.

The case law surrounding the organization of Canadian banks centres on areas key to union organization and survival. The determination of the appropriate bargaining unit, including size and staff composition at certification is central to the survival of the unit later in the process. Union formation and administration have been areas of concerted interference by the banks involving a series of individual and group discriminatory tactics designed to chill union support. As well, at the bargaining table, the banks have refused to negotiate terms which would give unionized branches working conditions superior to those in non-unionized branches. Finally, procedural administration by the Board and courts has interfered with the prompt resolution of disputes on several occasions. In addition, faced with evidence of similar forms of unlawful interference across all chartered banks, and in some cases, evidence of head office direction, the Board's approach to unfair labour practice adjudication has been disappointingly narrow. The C.L.R.B. has considered unfair labour practice complaints in an isolated case-by-case fashion without contextual analysis of the reality and consequences of the imbalance of power between individual bargaining unit employees and the concerted opposition of one of the most powerful industries in the country.

1. Bargaining Unit Definition

Bank organization was initiated in the late 1970's by the Victory Square decision⁹ in which the Board reversed its decision in Kitimat¹⁰ and permitted the certification of a single branch unit. Despite this decision and subsequent single branch certifications,¹¹ the Board refused to rule on "the most" appropriate bargaining unit, confining its decisions to ascertaining "an" appropriate unit in given circumstances.

In fact, the decision to certify single branch bargaining units may well have been a mistake which resulted in a burst of organizing activity and a concomitant series of demoralizing defeats (Lennon, 1980:193). While single branch units were clearly easier to organize than the national units proposed by the banks, the life-span of these tiny units was often very short because individual branches lack the bargaining power necessary to negotiate contracts which secure any meaningful changes in the working conditions and wages of bank employees. The ultimate effect of single branch certification was a flurry of certifications followed by a series of extremely expensive unfair labour practice hearings and collective agreements whose terms failed to justify the payment of union dues, pursued closely by

⁹ CIBC, Victory Square Branch, [1977] 2 CLRBR 99

¹⁰ Bank of Nova Scotia, Kitimat, [1959] CLLC para. 18,152.

¹¹ Royal Bank of Canada, Gibsons Branch, [1978] 1 CLRBR 326.

demoralizing decertifications. In fact, by the end of 1980, 47 of the 113 banking units certified after the Victory Square decision in 1977 had been decertified (Canada Labour Relations Board, 1990).

Although organizational groups such as the Service Office and Retail Workers Union Campaign (S.O.R.W.U.C.) had recognized the shortcomings of the single branch unit in terms of bargaining power, many organizational members believed that the certification of these early units should proceed in order to prove to bank workers that unionization was possible. As such, applications for single branch units continued despite the failure of these units to secure significant negotiating gains. Meanwhile, despite Victory Square, banks continued to resist certification applications by arguing in favour of much larger national or regional units. During a certification application hearing with regard to the Chargex Centre of the National Bank of Canada in Montreal, the R.C.I.U. applied for separate certificates for the data processing and the Chargex centre which comprised the whole of the Montreal head office. The Bank's representative argued that the appropriate unit should encompass all forty-one departments within the data processing and Chargex centres; a unit which comprised 1600 employees.¹² As Lennon noted with regard to the employer argument in the Kitimat decision, employer arguments for bargaining units of this size are obviously designed to "persuade the Board to agree to a unit so broad as to ensure that no union would ever be able to organize it" (1980:189). At the same time, the demoralizing incidence of decertification subsequent to Victory Square had led unions to acknowledge that the single branch unit, though the simplest to organize, provides little or no power to better working conditions for bank workers.

As a result of the bargaining inefficacy of single branch units, labour boards have increasingly been asked by unions to consider "cluster" bargaining units comprised of several branches within a given area. Revealingly, the same banks which opposed the single branch units in favour of national units now argued against larger units. In fact, representatives of the industry, whom the Board acknowledged had (with the exception of the Royal Bank) originally used a single Toronto law firm and the advice of labour relations experts to orchestrate a nationwide common front against the single branch bargaining unit, now argued that a cluster bargaining unit "through the distribution of employees, permit(ted) a majority to impose its will on a minority, possibly on all the employees in a small branch."¹³

One of the first instances in which the C.L.R.B. was requested to consider the "cluster" unit came about, not as a direct result of a certification application, but as a proposed consolidation of nine previously certified branches of the Bank of Montreal in Windsor pursuant to s.18 of the Canada Labour Code.¹⁴

Notwithstanding the fact that the nine branches had a practice of negotiating jointly, the Bank of Montreal representative argued that the most appropriate bargaining unit in this case was the single branch unit since a nine branch unit would create administrative inefficiency and thrust the will of the minority on the majority.

¹² Retail Clerks International Union and Bank Canadian Nationale, Montreal Quebec (Data Processing Centre) and Charges Centre of Bank Canadian Nationale and Certain Employees, [1980] 1 C.L.R.B.R. 297 (C.L.R.B.).

¹³ Syndicat des Employes des Banques Nationales de Rimouski (CNTU) and National Bank of Canada (1986), 11 C.L.R.B.R. 257 (C.L.R.B.).

¹⁴ Bank of Montreal and Union of Bank Employees (Ontario) Local 2104, C.L.C., [1982] 2 C.L.R.B.R. 380 (C.L.R.B.).

The application to consolidate the units was rejected by the Board on the basis that consolidation would merely have permitted the union to achieve gains from the tribunal that it had been unable to achieve at the bargaining table. Although the consolidation of these nine units would simply have formalized what was already a voluntary practice of joint negotiation and it was not clear why the formal consolidation would lead to administrative inefficiency the Board ruled against the consolidation of these units. Although the Board's refusal to become involved in the alteration of the balance of power between parties was consistent with past practice, it is not clear in this case that formal consolidation would actually have altered that balance in favour of the union given that joint negotiation was already a reality of the bargaining situation.

The C.L.R.B. has subsequently entertained and certified other cluster bargaining units.¹⁵ In response to an application by the C.N.T.U. for certification of a bargaining unit comprised of all five branches of the National Bank of Canada in Rimouski, the C.L.R.B. prepared an unnecessarily exhaustive 141 page decision defending itself against the criticisms of Lennon (1980) more than addressing the simple legal question before it.¹⁶ The decision, outrageously, was a full four years in the making. In an overwhelmingly defensive and misogynistic tone, C.L.R.B. Chairperson Marc Lapointe blamed the failures of the early bank organization attempts on S.O.R.W.U.C. and its fundamentally misguided "feminist" campaigns, and accepted no responsibility on the part of the Board for these unsuccessful attempts. The misogyny of the following comment made by Lapointe with reference to the demise of S.O.R.W.U.C. is self-evident. "(T)he process of elimination had been at work among the bargaining agents, what might be called an elimination of sorcerer's apprentices" (p.175). Apparently Lennon's criticisms (1980) of the Board's unwillingness to adopt new measures to facilitate collective bargaining in the hard-to-organize sectors hit a nerve given the unexpectedly antagonistic response of Lapointe.

In finally addressing the question before it, the C.L.R.B. issued a certificate for a cluster bargaining unit, despite the objections of the National Bank representatives who argued that this would permit the will of the minority to be thrust on the majority. However, the decision emphasized that the Board is obligated only to consider whether the applicant bargaining unit is appropriate and NOT to designate THE appropriate bargaining unit. As such, it does not follow that this type of unit will be suitable in every situation. And unfortunately, the Board provided little guidance on general criteria for certifying of clusters. With reference to the four year delay, the Board, at page 178, made an extraordinary claim "(t)he Board has deliberately delayed the final decision in this case to test the will and desire of these bank employees to opt for the collective bargaining system." Thus, after four years of organization and legal proceedings, four of the five applicant branches of the National Bank in Rimouski were certified as a single bargaining unit. During the Board's "deliberate delay" one of the branches was closed.

In this case, the Board admitted its responsibility for a deliberate delay as a test of motivation, despite the fact that the Code does not give the Board jurisdiction to conduct such tests. So, if LaPointe's remark regarding the Board's motivation for delay is accurate, the Board clearly abused its power. However, it is more likely that he was attempting to rationalize the inexcusable delay in rendering a

¹⁵ See for example, U.S.W.A. and Bank of Montreal (1986), 68 di 67 (C.L.R.B.); Union of Bank Employees (British Columbia and Yukon), Local 2100. C.L.C. and Canadian Imperial Bank of Commerce (1986), 64 di 89 (C.L.R.B.).

¹⁶ Syndicat des Employes des Banques Nationales de Rimouski (CNTU) and National Bank of Canada [1986] 11 C.L.R.B.R. 257 (C.L.R.B.).

decision and if this is the case, his remarks are both dishonest and extremely chilling to unorganized workers.¹⁷

The O.L.R.B. has also dealt with cluster bargaining unit applications in conjunction with trust companies. In 1985, the U.B.E. filed an application for a ruling on the viability of a cluster unit comprised of seven Metro Toronto branches of the National Trust.¹⁸ The Board in this case was asked to rule on the acceptability of the unit, assuming majority support. As such the O.L.R.B. in this case was not faced with the dilemma between feasibility for organization and efficacy for collective bargaining purposes. The Board ruled that a single cluster unit comprised of all seven branches would be appropriate, but maintained the O.L.R.B. stance that part-time and full-time employees should be divided into two separate units. The union was thus advised to seek the membership necessary for certification; which would require the support of more than 55 percent of each of the part-time and full-time employee groups in all seven branches for automatic certification.

However, upon provision of this membership evidence at a subsequent hearing, the O.L.R.B. adopted the Bank's position that certification should be based on proof of majority support at each branch rather than within the seven branches as a whole.¹⁹ Despite its ruling three years earlier, the O.L.R.B. evaluated the membership evidence on a branch by branch basis and, because the union did not have 45-55% support in each branch, the Board refused to certify a cluster unit. Instead, the Board certified five full-time and three part-time units, called for representation votes in two full-time and two part-time units and dismissed two other applications on the basis of insufficient membership evidence.²⁰ Thus, the apparently innovative spirit of the 1985 ruling did not continue through the presentation and evaluation of membership evidence. The U.B.E. was placed in the unfair position of working to attain majority support for the union within the seven branches as a whole and subsequently being confronted by an unexpected change in the O.L.R.B.'s position.

The determination of the appropriate bargaining unit also includes the identification of persons excluded from collective bargaining under Canadian collective bargaining regimes. The C.L.R.B. has generally included full and part-time employees within one unit while excluding casual employees. The O.L.R.B., however, generally certifies part-time and full-time employees separately, but includes casual employees in part-time units. These exclusions provide banks the opportunity to manipulate job classifications in order to prevent employees from opting for collective bargaining. The simple re-designation of many titles from "supervisor" to "manager" and positions from part-time to casual have permitted banks to avoid the organization of a significant number of otherwise eligible employees.

¹⁷ The short-lived duration of this bargaining unit as a result of the delay in certification will be discussed later under decertification decisions.

¹⁸ Union of Bank Employees (Ontario), Local 2104, C.L.C. v. National Trust, [1986] C.L.L.C. para. 16,026 (O.L.R.B.).

¹⁹ Union of Bank Employees (Ontario), Local 2104 v. National Trust, [1988] C.L.L.C. para. 16,026 (C.L.R.B.).

