in the Teachers' Pay and Conditions Act 1987 - which is for the moment in force until 1990 - is not in conformity with Article 4 of Convention No. 98.

(b) The Committee trusts that the consultations that are under way and the discussions on a permanent system will give the Government the opportunity to make the necessary legislative amendments to give effect to the fundamental principle of the voluntary negotiation of collective agreements, as contained in Convention No. 98.

(c) The Committee again draws this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations so that it may follow developments in the situation.

Case No. 1414

COMPLAINT AGAINST THE GOVERNMENT OF ISRAEL PRESENTED BY
- THE GAZA BUILDING WORKERS' AND CARPENTERS' UNION
- THE GAZA COMMERCIAL AND PUBLIC SERVICE WORKERS' UNION

90. The Gaza Building Workers' and Carpenters' Union and the Gaza Commercial and Public Service Workers' Union presented a complaint of violation of trade union rights in the Gaza Strip, Israeli-occupied territory, in a communication dated 2 June 1987. The complainants supplied further information in a letter of 23 July 1987.

91. The Government submitted its observations in a communication dated 19 April 1988.

92. Israel has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

93. In their communication of 2 June 1987, the Gaza Building Workers' and Carpenters' Union and the Gaza Commercial and Public Service Workers' Union complain that they have been prevented from meeting and electing new executive committees. It is alleged that the executive committee of the Gaza Building Workers' and Carpenters' Union sent a letter to the Officer for Labour Affairs in the Gaza Strip notifying him that the union intended to hold its general assembly on 21 February 1987 and, in accordance with the union's

by-laws and the Egyptian Labour Unions Law (No. 331 of 1954, an English language version of which is supplied), still in force in Gaza, to hold elections for new trade union officers. On 18 February the union was notified in a letter from the military authorities that the meeting and new elections were prohibited. The complainants state that elections were held, in accordance with the above-mentioned Act, despite the ban. The Commercial and Public Service Workers' Union likewise informed the military authorities of its intention to hold a general assembly and elect new trade union officers on 4 April 1987, which also met with prohibition by the authorities. On that day the military authorities are alleged by the complainants to have put a curfew on the area around the union building and detained several union officers that morning. Despite these measures aimed at preventing the union members from voting, the elections were held successfully in another place.

94. Following the elections, in accordance with the unions' by-laws, each of the newly elected executive committees of the two unions nominated two board members to represent them in the Federation Council. The complainants add that the Israeli authorities were also notified, in writing, of the names of the new executive committee members and those chosen to represent them in the Federation Council.

95. In a letter dated 17 March 1987, the Israeli military authorities informed the head of the Federation that they refused to accept the representatives chosen by the Building Workers' and Carpenters' Union, Mr. Tawfiq al-Mahbouh and Mr. Ayesh Obeid, stating that they did not agree to the holding of the elections. On 26 May 1987, the authorities reminded the Federation of their refusal and requested it not to make any further amendments to the membership of the Council without prior agreement (a translation of the letter in question is appended to the complaint). Finally, the authorities sent letters on 26 and 27 May 1987 to the eight members of the new executive committees barring them from all union activities; the unionists were warned that the authorities would take legal action against them if they did not cease their union activities.

96. The complainants state that the banning of the unionists from union membership runs counter to Article 2 of Convention No. 87 and that the prohibition of elections and refusal to recognise the new elected officers constitutes government intervention in trade union affairs.

97. As regards the eight trade union leaders who were barred from all union activities by the Israeli authorities, the complainants mention in their allegations that these measures were taken under section 7(2) of Law No. 331 of 1954, which provides that any person who has committed a crime has no right to be a member of a trade union or to hold a leading post on an executive committee or a workers' federation, and that the authorities stated in their communications that these persons had committed a crime. The complainants state further that five of the unionists were notified in the same letter that they were not actively engaged in the occupation represented by

their trade union and that they should be barred from trade union activity under section 3 of Law No. 331. (The text of both types of letter is appended to the complaint.) The complainants allege that the authorities' extension of the scope of section 7 to all union activities is arbitrary and illegal, since the prohibition contained in this provision only covers membership on the executive committee of a trade union. The complainants add that none of the eight union leaders banned from trade union activities has been convicted of a crime as defined in section 7 of the above-mentioned law. Two of them, Mr. Ziad Ashour and Mr. Ilias al-Jeldeh, have never been sentenced for any offence, while the other six have only been sentenced for "membership in an illegal organisation" as a result of their alleged support for the Palestinian Liberation Organisation. The position of the complainants is that the unionists have been disqualified because of their political opposition to the Israeli occupation, and not because they pose any risk to the proper exercise of trade union rights.

98. As the complainants denounce the Israeli authorities' interpretation of section 7, they likewise reject their interpretation of section 3 of Law No. 331 as regards the term "worker", which serves as a basis for barring certain unionists from union membership. According to the complainants, section 3 of this Law contains a broad definition of the term "worker" and excludes from its scope persons employed in public services (government, municipal councils or the military) and agents representing employers, denying them the right of association. The complainants, therefore, consider that the authorities' barring of the trade unionists from all union activities runs counter to the law, since only one of the eight persons concerned, Mr. Mustafa Burbar, could be considered not to be a worker under the terms of the Law, although the complainants consider that he is a worker, albeit a self-employed one; the complainants state further that most of the union leaders who held their positions prior to the last elections and were recognised by the authorities were not real workers under the provisions of section 3. (A list is supplied of the trade union posts and occupations of some of the former union leaders.)

99. The complainant organisations state that the law does not provide for any proper appeal against the decisions of the authorities and that the only appeal possible is to the Israeli High Court which is not competent to rule on the substance of the case but only to verify whether the legal procedures have been followed in an action taken by the authorities.

100. In conclusion, the complainants recall that the Gaza unions have been inactive since 1967, as the authorities continually restrict the scope of their activities, and that their attempts to resume their activities have met with severe oppression, which runs counter to basic trade union rights.

101. The complainants' communication of 23 July 1987 lists further interference allegedly perpetuated by the Israeli occupation forces in the affairs of Gaza unions: repeated summoning of unionists

for interrogation, detention of union leaders (for example, the Secretary-General of the Commercial and Public Service Workers' Union (CPSWU)), threats and other harassment.

102. The complainants describe in detail the events of 2 June 1987: an officer, known to the CPSWU as "Colonel Rubin", accompanied by a group of officers and soldiers stormed the headquarters of the union ordering unionists inside the building to freeze and to present their identity cards. The names of four workers were written down and one of them was asked but received no written order to appear at the Colonel's office. The Colonel threatened those present to stay away from the union and challenged the union's executive secretary, Mr. Hussein al-Jamal, as to his right to be there since the military had banned him from any trade union activities. On 8 June, CPSWU member Hussein Abu-Nar was summoned to the military government's headquarters in Deir al-Balah where he was forced to wait in the hot sun from early morning to 2 p.m. when he was told by an Israeli officer to return the next day. On 9 June he returned and was detained from 8 a.m. to 4 p.m. when he was brought before the Military Governor who handed him a written order that prevented him from practising any union activities under section 7 of Military Order No. 331.

103. According to the complainants, the following unionists were also detained by the military on 9 June: Ayesh Obeid; Tawfiq al-Mabhouh and Mustafa al-Burbar. They were released - with warnings to give up their union activities - after eight hours' detention. Also on the same day, a group of Israeli soldiers, led by an officer known as "Captain Abu-Salim", arrived at the bookshop where Mustafa al-Burbar, member of the CPSWU works. As he was not there, they went to his home, but he was not there either. Then they went back to the bookshop and conducted a thorough search and threatened to return. The complainants describe the events of 23 June 1987: Ayesh Obeid, Tawfiq al-Mabhouh, Mustafa al-Burbar, along with Suhail Abu-Ala, a member of the Building Workers' and Carpenters' Union, were arrested a second time and detained in the "Ansar 2" detention centre. They were released on 24 June 1987 at 11 p.m.

104. According to the complainants, on 25 June 1987 Hussein al-Jamal was summoned to the police station in Gaza City for interrogation. He went in the morning but was asked to return in the afternoon. When he arrived in the afternoon he was interrogated on the charge that he had violated the order against him by his participation in a meeting in the Union headquarters. Al-Jamal denied that he had done anything illegal, but was charged, then released on bail, and is now awaiting trial. On the same day Hussein Abu-Nar was again summoned, this time to the Gaza police station for interrogation where he was detained without being questioned.

105. Lastly, the complainants state that on 6 July 1987 Tawfiq al-Mabhouh was summoned to the police station in Gaza City; his interrogation was postponed until further notice. On the same day, Hussein Abu-Nar was again summoned to the Gaza police station, he was charged with violating the order against him to cease all trade union

activities because he was said to have participated in a meeting in the union headquarters. Abu-Nar denied the charges on the basis that the order was incorrect and had no basis under local or international labour laws or standards. The complainants fear that these practices will continue. They hope that the ILO will support them in confronting the practices of the military authorities, so that they can continue to work and provide their workers with the necessary services.

B. The Government's reply

106. In its communication of 19 April 1988, the Government of Israel states that it recognises the principle of freedom of association, and its obligation to fulfil the term of Conventions Nos. 87 and 98 to which it is a party. These principles are the underlying basis of the legislation and activities of the different branches of the Israeli Government in all that relates to the rights of workers and unions.

107. It states that in its activities in Judea and Samaria, the Government is fully aware of the principles and values which guide democratic governments in the free world in their relations with workers. No prohibitions or restrictions have been imposed on trade unions in Judea and Samaria on account of bona fide activities. According to the Government, whenever any steps have been taken against trade unions or their activities, this has been on account of terrorist acts, subversion, or other illegal activities, which have absolutely no connection with the declared mandate of trade unions.

108. As regards the background to the present case, it explains that the Workers' Association in Gaza, which unites the operations of six trade unions, was established in 1965, during the period of Egyptian rule. They are: the Commercial and Public Service Workers' Union; the Drivers' Union; the Building Workers' and Carpenters' Union; the Sewing Workers' Union; the Union of Agricultural Workers and the Union of Metal Workers. The Association froze its activities between 1967 and 1979, when it started functioning again in accordance with the law. On 25 October 1984 an attempt was made on its leader's life by members of the terrorist "Fatah" organisation, in order to gain control of the Association. After that, the Association became a focus of activity for the various terrorist organisations, and a focus of rivalry amongst them for positions of power in the organisation. In spite of this, the administration did not take advantage of the breaches of the Egyptian Law that regulates the conduct of trade unions in Gaza and made no use of its legal authority to disband either the Workers' Association or unions belonging to it.

109. The Israeli administration in Gaza acts in these matters in accordance with the Trade Unions Law (No. 331) enacted by Egypt on 15 November 1954. Every trade union in the Gaza area is obliged to operate in accordance with this Law, which contains clear provisions

regarding the holding and conduct of elections for trade unions so as to ensure that there are no restrictions on the right of democratic election by workers, as provided by Conventions Nos. 87 and 98. According to the Government, the unions that have made the complaint violated the following two sections of the Law: (a) section 8(a) which requires that elections should be secret, and conducted on the basis of equality; and (b) section 7(2) which prohibits anyone found guilty of a felony from being a member of the executive council of the union.

110. The Government states that the elections for the executives of the two complainant unions were held by using the "Tazkiyeh" unanimous oral election of a list of candidates agreed upon in advance, with only one candidate for each position. It considers that this system is contrary to the concept underlying the method of election described in section 8(a) that the voters should elect candidates by a genuine exercise of their free will, and not simply rubber-stamp a predetermined list of persons for specific tasks. It is also of the opinion that the principle of secrecy was not maintained during the elections carried out by the trade unions. It claims that there were never any real elections at all, but only appointments through an exercise of force majeure. These so-called "elections" were carried out despite the express prohibition of the Administration on the grounds of failure to comply with certain other provisions of the Law, as explained below.

111. According to the Government, at least seven persons who had been found guilty of felonies were elected to the executive council of unions that have filed the complaint. It is obvious that the characterisation of an act as a criminal offence whether of an ordinary or a security nature, cannot be affected by whatever ideological motives might have prompted the accused to commit them. The Government explains that:

- Ayesh Obeid was elected to the executive council of the Union of Carpenters and Builders but had been found guilty of membership of a hostile organisation, and of planting explosive devices, and was sentenced to ten years' imprisonment (Military Court Case No. 71/81);

- Jamil Ahmed Said Jaras was elected to the council of the Building Workers' and Carpenters' Union, but had been found guilty of an offence against the security of the region, and was sentenced to eight months' imprisonment (Military Court Case No. 1180/82);

- Tawfiq al-Mabhouh was elected to the council of the Building Workers' and Carpenters' Union, but had been found guilty of the offence of membership of a hostile organisation, and was sentenced to eight months' imprisonment (Gaza Military Court Case No. 775/73);

- Ziad Sabhi Abdallah Ashour was elected to the council of the Building Workers' and Carpenters' Union, but had been found

guilty of the offence of incitement (Military Court Case No. 21/86);

- Hussein Mahmad al-Jamal was elected to the executive council of the CPSWU, but had been found guilty of the offence of membership of a hostile organisation and was sentenced to five years' imprisonment (Military Court Case No. 678/75);

- Yehia Dib Salam Obeid was elected to the council of the CPSWU, but had been found guilty of offences of contact with a hostile organisation and carrying out services for a hostile organisation (Military Court Case No. 446/82);

- Hussein Abu-Nar was elected to the council of CPSWU, but had been found guilty of attempted murder and of planting explosive devices, and was sentenced to ten years' imprisonment (Military Court Case No. 395/71).