²⁰ The Ontario Labour Relations Act, R.S.O. 1980, 2.7, as amended, permits automatic certification upon presentation of valid membership evidence of more than 55% of the employees in the unit, requires that a vote be taken where evidence indicates 45% to 55% support. The O.L.R.B. generally dismisses applications with less than 35% support.

However, since 1980, there is evidence to indicate that the C.L.R.B. has recognized the abuse of exclusions by chartered banks and has engaged in an effort to minimize this inhibition to unionization.

In 1986, the C.L.R.B. ruled on the application of three C.I.B.C. branches to be certified as a single bargaining unit despite employer arguments for three single branch units.²¹ In addition to certifying the cluster bargaining unit, the Board identified two persons within the branches who were labelled managers by the C.I.B.C., but who were deemed to be supervisors by Board standards. The C.L.R.B. concluded that these employees had a closer community of interest with other branch employees than with management. This is an important Board recognition of the reality of non-substantive "management" titles, which statistics indicate are generally being "awarded" to women in the banking industry.²²

Later in the same year, the C.L.R.B. certified automatically, a bargaining unit comprised of five branches of the Bank of Montreal in Sherbrooke Quebec, despite the employer's claim to the right to a full hearing under the Charter of Rights and Freedoms.²³ However, the Bank was subsequently able to re-open the case for a full board decision under section 18 of the Canada Labour Code on the basis that the inclusion of casual employees in the bargaining unit was inconsistent with past Board policy.²⁴

In the 1987 ruling, the C.L.R.B. upheld its earlier decision to include the employees which the Bank had termed "casual." The Board's review noted the frequency with which the banking industry had confused part-time and casual employment. The Board defined genuine casual employment as necessarily including an element of chance for call-in on unforeseeable occasions in an effort to avoid future problems which this "confusion" within the banking industry had caused for the individual employee in attaining collective bargaining rights.

In these cases, managerial and casual exclusions have been reexamined for the purposes of the efficacious administration of collective bargaining legislation in light of bank industry terminology. These decisions are an obvious step toward the provision of collective bargaining rights for previously unfairly excluded bank employees. The consistency through these decisions has been the exclusion of management, but the more recent (and positive) initiative by the Board has been to delve into substantive analysis as to the nature of employment instead of accepting the formality of titles. It is to be hoped that this sort of substantive examination will continue to close this loophole which the banking industry has abused for so long.

²¹ Union of Bank Employees (British Columbia and Yukon). Local 2100. C.L.C. and Canadian Imperial Bank of Commerce (1986), 64 di 89 (C.L.R.B.).

²² Refer to the data presented in Table 4 demonstrating the promotion of women to 'managerial' positions, but locating them in the lowest possible salary quartiles.

²³ United Steelworkers of America and Bank of Montreal. Sherbrooke. Quebec (1986), 68 di 67 (C.L.R.B.).

The Bank claimed that the certification of the bargaining unit without a full hearing was contrary to its section 11 rights to a full defence under the Charter of Rights and Freedoms, but the Board ruled that that protection was intended for use in criminal cases and as such had no application in certification decisions.

²⁴ Bank of Montreal, Sherbrooke. Quebec v. United Steelworkers of America, [1987] C.L.L.C. para. 16,044 (C.L.R.B.).

2. Unfair Labour Practices

Over the period from 1977 to 1989, 158 unfair labour practice complaints were filed against Canadian banks, with litigation involving the "big six" comprising the vast majority of cases (Canada Labour Relations Board, 1990). Despite these figures, the Board has refused, with few exceptions, to acknowledge the industry-wide pattern of these offences, a pattern which pits scattered pockets of employees against a powerful nationally orchestrated anti-union campaign. Included in the banks' counter-campaign are individual discharges and demotions, typically combined with captive audience meetings and anti-union literature designed to intimidate employees interested in or involved in unionization. However, the banks have also developed anti-solicitation policies and have used wage freezes and corporate reorganization as means to avoid unionization.²⁵ Not only have these bank tactics proven very effective in chilling union support at the individual branches where they have been used, the effects have spilled over into other branches, discouraging organization attempts nationwide.

The banks have used the discharge of both union supporters (during organization) and active union members (after certification) to set an example of the negative repercussions of unionization for non-union employees. As well, anti-union dismissals have been used to dispel union support during bargaining deadlocks. The Board dealt with this situation in a decision regarding the dismissal of Eileen S. McArthur, the interim secretary of the Vancouver organizing committee of S.O.R.W.U.C., from her position at the Carrall and Hastings St. Branch of the Bank of Montreal in 1979.²⁶ Despite having been a satisfactory employee for several years, McArthur was dismissed from her duties for "incompetence" less than two years after the employees of the Hastings and Carrall St. branch became a certified bargaining unit and while first contract negotiations were proceeding. Coincident with McArthur's criticisms of the unproductive nature of negotiations with members of managerial staff, representatives of the bank asserted a need to streamline the deposit department in which McArthur was employed in order to improve profits and productivity. The Board, however, did not accept S.O.R.W.U.C.'s argument that this dismissal was based upon anti-union animus. Unwilling to recognize, what to employees would have been a chilling link between the dismissal and McArthur's union activities, the Board concluded that the dismissal was based upon sound business principles.

However, certain of the most blatant unfair labour practices have not gone unremedied. In a 1980 decision the Board dealt with a C.S.N. allegation of unfair labour practices by the Royal Bank concerning the dismissal of seven employees for participation in a lawful strike.²⁷ In this case the bank had attempted to prey upon the vulnerability of striking employees in order to dispel employee support underlying the bargaining deadlock. Given the blatantly anti-union actions of the Royal Bank in this

²⁵ Lennon's analysis (1980) also documents bank manipulation of the composition of staff in branches where certification applications had been submitted (or where the suggestion of union support had surfaced) in an attempt to eliminate union supporters in order to defeat certification applications. These gerrymandering tactics were especially effective immediately following the federal court decision regarding CROY. The details of this will be discussed under Procedural Administration. See for example, C.I.B.C., Sioux Lookout Branch, (1979) 1 C.L.R.B.R. 18; C.I.B.C., Toronto Branch, [1979] 1 C.L.R.B.R. 391.

²⁶ The Service, Office and Retail Workers' Union Campaign and Eileen S. McArthur, Vancouver, British Columbia and Bank of Montreal (Carrall and Hastings St. Branch), Vancouver, British Columbia (1980), 39 di 122 (C.L.R.B.).

²⁷ CSN de bureau du Comte de Lapointe, CSN de commerce de la Bale, et al and Royal Bank of Canada, Jonquiere, Renoqamie, Ville de Bale, Quebec (1980), 42 di 125 (C.L.R.B.).

instance, the Board was unable to avoid a decision against the employer. Not only were all seven employees reinstated and compensated for income lost, the bank manager was ordered to read a statement of apology at a meeting of its employees from the six branches affected. The well-documented tactics of the Royal Bank in these incidents helped to solidify the case against the Bank and to insure a "stern" remedy. Unfortunately for the bank's representatives, the veil of sound business principles was not available for shelter.

However, the same was not true in the case of an unfair labour practice allegation made by the U.B.E. against the assistant manager of the Devonshire Mall branch of the Bank of Montreal.²⁸ The allegation focused on the demotion of an employee who was also an active union member. Despite evidence that the assistant manager expressed anti-union sentiments and circulated anti-union news clippings to several employees, the demotion was found not to be associated with these sentiments. The Board found that coincident with the assistant manager's expression of anti-union sentiments was a bank review of a number of positions which were marked for deletion. Thus, the Board concluded that the deletion of the position of the subject employee, which caused that employee to accept another lower paid position, was based upon sound business principles, free from anti-union animus. Because of this, the Board determined that the assistant manager and not the Bank of Montreal per se was hostile to unionization. As such, the employee was not reinstated in the previously higher paying position, nor compensated with a higher level of pay.

Instead, the remedy fashioned to redress the situation focused upon the assistant manager's expression of anti-union sentiment, requiring only that he sign a letter of apology composed by the Board. This remedy reflects clearly the Board's inability to recognize the concerted anti-unionism of the banking industry. By laying specific blame on an individual assistant manager, the Board avoided the larger question of employment reorganization designed specifically to chill union support by eliminating the job opportunity of an active union member.²⁹

Dismissals based on anti-union animus are frequently combined with captive audience meetings in Canadian banks with devastating chilling effects on organization efforts. These combined approaches have been passed off by the Board as coincidental in nature, not comprising concerted anti-union efforts by the banks. For instance, in 1982, a Vancouver branch of the Bank of Canada dismissed a bank teller who supported the union during an organizing drive and shortly thereafter required all employees to attend a meeting in which allegedly anti-union literature was distributed and new human resource programs were announced. S.O.R.W.U.C. alleged that both of these actions constituted unfair labour practices and requested that the two issues be dealt with in a single hearing.³⁰

The Board determined that since there was no collective agreement in place, the dismissed employee's only recourse was to a common law action in wrongful dismissal, unless the union were able to demonstrate that the dismissal had been rooted in anti-union animus. On the basis of the fact that

²⁸ Union of Bank Employees (Ontario), Local 2104, C.L.C. v. Bank of Montreal, Devonshire Mall Branch, Windsor, Ontario, et al., [1983] C.L.L.C. para. 16,015 (C.L.R.B.).

²⁹ Although the chilling effect of eliminating the jobs of union supporters is profound, any workforce reduction in wake of union organizing or certification may be directly linked by employees to unionization.

³⁰ Brenda Hoekstra and Bank and Finance Workers' Union, Local 4, SORWUC and National Bank of Canada (1982), 51 di 60 (C.L.R.B.).

Hoekstra had been held responsible for cash shortages and had received both written warnings and further training subsequent to these shortages, the Board decided that Hoekstra's dismissal was not motivated by antiunion animus.

As to the captive audience meeting and distribution of literature, the Board found that the representatives of the bank had not endeavoured to chill union support, but had intended merely to inform employees of the new company newsletter entitled "Network" and the establishment of the "Let's Talk Program," a complaints procedure. The Board asserted that "... some accusative comments were directed toward the management of the company, and a fairly lively exchange is alleged to have ensued," (p.65) revealing its perception of the meeting as a "vehicle chosen to accentuate" the announcement of normally scheduled wage and merit increases rather than interference with the formation of the union.

The Board was unwilling (or unable) to recognize the chilling effect which the dismissal and meeting in combination undoubtedly had on the decision of employees to choose collective representation. Although it may seem evident that the dismissal of a union supporter and the introduction of new benefits at the start of an organizing drive would naturally be perceived by other employees as a carrot and stick approach to talk of unionization, the Board asserted that it would require "an excessive stretch" of the Board members' imaginations to determine these actions as unfair labour practices. (p.66)

Not all captive audience meetings and anti-union dismissals have gone uncensured or unremedied by the Board, such as the decision issued by the Board against the Bank of Montreal in 1986.³¹ Following the receipt of information that the U.B.E. was attempting to organize several of its branches in the Ottawa area, the Bank of Montreal ordered its Eastern Region Employee Relations Manager to investigate. Employees at several branches in the Ottawa area were surveyed in order to ascertain any reasons for employee unrest which could potentially motivate unionization. Within the questionnaire administered was an inquiry as to whether the employee wished to receive information regarding unions. After analyzing the results of the survey, two branches were identified as potential "trouble" spots where morale was low and interest in unionization appeared relatively high. Individual interviews and group meetings conducted at these branches resulted in the transfer of a particularly vocal union supporter to another branch and the issuance of an order for the assistant managers to watch over certain employees who had appeared interested in unionization.

Although the C.L.R.B. ruled that the group meetings were not captive audience meetings *per se* since individuals were free to leave at any time (despite the fact that they were informed in advance that they would receive over-time pay if they attended), it did determine that the meetings constituted unfair labour practices. In addition, the Board found that the transfer of one employee was motivated by anti-union animus, making it an unfair labour practice.³² The remedy ordered by the Board was fashioned as a "make-whole order",³³ an effort designed to compensate for the "wet blanket" effect of

³¹ Union of Bank Employees (Ontario), Local 2104 and Bank of Montreal and Richard Bayard (1986), 10 C.L.R.B.R. 129 (C.L.R.B.).

³² The Board also ruled that the disallowance of this type of meetings was a prima facie violation of the employer's Charter right to free speech, but concluded that it was justifiable under section 1 of the Charter.

³³ This remedy is comparable to what many consider to be the high water mark of judicially acceptable

the employer's unlawful action on the union's organization campaign. The order included a direction for the Bank to erect a bulletin board for the posting of union material, a distribution of the Board's decision to all employees and, most significantly, an order to reimburse the union for its organizing costs. While this type of order was quite forward-looking in terms of the C.L.R.B. responses to unfair labour practices, it should be noted that the O.L.R.B. had been issuing make-whole orders such as this for over six years. While it is unlikely that these remedial measures would be sizeable enough to deter wealthy organizations determined to resist unionization from further attempts to chill union support, this kind of order at least illustrates a recognition by the Board of the chilling effect that employer influence can have on an entire campaign.

While reasoning behind the divergent Board decisions regarding the use of dismissals and captive audience meetings to chill union support is not apparent upon comparison of the facts of the foregoing cases, other less obvious factors may have played a role in this divergence. The decision involving the dismissal of Brenda Hoekstra was based upon an unfair labour practice alleged and presented by S.O.R.W.U.C., while the second case, in which the Board finally rendered a make whole order, involved U.B.E. It is possible that a bias against S.O.R.W.U.C. as a feminist organization (confirmed by the Board's misogynistic overtones in the Rimouski decision)³⁴ was involved in these decisions or, at least, that the inexperience of S.O.R.W.U.C.'s representatives was not taken into consideration in assisting the union in presenting its claims in an effective manner. As well, the disparity in these decisions may be explicable in terms of the varying willingness among different Board chairpersons to recognize and give weight to the importance of the chilling effect of individual dismissals and transfers in combination with captive audience meetings and antiunion literature on overall unionization. Finally, it is possible (and more optimistic) that over the course of a number of years, the Board was able to develop a greater sense of the concerted nature of the counter-campaign of the banks, so that the later decision on the Bank of Montreal case reflected a genuine desire to deter anti-union behaviour.³⁵

Lennon (1980) records examples of captive audience meetings used across three different chartered banks to discourage support for unionization among employees.³⁶ Typifying these meetings was an appeal by branch managers for employee loyalty designed to elicit feelings of guilt among bank workers considering unionization and to intimidate employees by outlining prospective negative outcomes associated with unions. Despite a great degree of symmetry in the content of these captive audience meetings, including tearful appeals by branch managers, the Board was inconsistent in its deliberations. Of the three complaints described by Lennon (1980), only one involving the Bank of Montreal, Tweed and Northbrook Branch, was determined to entail the anti-union animus necessary for an unfair labour practice determination. The inconsistency in decision making here appears to rest with whether or not the Board is willing to engage in an analysis of power in rendering its decisions. Although the Board did not

remedial innovations by labour boards found in United Steelworkers of America and Radio Shack, [1980] 1 C.L.R.B.R. 99 (O.L.R.B.).

³⁴ Syndicat des Employés des Banques Nationales de Rimouski (CHM) and National Bank of Canada (1986), 11 C.L.R.B.R. 257 (C.L.R.B.).

³⁵ However, this explanation is stated with hesitancy. Had the surveys and interviews not been so clearly linked with head office orchestration in the Bank of Montreal case, it is quite possible that the transfer and meetings would have been perceived as nothing more than the decision of a distraught branch manager and hence dealt with in a much more casual manner.

³⁶ Bank of Nova Scotia, Selkirk Branch, [1978] 1 C.L.R.B.R. 544; Bank of Montreal, Tweed and Northbrook Branch, [1978] 2 C.L.R.B.R. 123; C.I.B.C., Gibson's Branch, Unreported Decision, Board File 745-293.

acknowledge that any of these meetings may have been orchestrated in response to head office policies, it did consider managerial abuse of power in taking advantage of the familial atmosphere of the branch in the case in which an unfair labour practice was determined.

In addition to anti-union dismissals and captive audience meetings Canadian banking representatives have intercepted union literature before it reached potential supporters, and the Board has determined this to be acceptable behaviour. By the 1980's, unions recognized small single branch units could not negotiate even modest improvements in wages or work conditions. Accordingly, they began to organize large employee centres. This, in turn, required them to develop innovative ways to solicit members given the risk of employer reprisal against organizers and lack of public access to many large banking centres such as office towers.

In 1985, U.B.E. and a Toronto branch of the C.I.B.C. filed unfair labour practice complaints against each other during the organization campaign at that branch.³⁷ The branch was composed of 265 full-time and 31 part-time employees located on the ground floor of both the East and West towers of the Bank's complex as well as the ground floor unit that joins the two towers located at 750 Lawrence Avenue West in Toronto. Although parts of the centre were in operation 24 hours a day, many of the employees worked flexible hours, beginning their work day anywhere between 7 a.m. and 9 a.m. Furthermore, other than those employed in the 24-hour operations, no employees were scheduled between 6 p.m. and 7 a.m. so that during these hours access to the building was permitted only by prior arrangement with management. Thus, finding appropriate hours and locations for solicitation was obviously problematic.

The organizing campaign of U.B.E. was mounted using a variety of solicitation techniques including: poster on instanteller machines and on bank notice boards, envelope drops at employees' desks prior to commencement of work and the use of external and internal mailing systems. The C.I.B.C. in response removed the notices posted, issued a blanket no-solicitation order through letters and notices to employees, removed envelopes dropped prior to commencement of work and insisted that employees pick up and sign for the information received through the mail, rather than following the normal policy of distributing it directly.³⁸ Each party filed complaints against the other, alleging unfair labour practices during solicitation.

The C.I.B.C.'s removal of envelopes³⁹ dropped prior to the commencement of work and broad no solicitation policy (which did not permit solicitation outside of working hours) were found to be in contravention of the Code as interferences in the formation of a trade union. U.B.E.'s use of internal and external mailing systems was also found to be an unfair labour practice as it distracted employees during hours of work.⁴⁰ Thus, the employer's right to maintain private property by removing posters and to withhold the mail of employees temporarily, using a check-off system at the time of pick up, were not

³⁷ Union of Bank Employees, Local 2104 (C.L.C.) Canadian Imperial Bank of Commerce, (1985] C.L.L.C. para. 16,021 (C.L.R.B.)

³⁸ In fact, the CIBC went to so far as to develop a list on which the names of employees who went to the manager to pick up the union information sent to them in the mail were checked off.

³⁹ The envelopes were clearly marked "Personal and Confidential - Read on Your Own Time."

⁴⁰ The Board also concluded that the no solicitation policy during working hours was a prima facie abrogation of employees' freedom of association, but perceived it justifiable under section 1 of the Charter.

found in violation of the Code. The Board issued a cease and desist order to both parties and directed that all employees be informed of the Board's decision.

While it would seem apparent that the Bank's interception of the union literature and the check-off system of pick-up were effective means to deter employees from obtaining union information, the Board did not interpret this activity as intimidating. Despite the Bank's claims of neutrality, by removing the mail sent to employees and requiring that they face an individual member of management in order to pick up the letters and sign their name to indicate their interest in the content of the literature, the Bank sent a clear message that it did not want its employees to receive the union information sent to them, and that it was going to watch for supporters. However, the remedy in the instant case shows little regard on the part of the Board for the right of employees to receive information regarding unionization (provided that it does not interfere with performance of their duties) and no regard for the institutional and environmental barriers frustrating the simple exercise of that right.

The banks also sought to chill support for unionization by exploiting statutory freezes following certification application (under s. 24(4) of the Canada Labour Code) and notice to bargain (under s. 50 of the Canada Labour Code) in order to deny unionized branches wage increases awarded to all non-union branches. The first freeze is designed to prevent unilateral changes in wages, benefits and working conditions by an employer during the organizing drive whose intent or impact is to dissuade employees from pursuing unionization. The second freeze is designed to prevent employers from making unilateral changes in wages, benefits or working conditions immediately prior to bargaining which would undermine the union by eroding benefits which members enjoyed prior to unionization (in the case of first contracts) or prior to the onset of bargaining which would effectively cause union members to begin bargaining in a worsened position than their counterparts in non-union branches.

Although both freeze periods would appear to have both been designed to prevent the erosion of support for unionization either through worsened working conditions or reduced bargaining power, the C.L.R.B. interpreted the two in completely different fashions. The first freeze, pursuant to s. 24(4) of the Code, was interpreted as a "dynamic" freeze on the usual conditions of employment; meaning that the employer is obligated to maintain existing wages, benefits and working conditions and to follow past policies including annual increases to all employees despite the certification application.⁴¹

In contrast, the second freeze effective pursuant to the notice to bargain (under s. 50 of the Code) was initially interpreted as a "static" freeze on all exercises of management rights; meaning that employers were not free to make any changes in the workplace even if such changes were introduced nation-wide in non-unionized branches and benefited employees.⁴² In effect, the banks adopted this interpretation of the freeze and denied regularly scheduled wage increases being received by staff across the country to newly unionized employees, thereby undermining support for unionization in both certified and yet-to-be organized branches. The Board found no illegality in this discrimination.

⁴¹ See for example, Bank of British Columbia v. U.B.E. (B.C. and Yukon), Local 2100, C.L.C. [1980] C.L.L.C. para. 16,032 in which the Bank attempted to use the first freeze under s. 24(4) to withhold raises from employees seeking certification.

⁴² Royal Bank of Canada, [1978] 2 C.L.R.B.R. 159; Bank of Nova Scotia, [1978] 2 C.L.R.B.R. 181; Bank of British Columbia, [1980] 3 C.L.R.B.R. 576.

Subsequent to this static interpretation of s. 50 of the Code, the Board reversed its position in two separate cases. In a 1979 decision under section 50, the Board ruled that the conduct of the C.I.B.C. in notifying all employees of the scheduled wage increases to be denied to unionized employees constituted an unfair labour practice.⁴³ Although the Board thereby reversed its interpretation of the second statutory freeze, reinterpreting it as a dynamic freeze, it justified its reversal based on the history of the C.I.B.C. which it claimed "embarked on a campaign designed to discourage its employees from exercising their rights under the Code" (Lennon, 1980:221). As such, the Board ordered that the wage increases from the past two years should be paid to all unionized employees.