112. The Government states that a police investigation was opened against three of these seven persons (Tawfik al-Mabhouh, Hussein al-Jamal and Hussein Abu-Nar) on the suspicion that offences had been committed under section 7 of the Egyptian Law (which prohibits anyone found guilty of a criminal offence from being a member of the executive council of a trade union). A complaint on this was lodged with the Gaza police after the three persons had been warned to give up their membership in view of the offences they had committed. According to the Government, when they refused to do so, File No. P.A. 1411/87 was opened against them, which led to the opening of Military Prosecution file No. 1676/87. No charge has yet been issued concerning these three persons.

113. The Government adds that as regards the legality of previously imprisoned persons who continue to serve as members of the executive council of trade unions, their election has two consequences: first, they are committing a criminal offence for which they are liable to punishment (hence the police investigation already opened against the three above-mentioned persons); and secondly, the union itself which elects someone who had in the past been sentenced for a felony violates the provisions of section 7 of the Law and such a violation can (under section 14(c) of the Law) serve as grounds for annulling the union's registration.

114. In addition, the Government claims that these unions systematically violate the provisions of the Trade Unions Law in the following respects.

115. Section 18(d) states that "unions may not engage in political or religious affairs", and this ban on political involvement is connected with the concept expressed in section 5, namely that the aim of establishing trade unions is mutual assistance in furthering the professional interests of members and their material and social condition. Despite this, on 23 July 1986, the Workers' Association (described above) adopted a resolution recognising the PLO as the sole

representative of the Palestinian people, and rejecting United Nations Security Council Resolution No. 242.

116. Section 21 requires every union to submit to the Officer for Labour Affairs an annual balance sheet at every financial year, certified by an accountant. With the exception of the Commercial and Public Service Workers' Union, none of the unions prepare or submit such balance sheets. Section 25 obliges every union to notify the Officer for Labour Affairs of every session of the General Assembly and section 21 also requires every union to transmit to the Officer for Labour Affairs each year a copy of the minutes of the General Assembly. Despite this, the unions do not do so.

117. According to section 5 of the Trade Unions Law, the unions can confer membership only on "workers", which term is defined in section 3, where "workers" and "non-workers" are distinguished from each other on the basis of the degree to which they are subject to the supervision of the employer. The CPSWU violated section 5 by conferring membership, and electing to the executive council, two persons who are not "workers", namely Ilias al-Jeldeh a jewel dealer, and Yedia Salem Obeid, who owns a shop for the sale of flour. The Agricultural Workers' Association (which is a member of the Workers' Association) also violated this section by electing Ahmed Atiah as a member of its executive council, notwithstanding the fact that he was not a member of this profession.

118. Lastly, the Government recalls that section 14 of the Law states that a trade union which does not satisfy its requirements can be dissolved; in view of principles contained in Conventions Nos. 87 and 98 the Government has not taken this step but stresses that it has no objection to the trade unions in Gaza holding elections which conform to the requirements of the law, and that it will recognise only the results of such elections as are conducted in accordance with the law.

C. The Committee's conclusions

119. The Committee notes that this case basically involves two distinct sets of allegations; first, non-recognition by the authorities of the new executive committees of the two complainant unions which were elected in February and April 1987 and the consequent ban on their involvement in any union activities; and secondly physical harassment of trade unionists and union leaders culminating in the June 1987 arrests. These various incidents allegedly form part of the oppression of Gaza trade unions which are trying to resume union activities for the benefit of their members after being inactive since 1967.

120. The Government's version of the events differs considerably from that of the complainant unions. First, the Committee notes the

Government's claim that not only have the unions involved - and others in Gaza - been in violation of the applicable law as regards their membership and functioning, but also that the particular elections in question were void for failure to comply with the legislative provisions on the subject. Secondly, the Government explains that the police investigations and questioning of three persons (Tawfik al-Mabhouh, Hussein al-Jamal and Hussein Abu-Nar) have been conducted in the context of suspected unlawful activities and led to the opening of a Military Prosecution file, but that no charges have yet been laid.

121. As regards the main legislative provision referred to in this case, the Committee observes that section 7 of the Trade Union Laws (No. 331 of 1954) reads as follows:

> 7. None of the following is allowed to become a member of the union's executive council: ...
>
> (2) Those convicted and sentenced for a felony or a misdemeanor in a crime that involves stealing or hiding stolen goods or fraud or dishonesty or bribery or deceivingly declaring bankruptcy or forgery or using forged documents or giving a false testimony or suborning witnesses or drug-trafficking or drug-possession, or sentenced for moral turpitude or crimes involving corruption of ethics.

It thus appears from the English translation of the text available to the Committee that the "crimes" which disqualify a person from union office are related to the appropriateness of allowing guilty persons to hold positions of trust, such as trade union office.

122. The position of the ILO supervisory bodies faced with such legislative restrictions on eligibility for union office has been that conviction on account of offences, the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions should not constitute grounds for disqualification and that legislation providing for disqualification on the basis of any offence is incompatible with the principles of freedom of association [see General Survey on Freedom of Association and Collective Bargaining, 1983, para. 164].

123. In the present case, the wording of section 7 places acceptable restrictions on criminal record holders, but it appears to the Committee that the military authorities have in fact applied section 7(2) in practice to a much broader range of crimes which, according to the criteria outlined above, have little direct relation to the capacity of a convicted person to fulfil trade union functions to which he or she might be elected. For example, the Committee observes from the detailed list supplied by the Government that four of the seven members of the recently-elected executives had been convicted of belonging to or having contact with a hostile organisation and the remaining three of a security offence, incitement, attempted murder and planting explosives. Moreover the

Committee notes that the Military Court judgements cited by the Government date back in some cases to the early 1970s and that, from the information available, it seems that where prison sentences accompanied the convictions, they have been completed. It also notes that the Government gives a lengthy description of the terrorist involvement of organisations in the Workers' Association in Gaza, the federation of unions in the region whose council includes members of the newly elected executives. In view of the facts before it, the Committee would recall the importance of the principle which guarantees the right of workers' organisations to elect their representatives in full freedom. It would point out to the Government that a practice of giving a broad interpretation to trade union election legislation so as to deprive certain persons of the right to hold elected posts solely on the grounds of their political belief or affiliation is not compatible with this right.

124. The Committee notes that suspected fresh violations of section 7(2) are quoted by the Government as the reason for the police investigation of and the opening of a Military Prosecution file against Tawfiq al-Mabhouh (elected to the executive of the Building Workers' and Carpenters' Union), Hussein al-Jamal and Hussein Abu-Nar (elected to the executive of the CPSWU). The Committee accordingly trusts that due consideration will be given by the investigating authorities to the above principles.

125. As regards the second flaw in the election formalities on which the Government bases its non-recognition of the new executives, namely the requirement that voting be secret and democratic, the Committee observes that section 8(a) of the Law reads as follows:

> 8. (a) the trade union's executive council is elected according to the way explained in the union's articles of incorporation, where it should be stated that all members have equal rights and should be given a fair chance to participate in elections, and that the secrecy of elections should be guaranteed by means of a reasonable and practical way.

126. In past cases concerning legislative requirements for secret ballots for trade union elections, the ILO supervisory bodies have been of the view that no violation of the principles of freedom of association is involved where the legislation contains certain rules intended to promote democratic principles within trade union organisations or to ensure that the electoral procedure is conducted in a normal manner and with due respect for the rights of members in order to avoid any dispute as to the election results [see General Survey, para. 169]. In the present case, the Committee notes the complainants' assertions that the elections were carried out in accordance with both unions' by-laws, but regrets that it does not have before it more detailed information as to the form of "Tazkiyeh" oral voting. In any event, the Committee observes that the military authorities have not attempted to use this alleged flaw to cancel the two complainant unions' registration - as they are entitled under section 14 of Law No. 331. On the basis of the information submitted

the Committee is unable to determine whether the February and April 1987 union elections took place in strict conformity with the relevant legislative provisions.

127. As regards the allegation that the military authorities have misinterpreted section 3 of the Law so as to limit the right to join unions, the Committee observes that this is linked to the Government's general counter claim that the complainant unions violated the membership provisions of Law No. 331. This alleged violation of Article 2 of Convention No. 87 appears, from the facts presented in this case, to affect the status of only three of the newly elected CPSWU executive members: Mr. Mustafa Burbar, Mr. Ilias al-Jeldeh and Mr. Jedia Salem Obeid. The Government claims that these persons are not "workers" and the complainants describe one, Mr. Burbar, as "self-employed". Once again, given that this alleged infringement of the current legislation did not give rise to the prescribed penalty - namely, cancellation of the union's registration - the Committee cannot but decide that there has been no violation of Convention No. 87 as regards this aspect of the case.

128. In view of its examination of Law No. 331 and the facts presented to it in this case, the Committee considers generally that the ban on involvement in any union activities applied to eight recently elected members of trade union executive committees should be reviewed in the light of the principles stated above.

129. The Committee notes with concern the allegations of continued physical harassment and threatening of six unionists, in particular the June 1987: the double interrogation of Hussein al-Jamal and his charging and release on bail; the two arrests followed by eight hours' and then day-long detention of Ayesh Obeid, Tawfiq al-Mabhouh - who was summoned for a third time in July - and Mustafa al-Burbar; the arrest and the day-long detention of Suhail Abu-Ala; the triple summoning and day-long detention and charging of Hussein Abu-Nar. The Committee notes that according to the Government, police investigations have been opened concerning three of these persons (Hussein al-Jamal, Tawfiq al-Mabhouh and Hussein Abu-Nar) but no charges have yet been issued against them. It also notes that the Government describes Mr. Ayesh Obeid's previous criminal record but is silent as to the alleged recent police interrogations of this person and of Suhail Abu-Ala and Mustafa al-Burbar. As in previous cases involving repeated summonsing by the authorities [see, for example, 226th Report, Case No. 1153 (Uruguay), para. 178], the Committee would draw the Government's attention to the principle that the apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights.

The Committee's recommendations

130. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee recalls the principle that a practice of giving a broad interpretation to legislation on trade union elections so as to deprive certain persons of the right to hold elected posts is not consistent with freedom of association.

(b) The Committee is of the opinion that the allegations and counter-claims concerning sections 8(a) and 3 of the Trade Unions Law No. 331 of 1954 in force in Gaza do not call for further examination.

(c) As regards the ban on involvement in any union activities applied to eight recently elected members of union executive committees, the Committee requests the Government to review the situation in the light of ILO principles on freedom of association.

(d) The Committee recalls the principle that the apprehension and systematic or arbitrary interrogation by the police of trade union leaders involves a danger of abuse.

Case No. 1430

COMPLAINT AGAINST THE GOVERNMENT OF CANADA (BRITISH COLUMBIA) PRESENTED BY THE CANADIAN LABOUR CONGRESS

131. The Canadian Labour Congress (CLC) submitted a complaint concerning infringements of trade union rights in Canada (British Columbia) in a communication dated 13 October 1987. On 15 February 1988, the Federal Government of Canada sent the reply from the Government of British Columbia in a communication dated 18 January 1988.

132. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); however, it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

133. In its communication of 13 October 1987, the Canadian Labour Congress (CLC) states that it is lodging a complaint concerning

infringements of ILO Conventions on freedom of association on its own behalf and on behalf of its affiliates in the province of British Columbia, and more particularly on behalf of its affiliate, the Canadian Union of Public Employees. The infringements arise from the adoption by the British Columbia Legislature of Bill 19/1987 on the reform of industrial relations, amending the British Columbia Labour Code and renaming it the "Industrial Relations Act" (hereinafter referred to as Bill 19 or Industrial Relations Act).

134. The complainant explains that Bill 19 has been proclaimed by the Government of British Columbia, with the exception of sections 137.97, 137.98 and 137.99, which however can be proclaimed any time at the will and discretion of the Government.

135. According to the complainant, Bill 19 is incompatible with the fundamental principles on which the ILO is founded. What is more, the British Columbia Federation of Labour, which is affiliated to the CLC, considers that this Bill is tantamount to "a declaration of war on the working men and women of this province" and recommends that the Industrial Relations Council established by the legislation in question should be boycotted.

136. The complainant draws particular attention to the aspects of the new legislation which, in its opinion, are the most incompatible with ILO principles. It points out that in Part 8.1 of the Bill, one of the major changes to the previous Labour Code is section 60 of the Bill, which adds an entirely new section 137, entitled, "Part 8.1: Disputes Resolution". Part 8.1 creates a new body known as the Disputes Resolution Division, whose duties are set out in section 137.2.