The C.L.R.B. again followed the dynamic interpretation of the second freeze in a 1980 decision.⁴⁴ In this decision the Board noted the chilling effect on union support of the Bank of Nova Scotia's refusal to grant normal wage increases to its unionized employees prior to settlement of their first collective agreement. Thus, the Board determined that the second statutory freeze was on the normal conditions of employment, rather than a freeze on management rights.⁴⁵ However, this rejection of past interpretation constituted blatant Board inconsistency which permitted the Bank of Nova Scotia to demand a full board review. In this review, the C.L.R.B. upheld its new interpretation of the second statutory freeze period as a dynamic freeze, despite its inconsistency with past Board policy.⁴⁶ Although the Board did finally reverse its static interpretation of the statutory freeze pursuant to notice to bargain and the new interpretation does improve the position of the union prior to collective bargaining, it does little to amend the deleterious effects which the previous interpretation had on the viability of other union campaigns in the banking sector.

In addition to prolonged abuse of the freeze structure, Canadian banks have also used corporate restructuring as a means to avoid collective bargaining. Employees affected by corporate shut downs and job losses immediately pursuant to organization drives or certification will almost certainly interpret these losses as stemming from unionization. This cannot help but chill support for unionization in an industry where job insecurity and employment restructuring have become a fact of life. Immediately following certification of the Maguire St. branch of the National Bank of Canada in 1980, the Bank announced its intention to close the branch and transfer its business and most of its employees to an unorganized branch nearby before the certified employee representative, the R.C.I.U., had served notice to bargain.⁴⁷ The union successfully argued that the closure was motivated by antiunion animus and that it amounted to a sale of a business pursuant to ss. 44-46 of the Code. Accordingly, it was able to claim successor rights at the second unorganized branch.⁴⁸

⁴³ Union of Bank Employees, Local 2104 and 2100 and C.L.C. v. Canadian Imperial Bank of Commerce, [1980] C.L.L.C. para. 16,002 (C.L.R.B.).

⁴⁴ The Bank of Nova Scotia and Retail Clerks International Union, [1981] 2 C.L.R.B.R. 365 (C.L.R.B.).

⁴⁵ The OLRB had adopted this interpretation of the second statutory freeze period two years before this CLRB decision in Spar Aerospace Products Ltd., [1978] O.L.R.B.R. 859 (Carter).

⁴⁶ The Bank of Nova Scotia and Retail Clerks International Union [1982] C.L.L.C. para. 16,158 (C.L.R.B.). The bank's application for judicial review was dismissed; The Bank of Nova Scotia and Retail Clerks International Union, [1983] C.L.L.C. para. 14,007 (Fed.C.A.).

⁴⁷ National Bank of Canada and Retail Clerks International Union, [1982] 3 C.L.R.B.R. 1 (C.L.R.B.).

⁴⁸ S. 46 of the Canada Labour Code expressly gives the Board jurisdiction to determine if a business has been sold, such that the new 'owner' of the business becomes the successor to the previous owner and is required to acknowledge the union should the business be unionized.

The obviously intimidatory methods of the National Bank were remedied by the Board in a highly innovative way. Most startling in this remedial order was the acknowledgement by the Board of the chilling effect of the Bank's actions on other employees in other branches. The remedy was designed not only to compensate the union for the immediate impact of this chilling effect, but was specifically oriented toward offsetting the ripple effects which the Bank's behaviour would have on future organization. Rather than the standard and relatively ineffectual remedies normally offered by the Board, this remedy included the following:

1. The Bank was to provide an updated employee list to the union.
2. The Bank was to permit union meetings of up to one hour during paid company time.
3. The Bank was to provide a bulletin board on its premises to be used by the union.
4. The Bank was to incur all expenses associated with the provision of the bulletin board and union meetings on its premises.
5. The Bank was to issue on its own letterhead a letter composed by the Board under the signature of the Bank's Chief Executive Officer and President to all employees, including management personnel at their home addresses. The letter explained the Board's findings in detail and specifically denoted the legal right of employees to opt for collective bargaining.
6. The Bank was to establish a trust fund to be jointly administered by the union and the Bank, designed to further the objectives of the Code and to make annual contributions to the fund of \$48,000 for a period of three years.

The Bank sought judicial review to quash both the successor declaration and remedial orders 5 and 6. At the Supreme Court of Canada⁴⁹, the Bank did not contest the finding that closure of the branch was motivated by anti-union intent. The Court held that the branch closure could reasonably be held by the Board to be a "sale of business" as per s. 46 of the Code, justifying the successor declaration. However, it quashed orders 5 and 6 on the ground that they were beyond the remedial authority of the Board. Section 99(2) of the Code permits the Board, on finding a breach of the Code, to order an employer to do anything "in order to remedy or counteract any consequence of such failure to comply that is adverse to the fulfilment of (the Code's) objectives." The Court held that there was no rational remedial relationship between the President's letter and trust fund and the unfair labour practices. Indeed, the majority of the Court went so far as to label the letter a "totalitarian" measure, clearly abrogating the employer's freedom of expression. Furthermore, it rejected the validity of the trust fund as a remedial measure since its main objective was to compensate for future organizing losses which might result in other branches, since a majority of the Court concluded that "(t)he fact that a large number of the Bank's other employees are not unionized is not a consequence of closure of the Maguire St. branch" (p.28).

Thus, the Court struck down what was undoubtedly the Board's most innovative remedial initiative, one which could have provided a clear deterrent for future offenders of the Code. In so doing, this Court decision left in its wake a clear message for labour boards in the future; the employer's freedom of

⁴⁹ National Bank of Canada v. Retail Clerks International Union et al. [1984] C.L.L.C. para. 14,037 (S.C.C.).

expression overrides any perceived right of employees to effectively pursue collective representation. The inability of the Court to view the Board's remedial orders as compensatory in nature is at least partially an outcome of a lack of exposure to the ongoing development of unfair labour practices in the banking community. The Board had finally recognized a need to offset the chilling pattern of unfair labour practices committed by individual banks on the unionization decisions of bank employees nationwide. In order to prevent these practices from recurring, the Board decided to make the misconduct a costly measure to repeat. In effect, all that the trust fund was designed to do was to recover unjust gains from illegalities committed by the Bank, and not just gains in terms of a single branch, but those gained by chilling support for unions across banks. This Supreme Court decision clearly indicates that the C.L.R.B.'s remedies for unfair labour practices must be fashioned in a more deliberative manner in order to persuade courts of the genuinely compensatory nature of make whole remedies.

3. Bargaining

The barriers to unionization in the banking industry do not end with the banks' unfair labour practices in the form of individual and group discrimination. Where delay tactics and intimidation have failed to prevent certification, employers are also able to defeat unions at the bargaining table. Banking employees expect results pursuant to hard-won certification and where the inferior bargaining position of the union vis a vis management prevents this, decertification is a likely outcome. Thus, the banking industry, like most employers, uses every opportunity to take advantage of the vulnerable position of newly certified unions.

Despite the statutory duty to bargain in good faith pursuant to s.50 of the Canada Labour Code and s.15 of the Ontario Labour Relations Act and the possibility of the imposition of a first contract⁵⁰ employer intransigence at the bargaining table continues. Langille and Macklem (1988) review the duty to bargain in good faith jurisprudence and conclude that the statutory duty in Canadian jurisdictions does not redress the realities of substantive employer intransigence in collective bargaining. Based on the contractual notion that bargaining is a free, voluntary and mutual exchange between self-determining parties, the duty ignores the real inequality of bargaining power which exists in many of the unorganized sectors. The procedural test associated with this duty requires only that the parties agree to meet and attempt to conclude a collective agreement. This requirement can easily be fulfilled by the "rational" bank industry employer, despite the fact that the employer's actions on the whole are substantively orchestrated to circumvent the collective bargaining relationship at all costs. It is possible, for example, for an employer to dictate the terms of a contract which codifies the pre-union status quo without making a single concession and thereby satisfy the duty.

The shortcomings of this procedural test were evident in a 1985 O.L.R.B. decision regarding a union allegation that Canada Trustco Mortgage Co. had breached its duty to bargain in good faith.⁵¹ In this decision, the O.L.R.B. distinguished between legitimate "hard" bargaining and "surface" bargaining⁵²

⁵⁰ First contract arbitration is available in several Canadian jurisdictions, including B.C., the federal level, Quebec, Manitoba and Ontario.

⁵¹ Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local No. 304 and Canada Trustco Mortgage Co. (1985), 8 C.L.R.B.R. 275 (O.L.R.B.).

⁵² This distinction was first raised by the OLRB in its decision regarding Radio Shack's breach of the duty to bargain in good faith; United Steelworkers of America and Radio Shack, [1980] 1 C.L.R.B.R. 99 (O.L.R.B.).

and concluded that Canada Trustco had merely exercised its lawful right to protect its self-interest through a tough bargaining stance. Commending the company on its "clean" history, the O.L.R.B. did not analyze the situation beyond the procedural requirements on the parties to meet and attempt to conclude a collective agreement. Myopic focus on this procedural test caused the Board to ignore the fact that the trust company refused to negotiate any substantive changes beyond what the non-unionized employees were receiving and admitted that this posture was designed to discourage the spread of unionization in other branches. Thus, the collective bargaining process was not substantively tested in order to ascertain its probable chilling effect on both the potential survival of collective bargaining rights and the possibility of further bank organization. The decision at page 275, states that "(a) party whose bargaining strength allows it to virtually dictate the terms of the agreement does not necessarily bargain in bad faith."

In effect, this interpretation of the duty demonstrates Board acceptance of the right of the most powerful party in the negotiations to refuse to discuss any issue and thus, effectively, to refuse to recognize the other party. By allowing one party to determine the bargaining agenda in advance, according to what will discourage the advance of unionization, the duty cannot possibly be hoped to foster the exercise of legitimate collective bargaining rights.

Federal first contract arbitration legislation permits the Board, upon an order of inquiry from the Minister of Labour and without the consent of either party to intervene to resolve collective bargaining impasses.⁵³ Imposition of a first contract was considered by many to be an important step forward in fostering collective bargaining where certification procedures and the statutory duty to bargain in good faith failed to eradicate what were, in effect, recognition strikes (Walker, 1987). However, in the case of the banking industry, the C.L.R.B.'s imposition of first contracts has been erratic. In determining under what circumstances such legislation should be used, the Board has moved from a very high standard test requiring concrete documentation of bad faith before a contract will be imposed to an overt willingness to become actively involved in the examination of the historic relationship between union and employer.

In 1982, the C.L.R.B. refused to impose a first collective agreement on six branches of the Royal Bank, after protracted negotiations which culminated in strike action, despite the evidence, which the Board had before it, of the rich history of this Bank's intimidatory⁵⁴ conduct. In fact, the Bank had engaged in a number of delay tactics which included three months of contesting the certification application, procrastinating for weeks on the principle of branch to branch bargaining and refusing for eight months to make a package offer covering all collective agreement items. The frustration resulting from these delay tactics culminated in a ten month strike which the Bank waited out using strikebreakers, illegal dismissals and threatening personal letters designed to intimidate individual strikers into returning to work⁵⁵. These dismissals were used as direct threats against other union members in direct contact between individual workers and management, despite the fact that the union had been certified as the

⁵³ This type of legislation will do nothing to resolve cases similar to Canada Trustco because it applies only to first contracts, ignoring the intractability of employers at future bargaining sessions. For an analysis of statutory variations among Canadian jurisdictions regarding such legislation, see Macdonald (1988).