137. According to the complainant, under new Part 8.1, free collective bargaining is to be respected and preserved only to the extent that it causes minimal disruption to interests of the public and the economy as perceived by the Government and its agents. It therefore sets out a number of compulsory procedures permitting third party, and particularly government, intervention in private sector collective bargaining. It also comprises a scheme which permits incursions into the private sector bargaining concerns of the parties, and the collective bargaining process, and which permits broad administrative and governmental control of the use of traditional economic weapons by parties to collective bargaining disputes.

138. The complainant continues that under the Act, the Commissioner, his agents, or, at a higher level, the Cabinet, are authorised to monitor and control all collective bargaining and to intervene in it virtually any time through a combination of elements drawn from the old Labour Code, the Essential Service Disputes Act, and the Compensation Stablisation Act, some of which were the object of a complaint submitted to the ILO in September 1983. The new Act combines principles and some language from each of these Acts, restructured with some new notions to implement government philosophy as regards controlling collective bargaining.

139. The complainant quotes in particular the subsections of section 137 of Part 8.1, which deal with the establishment of public interest inquiry boards and the appointments of mediators and fact-finders.

140. Furthermore, section 137.93 allows the Commissioner to appoint a public interest advocate who, according to the CLC, will almost certainly express views and take positions which are insensitive to the needs and aspirations of trade unions and their members.

141. Under section 137.97, government intervention to end a dispute can be launched for any reason not only by resolution of the Legislature, but also by the Lieutentant-Governor in Council, when he considers that the dispute poses "a threat to the economy of the province or to the health, safety or welfare of its residents". According to the complainant, the wording of this text is wide and the process for bringing disputes to the Legislature so unrestricted that the Legislature, and more alarmingly, the Cabinet effectively becomes an actor in the collective bargaining process.

142. As regards the public sector, the provisions of sections 137.95 and 137.96 and all references under Part 8.1 to public sector employees, indicate clearly that all compulsory settlements are made subject to the guiding principle of "ability to pay". However, according to the complainant, the definition of ability to pay allows so little leeway that an arbitration board will be forced to accept the Government's assessment of monies available. Thus the government-employer can effectively dictate its terms of settlement to public sector employees and the unions representing them.

143. The entire Part 8.1 is based on the premise that all services, either public or private, are essential to some degree. The complainant is of the opinion that under this concept, the right to strike of many workers will be largely illusory.

144. Sections 137.98 and 137.99 provide the Legislature and the Cabinet with the power to consider any matter "essential" and hence have a collective agreement imposed under the processes available to the Commissioner. In the complainant's opinion, this is entirely inconsistent with the basic premises of international principles on free collective bargaining.

145. Under sections 137.8 and 137.9, strikes or lock-outs may be prohibited even before they have started and the statute also imposes an unfair and severe system of punishment on employees not obeying back-to-work orders. Under sections 137.9(7) and 137.97(8), such an employee would be at the mercy of the employer regarding discipline. An arbitrator can hear the case, but has no power to alter the employer's penalty if cause exists. If a bargaining unit, for example, failed to bring down a picket line as instructed, the employer could carefully select and discharge any or all union supporters, without recourse by the union.

146. Amongst the other sections of Bill 19 which, according to the complainant, flagrantly infringe international labour Conventions, is section 6 which eliminates the right to include secondary boycott clauses in collective agreements and prohibits trade unionists from thus giving effective assistance to their fellow workers.

147. Furthermore, section 29 of Bill 19 (which amends section 53 of the Labour Code) severely restricts successor rights and permits employers to manipulate the structure of a transfer of business to reduce the likelihood of a "successor" declaration. As retention of the same employees is one indication of succession, the new provision is also a powerful incentive to employers not to employ the predecessor's employees.

148. The complainant adds that under section 81(3) of the Industrial Relations Act, any strike must start within three months of the strike vote or a new vote is necessary. The complainant considers that this section removes control over a union's strategy and tactics from the union and places it in the hands of the Government or the employers. (In some circumstances, an agreement could be imposed without a union ever having been able to take a strike vote.)

149. Section 43(b) of Bill 19 severely restricts the options of a union that wishes to exercise its right to strike. When this section is read with the new Part 8.1, it appears there may be circumstances where the right to strike is completely taken away from unions in both the private and public sector.

150. The complainant considers that section 47 of Bill 19 severely restricts the places or sites at which a union may lawfully picket and that, in certain circumstances, lawful picketing could be prohibited entirely.

151. In concluding, the complainant hopes that the ILO will deal fairly and speedily with this matter.

B. The Government's reply

152. In its reply of 18 January 1988, sent through the Federal Government of Canada, the Government of British Columbia points out that the legislative amendments to labour legislation introduced in the spring of 1987 were made against a difficult economic and social background requiring major change in labour law.

153. It states that in 1986, the year preceding the Industrial Relations Reform Act, virtually all components of British Columbia society would have agreed that the system of labour relations was undergoing a particularly traumatic time. The number of strikes and lock-outs had risen dramatically and this was imposing an unacceptable economic and social hardship on communities throughout the province.

In 1986, the total number of work-days lost due to labour disputes reached nearly 3 million and this unrest culminated in a six-month disruption in the province's forest industry. This dispute alone directly involved 28,000 workers and accounted for 2,100,000 days of lost production at an estimated cost of two billion Canadian dollars to the provincial economy. The Government therefore considered that the labour relations unrest was a serious concern to the province, that it was undoubtedly discouraging investment opportunities and was contributing to the high provincial level of unemployment, averaging 12.6 per cent during 1986. In addition, given British Columbia's long-term dependence on international markets, the Government felt it was essential not to jeopardise its reputation as a supplier of primary products after recovery from the serious recession of the early 1980s.

154. As a result of the emerging consensus among a broad spectrum of British Columbia's society that some major changes to the process of collective bargaining were not only desirable, but were essential to their long-term interests, the Government decided to initiate a comprehensive review of its existing legislative framework for labour-management relations which, in its basic elements, had not been changed significantly since the early 1970s. This intensive and consultative review was undertaken during the early months of 1987.

155. The Government continues by explaining that public hearings were held in nine major centres around the province, and the general public and interested parties were requested and encouraged to make their views known through written briefs as well as oral submissions. In all, more than 700 briefs were received by the Ministry of Labour and these played an important role in the consultative development of the ideas and specific elements that were ultimately incorporated into Bill 19. Of these briefs, 288 came from organisations and the balance from individual citizens.

156. The Government states that it should be noted that labour organisations played an active role in participating in this legislative review process. In fact, of the 288 briefs received from organisations, 76 were received from labour organisations. The Government considers that trade union viewpoints were given equal consideration with those of employer positions and with those representing a variety of other interest groups in the province. In the final analysis, however, the Government was required to make certain choices and decisions which it determined to be in the best long-term interests of the province taken as a whole.