⁵⁴ Royal Bank of Canada and C.S.N., [1982] 1 C.L.R.B.R. 16 (C.L.R.B.).

⁵⁵ See supra note 27 for previous discussion of CSN de bureau du Comte de Lapointe, CSN de commerce de is Bale, et al and Royal Bank of Canada, Jonquiere, Kenoaasle, Ville de Bale, Quebec (1980), 42 di 125 (C.L.R.B.).

only representative of the workers. In a letter dated January 14, 1980, G.W. Pope, Director of Personnel for the Royal Bank in Quebec, stated the following in reference to the dismissed strikers "(o)ther individuals are liable to disciplinary measures. ... We hope we can avoid other incidents which might make an employee liable to discharge. ... Obviously, a conflict such as the one we are experiencing holds no advantage for anyone." The letter was completed with an invitation for employees to re-examine the bank's bargaining position.

Despite these facts and the two year gap between the application for certification and this decision, a majority of the Board concluded that the use of first contract arbitration was unnecessary, stating, at page 16, that a contract must not be imposed "unless rigorous proof of exceptional circumstances" was documented. The fact that the actions of the Royal Bank in this case constituted unexceptional behaviour in the opinion of a majority of the Board clearly demonstrates an acceptance of egregious and illegal employer conduct and an unwillingness to consider the historic context of labour relations within the banking industry. Only Archambault in a 35 page dissent was willing to acknowledge the full extent of employer resistance to unionization in these branches. Upon a complete examination of the history of intransigence which began in these Royal Bank branches with opposition to the applications for certification and proceeded along a path of considerable demonstrated illegality, Archambault concluded that this was indeed a situation which demanded first contract imposition. He stated that "(t)he Board's ultimate purpose in intervening in this area must be ... to protect the integrity and legitimacy of the collective bargaining process" especially where there is no realistic possibility of a settlement in the short term (p.38). Despite Archambault's rigorous argument to the contrary, the majority refused to consider the history of the fierce anti-union campaign at these Royal Bank branches and did not believe that the Bank's actions constituted an abrogation of the duty to bargain in good faith. As such, the majority, chaired by LaPointe, refused to impose a first contract.

However, in an unexpected lowering of this apparently insurmountable standard for the use of first contract arbitration, the C.L.R.B. subsequently agreed to impose a first collective agreement at an Ontario based bargaining unit of the C.I.B.C.⁵⁶ As it had done in a previous decision against the C.I.B.C. in its 1977 reversal of its interpretation of the statutory freeze⁵⁷, the Board chose to consider the entire national campaign of this bank against unionization. In an unprecedented decision, the C.L.R.B. proclaimed that "(t)he natural effect of the exercise of the basic freedom of employees to participate in collective bargaining is to restrict the ability of employer to decide unilaterally what conditions employees will work under." (p.2). In arriving at their decision, the Board, chaired by Jamieson, elected to examine in-depth the seven months of negotiations and nine months of strike action (compared with 21 months of negotiations, and a ten month strike in the Royal Bank case) and bargaining strategies such as delay tactics and communicating directly with employees throughout the strike (which were very similar to those adopted by the Royal Bank). After engaging in a close examination of the power imbalance made evident in the history of the union/management relationship and determining that the C.I.B.C. had been engaged in "an uncompromising yet skilfully camouflaged rejection of the principles of the freedom of association upon which the Code is founded" (p.7) the

⁵⁶ Union of Bank Employees (Ontario). Local 2104. v. Canadian Imperial Bank of Commerce, [1986] C.L.L.C. para. 16,023 (C.L.R.B.)

⁵⁷ Union of Bank Employees. Local 2104 and 2100 and C.L.C. v. Canadian Imperial Bank of Commerce, 11980] C.L.L.C. para. 16,002: (1979), 35 di 105 (C.L.R.B.).

Board found the C.I.B.C. to be engaged in bad faith bargaining and imposed a first collective agreement pursuant to s. 80 of the Canada Labour Code.⁵⁸

The logical abyss between these two C.L.R.B. decisions creates the appearance that the two decisions were rendered by two separate labour boards, with the only apparent consistency being the Board's history of slamming the actions of the C.I.B.C., isolating their conduct as exceptionally different than that of the other banks.⁵⁹ As such, two significantly similar banking industry employers engaged in a similar collective bargaining stance designed to erode support for two substantially comparable unions were subjected to two completely opposite decisions. In fact, comparatively speaking the Royal Bank had amassed a far more egregious history in its relations with the C.S.N. than had the C.I.B.C. in its relations with the U.B.E. While the Board had upheld ten of the fifteen unfair labour practice complaints brought against the Royal Bank by the C.S.N. prior to 1982, only six of the seventeen actions brought against the C.I.B.C. by the U.B.E. in the same period were upheld (Canada Labour Relations Board, 1990). Furthermore, strike pay during the U.B.E. action against the C.I.B.C. was \$250 per week as a result of C.L.C. contributions to the strike fund; substantially above what the C.S.N. or other bank organizers were able to pay. Thus, the C.I.B.C., engaged in at least similar if not less coercive action than the Royal Bank, had a first contract imposed, while the hostile actions of the Royal Bank went virtually unchecked.

While the C.I.B.C. decision is obviously a favourable one in terms of the labour movement in hard-to-organize sectors, its inconsistency with previous C.L.R.B. decisions creates cause for future concern. Again, it appears that the inconsistency in decision making turns on the willingness of different Board members to consider the history of the union/management relationship in the banks and the effect that power imbalance between the two has had on that relationship. In this way, these decisions create no certain guidance as to what type of employer behaviour is so unacceptable as to result in C.L.R.B. imposition of a first contract. Nevertheless, it is to be hoped that the Board will continue to recognize the importance of analysis of the power relationship between parties in an industry that has "chosen the bargaining table as its main line of defense. ... In order to effectively deny the employees who have joined the union of their fundamental right to participate in meaningful collective bargaining."⁶⁰

Overall, the Canadian banking industry has amassed a wealth of unfair labour practice allegations and convictions. (See Table 8) The effect of these, in combination with ineffectual remedial action taken by labour boards has undoubtedly contributed significantly to the decertification of 157 of the 197 bargaining units certified since 1977 (Canada Labour Relations Board, 1990). Despite an across-the-board pattern of unfair labour practice allegations, ranging from both individual and group discrimination to an unwillingness to bargain substantively, Board consideration of issues such as power imbalance, the concerted nature of the bank campaign against unionization and its willingness to place the rights of individuals to collective empowerment above the rights of property and contract continues to be limited.

⁵⁸ The Board also concluded that the imposition of the first collective agreement was a justifiable contravention of the employer's right to freedom of expression under section 1 of the Charter.

⁵⁹ While the C.I.B.C. has been more blatant with regard to its anti-union goals, producing many written documents which have subsequently been exposed, its conviction rate in terms of unfair labour practices is in fact lower than that of the Royal Bank and only one higher than the Bank of Montreal. (See Table 8) And, the C.I.B.C. still maintains the largest number of unionized employees and only one less bargaining unit than the Bank of Montreal and the Royal. (See Table 7, Chapter II)

⁶⁰ Union of Bank Employees (Ontario), Local 2104, v. Canadian Imperial Bank of Commerce, [1986] C.L.L.C. para. 16,023, p.9 (C.L.R.B.).

The Board considered the issue of the imbalance of power between employees and the banking industry in only six of the fifteen unfair labour practices considered earlier. And unfortunately, it was unable to convince the Supreme Court of the legitimacy of its most remarkably forward looking remedy in one of these six. Unless a consistent approach toward unfair labour practices which renders them unaffordable, and thus unattractive, the misconduct of Canadian banks in resisting unionization is likely to continue.

Table 8

Unfair Labour Practices in Canadian Banks 1977-1989

| Bank | Unsettled | Granted | Rejected | Settled | Withdrawn/Settled | Total |
|--------------------------------------|-----------|-----------|-----------|-----------|-------------------|------------|
| Bank of B.C. | | | 2 | 2 | 2 | 6 |
| Bank of Montreal | | 6 | 2 | 11 | 7 | 26 |
| Bank of Nova Scotia | 1 | 1 | 8 | 7 | 3 | 20 |
| Banque Canadienne Nationale | | 3 | 1 | 1 | 2 | 7 |
| Montreal & District | | | | | | |
| Savings Bank | | | 1 | | 1 | 2 |
| Banque Nationale Du Canada | | 2 | 7 | 3 | 10 | 22 |
| CIBC | | 7 | 7 | 7 | 15 | 36 |
| Royal Bank | 1 | 11 | 9 | | 1 | 22 |
| Toronto Dominion | | | 2 | 9 | 1 | 12 |
| Laurentian Bank | 2 | | | | 1 | 3 |
| Banque Provincielle | | | 1 | | 3 | 4 |
| Chase Manhattan Bank of Canada | | 1 | | | | 1 |
| Total Unfair Labour Practices | 4 | 31 | 40 | 40 | 45 | 158 |

Source: Canada Labour Relations Board, Unfair Labour Practices in Canadian Banks, December 5th, 1989.

4. Procedural Administration

Certain issues concerning procedural administration have also had negative repercussions on the organization of Canadian banks, including the date upon which membership support should be determined in certification applications, the structure and support necessary to accept decertification applications and the costly effects of Board induced delays. In 1977, the Federal Court ruled that the C.L.R.B. should be bound to determine support for an application as of the date of the certification hearing.⁶¹ Thus, during the period between the submission of application for certification and the hearing, employers had ample time to alter the staff composition of branches seeking certification by eliminating union supporters through transfer, lay off or discharge or by transferring in or hiring new staff who would vote against unionization.

While the negative effects of the CKOY decision were ultimately arrested in 1978 by a legislative amendment permitting the Board to determine union support as of the date of application, the Board later decided that in order to use the date of application to determine union support, membership evidence as of the date of application must indicate majority support.⁶² As such, any application with less than majority support would not be afforded protection from gerrymandering through determination of support at the date of application. This, accompanied by a high rate of turnover among bank employees (27% to 36% in 1980), created hardship for unions attempting to ascertain support among an almost constantly changing group of employees (Lennon, 1980:180). Generally, the Board treated these gerrymandering techniques as little more than business as usual, occasionally varying from this approach where banking representatives were so blatant in their anti-union intent as to make unfair labour practice determinations unavoidable.

The process of decertification is designed to permit unionized employees to reject collective representation where it is no longer desired by the majority. Where the Board has perceived an application to be free from employer influence and to be an accurate representation of the wishes of a majority of the bargaining unit, decertification without a vote has been the normal course of action.⁶³ However, managerial resistance and Board decisions at this and other stages in the collective bargaining process have influenced the termination of these collective relationships. Where employer influence has been perceived to have affected or incited a decertification application, the C.L.R.B. may demand that a vote be taken. However, this remedial action is often too little and too late. By the time the vote is taken, employer intimidation and coercion will clearly affect the voting pattern of bargaining unit members and will ultimately unfairly influence the decision for decertification anyway.⁶⁴

Furthermore, in deciding an application for revocation of a branch certificate in the Bank of Montreal, the Board held that the meaning of majority support required for decertification is a majority of those

⁶¹ CKOY Limited v. Ottawa newspaper Guild, Local 205, (1977] 2 F.C. 412: 74 D.L.R. (3d) 22§, (1977), 14 N.R. 464: 77 C.L.L.C. para. 14093.

⁶² C.I.B.C., Sioux Lookout Branch, [1979] 1 C.L.R.B.R. 18.

⁶³ Donna English, et al and Union of Bank Employees (Ontario), Local 2104, C.L.C. and Bank of Montreal, Bowmanville, Ontario (1980), 40 di 179 (C.L.R.B.).

⁶⁴ Union of Bank Employees (Ontario), Local 2104, C.L.C. and Bank of Montreal, Place Bell Canada Branch, Ottawa (1985), 62 di 154 (C.L.R.B.).

voting and not the majority of the bargaining unit.⁶⁵ Not only does this interpretation allow a minority of bargaining unit members to determine the fate of a certificate, it is especially problematic in an industry where high turnover and extensive use of part-time employees permits votes taken at inopportune times to prevent all bargaining unit members from input into the decision. As such, in the dissent to this decision, Galipeau criticized this interpretation (at 14255) for its potentially deleterious effects on the continuation of certification which has "often been dearly fought for."

The Board has also dealt with the procedural issue as to which situations would justify an employer application for revocation of a certificate. In a 1985 decision, the National Bank of Canada requested, that the C.L.R.B. revoke the certificate issued to its Senterre Branch because it had been closed.⁶⁶ The Board dismissed the application on the basis that the decertification process is reserved for the expression of employee discontent with union representation and NOT to permit the employer to close unionized operations in order to resume business activity in a new non-unionized location. However, in a judicial review requested by the National Bank the Federal Court of Appeal ruled that the C.L.R.B. had the ability under section 18 of the Canada Labour Code to revoke certification upon application by the employer and ordered that the Board reconsider its decision.⁶⁷ Again, the Board dismissed the application as contrary to the objectives of the Code which states that employer decertification applications may only be granted in cases of fraudulent union representation.⁶⁸ These references to the intent of the Code are impressive and should be used more often in guiding Board decisions.

In addition to the gerrymandering tactics and employer involvement in applications for certificate revocations common to the banking industry, the Board through its delays must also be held responsible for decertifications. The four-year delay between certification application and the Board decision in the Rimouski case⁶⁹ ultimately led to a decertification application less than two years later.⁷⁰ Following the four year delay in certification, the members of the cluster bargaining unit at the National Bank in Rimouski waited a further fourteen months before a contract was signed. Despite the fact that the collective agreement was signed only three months before, a decertification application was filed in 1987 and the application was considered timely pursuant to ss. 38 and 39 of the Canada Labour Code since the stated effective date of the contract was fourteen months earlier. Thus, the C.N.T.U. worked for fourteen months to achieve its first agreement and was decertified before the contract was three months old.

⁶⁵ Albert v. Union of Bank Employees (Ontario), Local 2104, [1987] C.L.L.C. para. 16,031 (C.L.R.B.)

⁶⁶ National Bank of Canada, Senterre Branch and Retail Clerks International Union, Local 508(1986), 12 C.L.R.B.R. (N.S.) 300 (C.L.R.B.).

⁶⁷ National Bank of Canada v R.C.I.U., [1986] C.L.L.C. para.14,039 (F.C.A.).

⁶⁸ National Bank of Canada, Senterre Branch and Retail Clerks International Union, Local 508 [1987] C.L.L.C. para. 16,041 (C.L.R.B.).

⁶⁹ Syndicat des Employes des Banques Nationales de Rimouski (ONTO) and National Bank of Canada (1986), 11 C.L.R.B.R. (N.S.) 257 (C.L.R.B.).

⁷⁰ It is crucial that the Board recognize the importance of delays to the long run survival of unions in the banking industry. With very high staff turnover rates and excessive employer interference, even a period of several weeks can have a negative effect on support for the union. Time is of the essence in certification in the banking industry; before supporters are removed from the unit or quit.

In its 1987 decision regarding this decertification, the Board refused to accept any of the union's arguments against the application, despite the fact that two of them relied on past Board decisions.⁷¹ First, the Board refused to order a vote despite C.N.T.U. arguments that the evidence purported to demonstrate majority support for decertification did not include in total membership several employees termed "casual" by the Bank. Second, in an effort to circumvent this argument, the Board, admitting that it was highly doubtful that these employees were genuine casual employees in terms of its definition of casual employment specified in a previous decision,⁷² relied on its discretionary power regarding the admissibility of evidence submitted after the initial application. In so doing, the Board extended the deadline for submission of signatures and allowed the applicants to submit the signatures of a majority of the arguably "casual" employees in support of its original application. Finally, the Board refused to accept that the employer had failed to bargain in good faith, despite the protracted nature of negotiations and the very modest nature of contract terms.

5. Comments on the Law in Action

The work of Lennon (1980) thoroughly documented the inefficacy of the present legislative regime and its administrators in dealing with the realities which bank workers confronted in their struggle to organize prior to 1980. Since then, it would appear that many of her criticisms remain valid. Although the Board has recognized the inadequacies of single branch units in terms of bargaining strength, the unmanageability of organizing national units and the banks' abuse of "managerial" and "casual" titles designed to prevent employees from unionizing, its inability to respond adequately to unfair labour practices remains evident. Despite a handful of cases in which the Board has been willing to engage in substantive analysis of industry wide patterns and power relationships involving instances of both individual and group discrimination, its remedial initiatives have clearly fallen short of deterrence (save one which unfortunately was quashed by a court system myopically focused on legalism). Where collective bargaining is concerned, the Board, although inconsistent in its application of first contract imposition, appears to have moved toward a substantive analysis of bargaining issues. Finally, the Board in its procedural administration has in some cases actually been responsible for decertification through unnecessary delay and in others has been willing to use specialized tools to permit revocation applications to succeed where they might otherwise have failed.

6. Conclusion

With job insecurity in banks growing in wake of increasing automation and employment restructuring designed to improve banks' competitive position, it is more important than ever that labour legislation be accommodative to the needs of bank workers in their quest for collective empowerment. However, where bank workers have been able to overcome exceptional barriers and have turned to the law and its administrators for assistance in the exercise of the collective bargaining rights afforded them by the Code, little effective response has been forthcoming. So, despite unmet bank promises to reduce occupational segregation based on sex, continued job insecurity and poor compensation levels, an extremely low level of collective action remains a fact of life for bank workers. Present labour

⁷¹ National Bank of Canada, Rimouski, Quebec and Otis and Moisan, et al. and Syndicat des Employes des Banques Nationales de Rimouski (CNTO) (1989), 19 C.L.R.B.R. (N.S.) 16 (C.L.R.B.).

⁷² Bank of Montreal, Sherbrooke, Quebec v. United Steelworkers of America [1987] C.L.L.C. para. 16,044

legislation and its administrators are at least partially responsible for failing to facilitate the collective initiatives among these workers, a majority of whom are women striving to gain some degree of control in this women's job ghetto.

It appears upon consideration of the decisions of the Canada and Ontario Labour Relations Boards that inconsistency in decision making is primarily a result of the positions of varying Board members as to whether or not the power imbalance generated by a concerted corporate counter-campaign against a smattering of frustrated employees should be assessed before decisions are rendered. Except for several glimmers of hope generated by a handful of contextually aware decisions, it appears that labour legislation and its administrators have become no more effective for the unorganized than they were ten years ago. However, there are certain initiatives which could facilitate collective bargaining for the unorganized and these are outlined below.

Bargaining Unit Definition:

1. The Board should render decisions without delay and should indicate under what circumstances it would consider cluster units to be preferable to single branch units.
2. The Board should permit the establishment of "open-ended" bargaining units as is a practice of the British Columbia Industrial Relations Committee (B.C.I.R.C.).⁷³ This would permit certification of units small enough to make organization manageable, but permit a growth in bargaining power through re-opening for expanded membership resulting from subsequent organization.

Unfair Labour Practices:

1. The Board must be consistently prepared to consider the economic relationship between the parties in order to render decisions which reflect contextual realities, such as the balance of power.
2. The Board must be prepared to recognize that the patterns of unfair labour practices in banking are not isolated branch decisions, but reflect a common industry front against unionization.
3. The Board must be prepared to recognize that the objectives of the Code⁷⁴ should be given primary consideration so that decisions claimed to be founded in "sound business principles" are examined closely for underlying animus and not just their primary intent.
4. Remedial initiatives must be designed to offset the chilling effect of the action of one bank on all yet to be organized banks and in order to achieve this they must be costly enough to deter future commission of unfair labour practices. The Board must be prepared to defend the compensatory nature of the make-whole order against judicial review.

⁷³ Olivetti Canada Ltd., [1975] 1 C.L.R.B.R. 60 (B.C.L.R.B.); The Original Dutch Pannekeok House Ltd., [1979] 1 C.L.R.B.R. 212 (B.C.L.R.B.).

⁷⁴ This may necessitate legislative amendment in order to clarify the objectives of the Code. If this amendment produces a preamble which declares the Code to be primarily oriented toward the fostering of collective bargaining, then this objective should guide every Board decision. This might be facilitated by borrowing the "taint" approach to motivation used in the Human Rights Review Tribunal in determining *Carson v. Air Canada* (1983), 18 D.L.R. (4th) 72.

Bargaining:

1. The Board must be willing to delve into the substance of negotiations on a consistent basis rather than merely requiring that parties meet only the procedural obligations of s.50 of the Code.
2. Standards for use of first contract arbitration must be based consistently on a realistic assessment of the "entire pattern of the conduct of the applicant as well as the respondent ... prior to the breakdown of negotiations," such as the test administered by the B.C.L.R.B. in the case of London Drugs.⁷⁵

Procedural Administration:

1. The Board must be willing to deliver decisions without delay in recognition of the damage which delays may cause in a high turnover industry.
2. Decertification counts must be based on a majority of all bargaining unit members rather than a majority of the persons voting. Again, the nonstandard employment forms which characterize this industry demand this.
3. Special measures such as the extension of deadlines should not be used to permit employers to defeat unionization through technical loopholes.

Although the areas listed above are designed to enhance the efficacy of present labour legislation, it is quite possible that the current regimes cannot be expected to encourage the organization of today's unorganized. Indeed, current legislation, premised upon the contractual notion of bargaining between free agents, has been relatively effective in terms of the organization of Canadian workers in primary and secondary industries where by virtue of sheer numbers a rough degree of bargaining equality has been established. However, these same regimes and the jurisprudence developed from them simply may not be able to accommodate the needs of small, fragmented groups of employees increasingly engaged in nonstandard work forms and threatened by computerization. The challenge of today's unorganized may demand the development of a separate legislative regime, such as those developed for teachers and government employees, which encourages recognition of the differences between unionization in the resource/manufacturing sectors and the emerging service sector.

While the central focus of this paper has been the effect of labour legislation on the unionization attempts of bank workers, the betterment of the position of these, and other service sector employees admittedly does not rest with efficacious administration of legislation alone. In fact, the role of unions in organizing these sectors has generated considerable criticism in terms of the failed attempts to improve the working conditions of these workers. Since the demise of S.O.R.W.U.C., no union has engaged in the design of an organizational strategy which appears specifically oriented toward the women who constitute the majority of bank workers. Furthermore, a degree of interunion squabbling over jurisdiction has also diverted valuable time and energy from organizing.