157. With respect to the specific concerns raised in the complaint, the Government of British Columbia replied to each of the points raised by the complainant.

158. As regards Part 8.1 of Bill 19 which, according to the CLC, sets out a number of compulsory procedures permitting third party and particularly government intervention in private sector bargaining, the Government states that it has two comments to make: first, it

considers that the ability of a trade union to strike or of an employer to lock-out its employees is not an unlimited right and that it has already played a role in the past in labour disputes, by instigating conciliation procedures before the declaration of a strike and by determining which essential services should be maintained in the case of a strike, to protect public health, safety or welfare; secondly, according to the Government, the compulsory procedures outlined in Part 8.1 of the Act existed in one form or another in previous legislation or practice apparently without causing major difficulty to parties involved in labour negotiations.

159. According to the Government, the Industrial Relations Council's powers are a continuation of those previously exercised by the Minister and Ministry of Labour. The Government states that it is its intention that the Commissioner's authority to assist actively in private sector bargaining will be exercised judiciously and that significant interventions will only occur when the public interest is in jeopardy. Consequently, it does not agree with the complainant's allegation that the Commissioner's duty would be to control all collective bargaining.

160. As regards certain provisions of section 137 of Part 8.1 dealing with the establishment of public interest boards and the appointment of mediators and fact-finders which, according to the complainant, would express views and take positions which are insensitive to the needs and aspirations of trade unions and their members, the Government states that, on the contrary, the role of these various bodies will be to assist the parties in concluding and settling their differences. In addition, these bodies might on occasion play the role of advocate or protector of the interests of parties not directly involved in the dispute but who nevertheless have a vital concern in the eventual outcome. These features of the Act are designed to delay a work stoppage where the public interest may be adversely affected. However, they are not intended to prevent the parties directly involved from freely negotiating the collective agreement which it might be in their mutual interests to conclude.

161. As regards section 137.97 which enables the Government to intervene to end a dispute not only by resolution of the Legislature but also by the Lieutenant-Governor in Council, which, according to the complainant, is so vaguely worded that it allows the Cabinet broad intervention in the collective bargaining process, the Government replies that this provision is not going to result in the degree of intrusion into the collective bargaining arena that the CLC suggests. According to the Government, the Legislature's or Cabinet's involvement will be limited, as it has been in the past, to only those disputes having major impact on the health, safety and welfare of citizens. The Government adds that, even if this section should be brought into force in the future, it would do no more than speed up, and therefore limit the negative impacts of, intervention into areas where government involvement would likely occur even without change. Finally, the direct intervention of the Legislature or the Cabinet under section 137.97 will be mainly to trigger a response by the

Commissioner of the Industrial Relations Council. His response would normally be to provide some assistance to the parties to aid them in concluding a mutually acceptable collective agreement.

162. Concerning section 137.95 and 137.96 and all references under Part 8.1 to public sector employees indicating that all compulsory settlements are made subject to the guiding principle of ability to pay, the Government concedes that although it is understandable that there are some features of the Industrial Relations Act which might be considered undesirable by trade unions and employers because of the possibility that the Commissioner may require the dispute to be settled by compulsory arbitration, previous practice in British Columbia suggests that this is a remote and unlikely occurrence. According to the Government, the underlying focus of the Act is to have the parties mutually determine the terms and conditions of their collective agreement through collective bargaining. The Act contains a variety of features designed to assist the parties in this process rather than to compel them as the CLC suggests.

163. The Government agrees that section 137.96 does make ability to pay an important, and in some instances the paramount, consideration for an arbitrated settlement of a public sector collective agreement. The ability to pay criterion was, however, incorporated into this section because the Government found that a limited number of arbitrators were ignoring or paying insufficient attention to the financial implications of their awards. This was causing problems for some local authorities and was, in effect, substituting an outside arbitrator's view of the proper organisation of resources for that determined by elected local officials. According to the Government, this change does not interfere with the integrity or the neutral position of the arbitrator and his or her ability to arbitrate fairly the issues under dispute. Even before the introduction of this legislative provision, most arbitrators normally considered the financial implication of an awarded wage settlement on the employer in question. Arbitrators will therefore continue to ensure that the real and true financial situation of the employer is carefully examined and that the economic facts are not manipulated to distort the arbitrator's award.

164. As regards sections 137.98 and 137.99 which, according to the complainant, enable the Legislature and the Cabinet to deem any matter essential and have a collective agreement imposed under the processes available to the Commissioner, the Government states that these two sections refer to the possible role of a special mediator who may be appointed to provide mediation assistance to the parties involved in a dispute seen as having particularly significant impact on the health, safety and welfare of the general public. Should this mediation role not be successful, the special mediator would be empowered to establish the terms of the collective agreement which are in dispute. The Government points out that these two sections have not yet been proclaimed and therefore have not become law. In any case, it adds, even if it finds it necessary to proclaim these

sections in the future, this would merely codify a process which has already long existed in British Columbia and which is both rarely used and is largely acceptable to the parties based on previous experience. By way of example, the Government mentions the Metro Transit Collective Bargaining Assistance Act of 1984 which, at the time, ended a long stoppage of the public transport system in Vancouver and Victoria. It explains that the Act in question enabled a special mediator to be appointed, who had the responsibility of concluding a collective agreement to meet the longer-term interests of the parties while, at the same time, ensuring the resumption of this necessary service to the public after several months of disruption. The Government adds that these parties have since concluded a renewal agreement without the need for any outside involvement or interference.

165. Concerning sections 137.8 and 137.9 which, according to the complainant, make it possible to prohibit strikes or lock-outs even before they have started, the Government retorts that these two sections deal with labour disputes in the essential services. It agrees that the definition of essential services might be considered to be too broad, in that it includes reference to "poses a threat to the economy of the province" or "to the provision of educational services". However, it maintains that the scope of essential services as defined is consistent with the context of collective bargaining and previous experience in the province. In fact, according to the Government, these sections are carried over from previous legislation, in particular section 73 of the former Labour Code and section 8 of the Essential Service Disputes Act. It explains that section 137.8 covers two aspects of labour disputes, i.e. the designation of services to be maintained during a dispute and the possibility of imposing a short-term "cooling-off" period of up to 40 days. The "cooling-off" provision was introduced into legislation in 1975 and in the majority of cases of past usage has been accepted by the parties concerned. In fact, the new Act reduces the allowable period from the 90 days (plus an optional 14-day extension), that had been permissible under the Essential Service Disputes Act, to 40 days.

166. As regards section 137.9, the Government accepts that this authorises back-to-work orders, but explains that it merely codifies a practice which has been developed over the years. In this respect the Government affirms that its intention is only to intervene in the most serious situations.