Recent announcements indicate the intention of the Canada Labour Congress (C.L.C.) to once again attempt organization of the Canadian banks, but this time the strategy is somewhat different. According to John Fryer, the President of the National Union of Provincial Government

⁷⁵ London Drugs, [1974] 1 C.L.R.B.R. 140 (B.C.L.R.B.).

Employees (N.U.P.G.E.), the largest and most powerful union from each province have been given responsibility within their province to tackle the banking industry. This C.L.C. strategy leaves the organization of Ontario bank employees to the United Steelworkers of America (U.S.W.A.), an organizationally innovative union, but not without an overtly male-oriented reputation. Without special organizational tactics, this province by province strategy may still fall short of appeal to women in banking, especially in those provinces where a union such as the Steelworkers is given the task of organization.

In any event, organizing the unorganized in the burgeoning service sector represents a significant challenge for the Canadian labour movement in order to improve union density figures which have declined over the past decade (Anderson et al, 1989), a challenge requiring innovative organizing tactics, persistence and substantial financial backing. Specifically, organizers must recognize two crucial realities in the banking sector. First and foremost, in order for the strike weapon to be at all effective in the banking industry, whole regions must be organized in order to undermine the ability of banks to defer business to other locations. Secondly, the ease with which business may be deferred between branches has been exacerbated with the growing use of automated banking machines and this further erodes the threat of the strike weapon. As such, careful consideration should be given to the organization of head offices where centralized computer processing is performed, which was done in the organization of the Chargex Centre of the C.I.B.C. in Toronto.⁷⁶

While unionization is one means by which workers have historically sought to better their conditions of employment, it is not the only solution. In fact, unionization in Canadian banks and other service sector industries may not even be necessary to improve employment conditions in these operations should legislative reforms requiring improved minimum wages and benefits, especially for those involved in nonstandard work forms, be initiated. Indeed, many groups, including the Ontario Federation of Labour (O.F.L.) support this means of improvement in conjunction with, rather than in place of, unionization. Given the lengthy process of organization and certification, intermediate measures such as strengthened employment standards may be necessary to protect the unorganized in the interim.

Whether the task of organizing thousands of disparately located bank workers across Canada is actually possible is a question which can only be partially answered. Given the legislative and administrative shortcomings of the collective bargaining regime and the intense resistance of the banking industry, even the achievement of the present minimal level of unionization in Canadian banks is virtually inexplicable. Should a rejuvenated organizational strategy from Canadian unions be complemented by a more substantive and critical labour board stance toward employer intransigence, it would appear that the possibilities could be endless. However, whether these key components will manifest themselves is another question in itself, awaiting an answer in the anticipated organizational wave of the 1990's.

⁷⁶ Of course, these union strategies do not stand alone as an answer to bank unionization. Failed strike efforts such as the one at the central VISA office in Toronto clearly demonstrate that a more facilitative legal structure is also a pre-condition for successful organization.

REFERENCES

- Anderson, John C., Morley Gunderson and Allen Ponak. Union-Management Relations in Canada (2nd Ed.). Don Mills, Ontario: Addison-Wesley Publishers Limited, 1989.
- Beckett, E. Unions and Bank Workers: Will the Twain Ever Meet? Ottawa: Women's Bureau Labour Canada, 1984.
- Canada Labour Relations Board. Bank Certification and Decertification Data. Ottawa: Canada Labour Relations Board, January 31, 1990.
- Canada Labour Relations Board. Unfair Labour Practices Related to Banking Data. Ottawa: Canada Labour Relations Board, December 5, 1989.
- Canadian Bankers Association. "Bank Facts," (1988) 95 Canadian Banker. No. 6, Special Insert pp.1-6, 16.
- Canadian Bankers Association. "Bank Facts," (1989) 96 Canadian Banker. No. 6, Special Insert pp.1-6, 16.
- Canadian Press. "Women still occupy lower rungs of banking ladder, study shows," The Globe and Mail. November 7, 1989, p. B28.
- Economic Council of Canada. Good Jobs, Bad Jobs: Employment in the Service Economy. Ottawa: E.C.C., 1990.
- Employment and Immigration Canada. Employment Equity Act, Annual Report to Parliament, 1988.
- Employment and Immigration Canada. Employment Equity Act, Annual Report to Parliament, 1988, Tables.
- Employment and Immigration Canada. Employment Equity Act, Annual Report to Parliament, 1989.
- Employment and Immigration Canada. Employment Equity Act, Annual Report to Parliament, 1989, Tables.
- Employment and Immigration Canada. Employment Equity Reports. Ottawa: Employment Equity Branch, (including reports filed by The Bank of Nova Scotia, The Royal Bank of Canada, The Toronto Dominion Bank, The Bank of Montreal and The Canadian Imperial Bank of Commerce), 1989.
- Fiorito, J. and C. Greer. "Gender Differences in Union Membership, Preferences and Beliefs," (1986) VII Journal of Labor Research. No.2, pp.145-163.

Fryer, John. "A Trade Union Official View the Canadian I.R. Scene in the 1990s," (1990) Queen's University, Kingston, Ontario: Keynote Address to Industrial Relations Conference Spring Seminar.

Labour Canada. A Survey of Part-Time Employment in Federally Regulated Industries. Vol. 1, December 1985.

Labour Canada. A Survey of Part-Time Employment in Federally Regulated Industries. Vol. 2, December 1986.

Langille, Brian and Patrick Macklem. "Beyond Belief: Labour Law's Duty to Bargain," 13 Queen's Law Journal 62 (1988).

Leighton, D. "Preparing Bankers for the Eighties," (1981) 88 Canadian Banker and I.C.B. Review No.1, pp.42-48.

Lennon, Elizabeth. "Organizing the Unorganized: Unionization in the Chartered Banks of Canada," 18 Osgoode Hall Law Journal 2 (August 1980) pp. 178-237.

Lowe, Graham. Bank Unionization in Canada: A Preliminary Analysis. Toronto: Centre for Industrial Relations, University of Toronto, 1980.

Lowe, Graham. "Causes of Unionization in Canadian Banks," Relations Industrielles. Vb1.36, No.4, 1981, pp. 865-892.

Macdonald, Alistair. "First Contract Arbitration in Canada: An Analysis of the Legislation in Five Labour Jurisdictions in Canada." Kingston: Queen's University School of Industrial Relations Research Essay Series No. 17, 1988.

Meltz, Noah. "Unionism in the Private Service Sector: A Canada-U.S. Comparison," Toronto: University of Toronto Centre for Industrial Relations, 1990.

Menzies, Heather. Women and the Chip: Case Studies of the Effects of Informatics on Employment in Canada. Montreal: The Institute for Research on Public Policy, 1981.

MuthuchidaMbaram, S. "Settlement of First Collective Agreements: An Examination of the Canada Labour Code Amendment," (1980) 35 Relations Industrielles No.3, pp.387-409.

Poole, Phoebe-Jane. Women in Banking: The First Year of Employment Equity. Ottawa: The Canadian Centre for Policy Alternatives and the National Action Committee on the Status of Women, 1989.

Reed, C. "Assertiveness as a Key to Success," (1977) 84 Canadian Banker and I.C.B. Review, No.3, pp.42-47.

Rose, P. "Banking's Next Key Objective," (1989) 96 Canadian Banker, No.1, pp.54-63.

Rose, P. "The Bank Branch: Which Way to the Future?" (1986) 93 Canadian Banker, No.6, pp.42-50.

Statistics Canada. Women In Canada. 2nd ed., Catalogue # 89-503E, Ottawa: Statistics Canada, February 1990.

Thompson, E. "Bankers Don't Wear Hush Puppies," (1989) 96 Canadian Banker, No.6, pp.30-35.

Walker, Julian. "First Agreement Disputes and Public Policy in Canada." Kingston: Queen's University School of Industrial Relations Research Essay Series No. 17, 1987.

Wallace, M. "Reflections on Women at Work." (1978) 85 Canadian Banker and I.C.B. Review, No. 1, pp.40 -43.

Warskett, Rosemary. "Bank Worker Unionization and the Law," 25 Studies in Political Economy 41 (1988).

BANK UNIONIZATION CASES CONSIDERED (by Subject)

Bargaining Unit Definition

Bank of Nova Scotia, Kitimat [1959] 59 C.L.L.C., para. 18,152.

C.I.B.C., Victory Square Branch (1977) 20 di 319, [1977] 2 C.L.R.B.R. 99, 77 C.L.L.C., para. 16,089.

Royal Bank of Canada, Gibsons Branch (1977) 26 di 509, [1978] 1 C.L.R.B.R. 326.

Retail Clerks International Union and Bank Canadian Nationale, Montreal Ouebec (Data Processing Centre) and Chargex Centre of Bank Canadian Nationale and Certain Employees [1980] 1 C.L.R.B.R. 297 (C.L.R.B.).

Bank of Montreal and Union of Bank Employees (Ontario) Local 2104, C.L.C. [1982] 2 C.L.R.B.R. 380 (C.L.R.B.).

Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and The Bank of Nova Scotia, Cedarbrae Plaza, 3515 Lawrence Avenue East, Scarborough, Ontario (1985) 62 di 190 (C.L.R.B.).

Syndicat des Employes des Banques Nationales de Rimouski (CNTU) and National Bank of Canada [1986] 11 C.L.R.B.R. 257 (C.L.R.B.).

Union of Bank Employees (British Columbia and Yukon), Local 2100, C.L.C. and Canadian Imperial Bank of Commerce (1986) 64 di 89 (C.L.R.B.).

Union of Bank Employees (Ontario), Local 2104, C.L.C. v. National Trust (1986) C.L.L.C. para. 16,026 (O.L.R.B.).

United Steelworkers of America and Bank of Montreal, Sherbrooke, Quebec (1986) 68 di 67 (C.L.R.B.).

Bank of Montreal, Sherbrooke, Quebec v. United Steelworkers of America (1987) C.L.L.C. para. 16,044 (C.L.R.B.).

Union of Bank Employees (Ontario), Local 2104 v. National Trust (1988) C.L.L.C. para. 16,026 (C.L.R.B.).

Comox District Credit Union v. Union of Bank Employees, Local 2100 (1988) B.C.I.R.C.D. vol.1, 52-01.

Union of Bank Employees (Ontario), Local 2104 v. National Trust v. Group of Employees (August 1986) O.L.R.B.R. 1115 (O.L.R.B.)

Unfair Labour Practices

a. Captive Audience Meetings

Bank of Nova Scotia, Selkirk Branch (1978) 27 di 690, [1978] 1 C.L.R.B.R. 544.

Bank of Montreal, Tweed and Northbrook Branch (1978) 26 di 591, [1978] 2 C.L.R.B.R. 123.

C.I.B.C., Gibsons Branch Unreported Decision, Board File 745-293.

b. The Statutory Freeze

Royal Bank of Canada [1978] 2 C.L.R.B.R. 159.

Bank of Nova Scotia [978] 2 C.L.R.B.R. 181.

Bank of British Columbia [1980] 3 C.L.R.B.R. 576.