167. Concerning sections 137.9(7) and 137.97(8) which, according to the complainant, would place an employee at the mercy of the employer regarding discipline, the Government explains that the purpose of these two subsections is to make clear to all concerned in a labour dispute that a back-to-work requirement is an order of priority to those affected. Consequently, according to the Government, employees are not placed at the mercy of the employer. They continue to have access to grievance and arbitration procedures available under their collective agreement for dealing with matters arising from some form of discipline. Similarly, the unfair labour practice provisions of the Industrial Relations Act will continue to

apply and provide a broader protection for any employee that might be affected by an unjustified employer decision involving the sections about which the CLC has expressed concern.

168. As regards section 6 of Bill 19 (section 4.1 of the Industrial Relations Act) which abolishes the right to include secondary boycott clauses in collective agreements and prohibits trade unionists from thus giving effective assistance to their fellow workers, the Government replies that ILO Conventions do not provide for a "right" to conduct and engage in secondary boycott activities. It points out that it has decided to bring this practice more in line with that contained in the legislation of other Canadian provinces. In its view, the change in question does not prohibit declarations of support or boycott movements but only prevents an employer from agreeing to be a party to them as part of signing a collective agreement. It explains that individual union members, for example, could decide that they wanted to exert economic pressure on an employer by refusing to shop at a particular store. This type of activity would not be prohibited by section 4.1 of the Industrial Relations Act.

169. Concerning section 29 of Bill 19 (amending section 53 of the previous Act), which would allegedly severely restrict successor rights and enable employers to manipulate the structure of a transfer of business to reduce the likelihood of a successor declaration, the Government points out that the changes introduced by section 29 of Bill 19, amending section 53 of the Act, do not eliminate or significantly erode the successor provisions available under the Act. Section 53(1) still makes it clear that upon the sale, transfer or other disposal of a business, or a substantial part of it, a successorship and continuation of the existing collective agreement will occur. No "declaration" is required or ever has been required for a trade union to acquire successor status. Under the Labour Code (now the Industrial Relations Act), the Labour Relations Board/Industrial Relations Council is provided with jurisdiction to decide questions arising from a successorship issue pursuant to sections 53(3) and 34. According to the Government, section 53 simply clarifies the existing legislation respecting some specific issues that were surfacing as potential problems for the interpretation of this section. The amendment is therefore designed to provide guidance for the Industrial Relations Council.

170. In the Government's view, the interpretation previously given to section 53 was too narrow and worked to the detriment of investment opportunities. The addition of subsections 1.1, 1.2 and 1.3, dealing with individual skills, business location and bankruptcy cases, respectively, attempts to define better the relationship of these factors to a successorship.

171. As regards section 43 of Bill 19 (amending section 81(3) of the Labour Code), which stipulates that any strike must start within three months of the strike vote failing which a new vote is necessary, and section 43(b) (amending section 81(3)(b) of the Code) which

severely restricts the options of a union that wishes to exercise its right to strike, the Government considers that these aspects of the Act are almost exactly the same as those which existed under the previous Labour Code. They have only, to a great extent, been carried over from previous legislation (see section 81(3)(a) of the Labour Code). The Government also adds that parallel provisions exist for employers who bargain as part of a multi-employer bargaining association who may wish to lock-out their employees. According to the Government, the statutory limitation on an unused strike mandate and the advance notice requirements, which are part of sections 81 and 82, are both appropriate and acceptable limitations which do not unduly hinder or restrict freedoms to use a strike weapon.

172. Concerning section 47 of Bill 19 (section 85 of the Industrial Relations Act) which allegedly places severe restrictions on the places and sites at which a union may lawfully picket, the Government states that it does not intend restricting the right of striking or locked out workers to express their opinions through picketing. In its view, the purpose of the changes is to eliminate, as far as possible, the unnecessary impact and disruption of picketing activity on third parties that do not have a direct involvement in the primary dispute. The Government adds that the Canadian Charter of Rights and Freedoms provides fundamental protection to individuals on grounds such as the right of freedom of expression. It points out for instance that if trade unions or their membership feel that fundamental freedoms have been infringed in this area, legal avenues are available to rectify that situation. In the Government's view, however, any limited restrictions on picketing introduced through Bill 19 are warranted, given the beneficial impacts on neutral third parties.

C. The Committee's conclusions

173. In the present case, the complainant criticises Bill 19 on industrial relations, amending the Labour Code of British Columbia, most of which entered into effect in July 1987, with the exception of sections 137.9, 137.98 and 137.99 which can however be proclaimed at any time at the discretion of the said Government.

174. According to the complainant, the new Act establishes a number of compulsory procedures in private and public collective bargaining and places administrative restrictions on the means which should be available to workers to put forward their economic claims.

175. The Committee has noted the detailed allegations submitted by the complainants and the specific replies communicated by the Government on each of these allegations. It has also taken note of the legislation criticised by the complainant, the relevant extracts of which are annexed to the present report. The question is to determine whether the disputes settlement procedures concerning

workers in the public and private sectors, which have been introduced by the new Act in British Columbia, are in accordance with the principles of freedom of association upheld by the Committee on Freedom of Association.

176. The Committee notes the Government's explanation that it initiated a comprehensive review of legislation on labour-management relations as a result of a broad consensus among society in the province in 1986 after a number of difficult labour disputes. The Government claims that the workers' organisations were consulted but acknowledges that it was required to make certain choices and decisions which it considered to be in the best long-term interests of the province taken as a whole.

177. With respect to the allegations concerning Part 8.1 of Bill No. 19 on the reform of industrial relations, amending the Labour Code, which sets out a number of compulsory procedures permitting third party, and particularly government intervention, in private sector bargaining, the Committee notes the Government's assurances that it is its intention that the Commissioner's authority to assist actively in private sector negotiations will be exercised judiciously and only when the public interest is in jeopardy.

178. In the Committee's opinion, however, as the Committee of Experts on the Application of Conventions and Recommendations has already indicated, certain rules and practices can facilitate negotiations and help to promote collective bargaining and various arrangements may facilitate the parties' access to certain information concerning, for example, the economic position of their bargaining unit, wages and working conditions in closely related units, or the general economic situation; however, all legislation establishing machinery and procedures for arbitration and conciliation designed to facilitate bargaining between both sides of industry must guarantee the autonomy of parties to collective bargaining (see General Survey on Freedom of Association and Collective Bargaining, 1983, paragraph 302).

179. Consequently, the Committee considers that instead of entrusting the public authorities with powers to assist actively, even to intervene, in order to put forward their point of view, it would be better to convince the parties to collective bargaining to have regard voluntarily in their negotiations to the major reasons put forward by the Government for their economic and social policies of general interest.