Union of Bank Employees, Local 2104 and 2100 and C.L.C. v. Canadian Imperial Bank of Commerce (1980) C.L.L.C. para. 16,002, (1979) 35 di 105 (C.L.R.B.).

Bank of British Columbia v. Union of Bank Employees (British Columbia and Yukon), Local 2100, C.L.C. (1980) C.L.L.C. para. 16,032 (C.L.R.B.).

The Bank of Nova Scotia and Retail Clerks International Union [1981] 2 C.L.R.B.R. 365 (C.L.R.B.).

Union of Bank Employees, Local 2100 v. Bank of British Columbia (1981) C.L.L.C. para. 16.068 (C.L.R.B.).

The Bank of Nova Scotia and Retail Clerks International Union (1982) C.L.L.C. para. 16,158 (C.L.R.B.).

The Bank of Nova Scotia and Retail Clerks International Union (1983) C.L.L.C. para. 14,007 (Fed.C.A.).

Syndicat des travailleuses(eurs) de la Banque Nationale (CNTU and National Bank of Canada, 252 Notre-Dame, Maniwaki, Ouebec and Nicole Grondin (1987) 70 di 146 (C.L.R.B.).

c. Dismissals, Demotions and Transfers as Unfair Labour Practices

C.I.B.C, Sioux Lookout Branch (1978) 33 de 432, [1979] 1 C.L.R.B.R. 18.

C.I.B.C., Toronto Branch (1979) 34 di 677, [1979] 1 C.L.R.B.R. 391. The Service, Office and Retail Workers' Union Campaign and Eileen S. McArthur, Vancouver, British Columbia and Bank of Montreal (Carrall and Hastings St. Branch), Vancouver, British Columbia (1980) 39 di 122 (C.L.R.B.).

CSN de bureau du Comte de Lapointe, CSN de commerce de la Baie, et al and Royal Bank of Canada, Jonquiere, Kenogamie, Ville de Baie, Ouebec (1980) 42 di 125 (C.L.R.B.).

Brenda Hoekstra and Bank and Finance Workers' Union, Local 4, SORWUC and National Bank of Canada (1982) 51 di 60 (C.L.R.B.).

Bank and Finance Workers' Union, Local 4 of the Service, Office and Retail Workers' Union Campaign on Behalf of Mary Jean Rands and Bank of British Columbia (1983) 52 di 98 (C.L.R.B.).

Union of Bank Employees (Ontario), Local 2104, C.L.C. v. Bank of Montreal, Devonshire Mall Branch, Windsor, Ontario, et al. (1983) C.L.L.C. para. 16,015 (C.L.R.B.).

Bank and Finance Workers' Union, Local 4 of the Service, Office and Retail Workers' Union Campaign on Behalf of N. Rolland v. National Bank of Canada (1984) C.L.L.C. para. 16,038 (C.L.R.B.)

Union of Bank Employees (Ontario), Local 2104, C.L.C. and Bank of Montreal, Place Bell Canada Branch, Ottawa (1985) 62 di 154 (C.L.R.B.).

Union of Bank Employees (Ontario), Local 2104 and Bank of Montreal and Richard Savard [1986] 10 C.L.R.B.R. 129 (C.L.R.B.).

Union of Bank Employees, Local 2104 (Ontario), and Vivien Schreiber and The Chase Manhattan Bank of Canada (1986) 64 di 1 (C.L.R.B.).

d. Solicitation Techniques

Union of Bank Employees, Local 2104 (C.L.C.) v. Canadian Imperial Bank of Commerce (1985) C.L.L.C. para. 16,021 (C.L.R.B.)

Union of Bank Employees (British Columbia and Yukon), Local 2100 v. Canadian Imperial Bank of Commerce, North Hills Shopping Centre and Victoria Hills Branches (1980) C.L.L.C. para. 16,001 (C.L.R.B.)

Union of Bank Employees, Local 2104, C.L.C. and Canadian Imperial Bank of Commerce [1986] 10 C.L.R.B.R. 182 (C.L.R.B.).

e. Reorganization

National Bank of Canada and Retail Clerks International Union [1982] 3 C.L.R.B.R. 1 (C.L.R.B.); rev'd in National Bank of Canada v. Retail Clerks International Union et al. (1984) C.L.L.C. para. 14,037 (S.C.C.).

f. Duty to Bargain in Good Faith

Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local No. 304 and Canada Trustco Mortgage Co. [1985] 8 C.L.R.B.R. 275 (O.L.R.B.)

g. Imposition of First Collective Agreement

Royal Bank of Canada Branch at 11 Price St. Keno•ami •uebec 675-5), (Branch at 100 Harvey Blvd., Jonquiere, Quebec, 675-7), (Branch at 375 Bagot St., La Baie, Quebec, 675-8), (Branch at 1055 Dupont St., Alma, Quebec, 675-9), (Branch at 510 Sacre -Coeur St., Alma, Quebec, 675-10), (Branch at 279 St. Dominique St., Jonquiere, Quebec, 675-11) and Syndicat de Employes de Commerce et de Bureau du Comte Lapointe (CNTU) 675-6, 675-7, 675-11 and Syndicat des Commes-Comptables D'Alma Inc. (CNTU) 675-9, 675-10 and Syndicat des Employes de Commerce de la Baie (CNTU), 675-8 [1982] 1 C.L.R.B.R. 16 (C.L.R.B.) .

Union of Bank Employees (Ontario), Local 2104, v. Canadian Imperial Bank of Commerce (1986) C.L.L.C. para. 16,023 (C.L.R.B.)

Procedural Administration

a. Decertification Applications

Donna English, et al and Union of Bank Employees (Ontario), Local 2104, C.L.C. and Bank of Montreal, Bowmanville, Ontario (1980) 40 di 179 (C.L.R.B.)

Pat Steele v. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local No. 304 v. Canada Trustco Mortgage Co. (January 1985) O.L.R.B.R. 43 (O.L.R.B.)

National Bank of Canada, Senterre Branch and Retail Clerks International Union, Local 508 [1986] 12 C.L.R.B.R. 300 (C.L.R.B.)

National Bank of Canada, Senterre Branch and Retail Clerks International Union, Local 508 (1987) C.L.L.C. para. 16,041 (C.L.R.B.)

Albert v. Union of Bank Employees (Ontario), Local 2104 (1987) C.L.L.C. para. 16,031 (C.L.R.B.)

National Bank of Canada, Rimouski, Quebec and Otis and Moisan, et al. and Syndicat des Employes des Banques Nationales de Rimouski (CNTU) [1989] 19 C.L.R.B.R. 16 (C.L.R.B.)

Union of Bank Employees (Ontario) Local 2104, C.L.C. v. National Trust v. Group of Employees, Janeen Snare v. The Union of Bank Employees, Local 2104, v. National Trust (April 1989) O.L.R.B.R. 369 (O.L.R.B.)

BIBLIOGRAPHY

- Abela, E. "Bankers should stick to their last," (1987) 94 Canadian Banker. No. 3, pp.16-17.
- Ashenfelter, O. and T. Hannon. "Sex Discrimination and Product Market Competition: The Case of the Banking Industry," (1986) 101 Quarterly Journal of Economics. pp. 149-173.
- Cardy, S. and J. DeLaurentiis. "Employment Equity in Canadian Banks," (1988) 95 Canadian Banker. No.6, pp.26-30.
- Crean, J. "Automation in Canadian Banking," (1978) 85 Canadian Banker and I.C.B. Review. No. 4, pp.16-21.
- Crino, M. and T. Leap. "What Human Resource Managers Must Know About Employee Sabotage," (1989) 66 Personnel. May, pp.31-38.
- Crockett, W. "Dynamic Subordinancy," (1982) 89 Canadian Banker and I.C.B. Review. No. 1, pp.49-58.
- Currie, C. "Communicating in an Automated Environment," (1984) Canadian Banker and I.C.B. Review. No. 6, pp.18-21.
- Douglas, J., S. Klein, D. Hunt. Strategic Managing of Human Resources. New York: John Wiley and Sons Inc., 1985, pp.471 -552.
- Employment and Immigration Canada. Success in the Works: A Profile of Canada's Emerging Work Force. Catalogue # IN-007/4/89, Ottawa: Strategic Policy and Planning, 1989.
- Foot, D. and J. Harries. "Population Aging and the Financial Industry," (1989) 96 Canadian Banker. No. 5, pp.6-10.
- Giles, A. "Skills for Survival and Success," (1989) 96 Canadian Banker. No.1, pp.20-24.
- Gobel, R. and A. Meers. "Impact of Two Successive Mechanization Projects on Motivation and Work Organization in a Bank," Work, Organizations and Technological Change. G. Mensch and R. Niehaus, eds. New York: Plenum Press, 1982, pp. 167-178.
- Haccoun, R. "Another Myth Goes Poof," (1988) 95 Canadian Banker. No.3, pp.54-56.
- Hanson, P. "Leadership and the Bad Boss Syndrome," (1989) 96 Canadian Banker. No. 4, pp.38-42.
- Jenkins, S. "Turnover: Correcting the Causes," (1988) 65 Personnel. December, pp.43-48.
- Kawolski, E. "Women as Peers in the Organization," (1979) 86 Canadian Banker and I.C.B. Review. No.1, pp.40-43.

- Krossel, M. "A Contemporary Woman," (1989) 96 Canadian Banker. No.3, pp.6-8.
- Levin, A. "Updating Social Responsibility," (1982) 89 Canadian Banker and I.C.B. Review. No.5, pp.56-61.
- Malkiel, B. and J. Malkiel. "Male-Female Pay Differentials in Professional Employment," (1973) The American Economic Review. September, pp.693-705.
- McInnes, D. "... And Now - Consumerism," (1989) 96 Canadian Banker. No.4, pp.6-9.
- Milkovich, G.T., W.F. Glueck, R.T. Barth, S.L. McShane. Canadian Personnel/Human Resource Management: A Diagnostic Approach. Texas: Business Publications Inc., 1988, pp.554-598, 600-636.
- Pare, P. "Political Involvement: from a 'necessary evil' to a management skill," (1978) 85 Canadian Banker and I.C.B. Review. No. 5, pp.55-59.
- Schuler, R. and S. Youngblood. Effective Personnel Management. 2nd ed., St. Paul, Minnesota: West Publishing Co., 1986, pp.536-569.
- Schwind, H., H. Das, F. Miner. Canadian Personnel Management and Human Resources. 2nd ed., Toronto: MacGraw-Hill, Ryerson Ltd., 1985, pp.448-498.
- Sekaran, U. "Paths to the Job Satisfaction of Bank Employees," (1989) 10 Journal of Organizational Behaviour. pp.347-359.
- Smye, M. and A. Grant. "The Personnel Challenges of Mergers and Acquisitions," (1989) 96 Canadian Banker. No. 1, pp.44-49.
- Srinivas, K. "Our Changing Work Environment," (1978) 85 Canadian Banker and I.C.B. Review. No.3, pp.40-45.
- Stewart, D. "The Education of Banking Officers," (1978) 85 Canadian Banker and I.C.B. Review. No. 5, pp.46-49.
- Tremblay, D. "Promising Professionalism," (1987) 94 Canadian Banker. No. 4, pp.20-26.
- Whyte, W. "Who Goes Union and Why," (1944-45) 23 Personnel Journal. pp.215-230.



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