180. In the present case, the Committee notes that the Commissioner may, when he considers it necessary, establish a public interest inquiry board (section 137.92 of Bill 19) which tries to assist the parties in reaching agreement and puts forward recommendations that each of the parties might accept or reject within ten days (section 137.94(1) to (7)). Nevertheless, it would seem that if one of the bargaining parties neglects or refuses to participate in the preparation of a collective agreement in accordance with the

public interest board's recommendation, the other party may prepare an agreement giving effect to the recommendation and submit it to the public interest board for certification, following which it is binding on both parties (section 137.94(10) and (11)). In other words, under the new legislation, one of the parties alone can have recourse to compulsory arbitration to put an end to a labour dispute.

181. In this respect, the Committee feels bound to draw the Government's attention to the fact that compulsory arbitration to end a collective labour dispute is acceptable if it is at the request of both parties involved in the dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving civil servants acting on behalf of the public authorities or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

182. The Committee therefore requests the Government to amend its legislation to limit the public authorities' powers of intervention in settling a labour dispute to the above-mentioned conditions and circumstances.

183. As regards sections 137.95 and 137.96 concerning the "ability to pay" criterion of employers in the public sector and the obligation of arbitrators to abide by this criterion, the Committee notes that it has already been called upon to examine Case No. 1329 concerning Canada (British Columbia) on this matter. The Committee therefore feels bound to refer to the conclusions it reached on this issue in that Case (see 243rd Report, paras. 183 to 188), where it is stressed that the requirement of prior approval before a collective agreement can come into force is not in conformity with the principles of voluntary collective bargaining laid down in Convention No. 98. The Committee had already suggested to the Government to envisage a procedure whereby the attention of the parties could be drawn to the considerations of general interest which might require further examination of the terms of the agreement on their part. However, it pointed out that persuasion was always to be preferred to constraint.

184. As regards sections 137.87, 137.98 and 137.99 which authorise the public authorities (i.e. the Lieutenant-Governor in Council or the Legislature) to refer a collective dispute - which, in their view, constitutes a threat to the economy of the province, to the health, safety and welfare of its residents or to the provision of educational services in the province - to a special mediator appointed by the Commissioner, who is empowered to establish the terms of a collective agreement between the parties, the Committee notes that for the moment the provisions in question have not entered into effect. The Committee notes, however, that the Government considers that these provisions merely codify an existing process which is rarely used but largely acceptable to the parties - based on previous experience.

185. For its part, the Committee can only express its firm hope that the Government will not implement these provisions, which are

tantamount to providing the public authorities with the power of submitting a dispute to the compulsory arbitration of a special mediator. The Committee therefore requests the Government to ensure that the public authorities' powers of intervention remain restricted to the extremely limited conditions described above, i.e., to cases when the authorities may end a strike in the civil service or essential services, in the strict sense of the term. The Committee also recalls that teachers should also be able to enjoy the right to negotiate freely their working conditions and have recourse to strike action as a legitimate means of defending their economic and social interests.

186. Concerning section 137.8 which deals with essential services and allows a cooling-off period to be imposed for up to 40 days before a strike is declared, the Committee considers that the laying down of such a clause to defer a strike, in so far as it is designed to provide the parties with a period of reflection, is not contrary to the principles of freedom of association. Indeed, the Committee has already pointed out in the past that legislation imposing recourse to compulsory conciliation and arbitration procedures in industrial disputes before calling a strike cannot be regarded as an infringement of freedom of association (see, for instance, paragraph 378 of the Digest of Decisions and Principles of the Committee on Freedom of Association, 1985). The Committee feels that this clause which defers action may enable both parties to come once again to the bargaining table, and, possibly, to reach an agreement without having recourse to a strike.

187. As regards section 137.9, also on essential services, which makes it possible to ask the public interest board to determine the minimum service it considers necessary or essential to prevent an immediate and serious threat to the economy of the province, to the health, safety or welfare of its residents or to the provision of educational services, the Committee recalls that it has always admitted that a certain minimum service may be requested in the event of strikes whose scope and duration could cause an acute national crisis, but that in this case, the trade union organisations should be able to participate, along with the employers and the public authorities, in defining the minimum service (see Case No. 1356 concerning Canada (Quebec), 248th Report, paragraph 144).

188. The Committee therefore invites the Government to ensure that the occupational organisations in question are consulted when the necessary minimum service is being defined.

189. As regard sections 137.9(7) and 137.97(8) on return to work and the employer's right to discipline employees not obeying back-to-work orders, the Committee feels bound to recall that although Article 8 of Convention No. 87 calls upon workers and employers to respect the law of the land, this law should not impair upon the guarantees provided for in the Convention. In the Committee's opinion, whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or

personal safety of the population might be endangered, a back-to-work order might be lawful if applied to a specific category of staff in the event of a strike, whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association.

190. The Committee therefore requests the Government to ensure that the back-to-work orders are limited to the specific cases mentioned above and to amend its legislation to provide that employers are not authorised to discipline workers as they themselves feel fit.

191. Concerning the obligation to hold a second strike vote if a strike has not taken place within three months of the first vote (section 43 of Bill No. 19 amending section 81.3 of the Labour Code), the Committee considers that the parties might change their minds during a three-month period. Consequently, this provision does not constitute an infringement of freedom of association, provided that it sets out to enable the parties concerned to put forward their point of view democratically in a new vote.

192. As regards the restrictions on the places or sites at which a trade union may lawfully picket (section 47 of Bill No. 19 amending section 85 of the Labour Code) and the requirement that strike pickets cannot be set up near an enterprise where the workers are lawfully on strike, the Committee considers that this provision does not infringe the principles of freedom of association, in so far as these strikes have been legally declared in accordance with the principles of the ILO in this field.

193. As regards the elimination of the right to include secondary boycott clauses in collective agreements (section 6 of Bill No. 19), the Committee, while noting the Government's explanations on this point, considers that it is not in accordance with free and voluntary collective bargaining to include in legislation restrictions on types of clauses which could be included in collective agreements. Consequently, the Committee requests the Government to review the legislation on this point.

194. With regard to the provision which would restrict successor rights and permit employers to manipulate the way in which enterprises are transferred so that there will be no more obligation for successorship (section 29 of Bill No. 19 amending section 53 of the Labour Code which provides the Industrial Relations Council with jurisdiction to rule on the matter), the Committee notes that it has already been called upon to examine similar legislation in Case No. 1247 concerning Canada (Alberta). At the time, the Committee noted that the legislation in Alberta only codified and speeded up the previous normal practices and that it was not unreasonable (241st Report, para. 138). In the present case the Committee notes the Government's statement that the provision in question merely clarifies the legislation and is designed to provide guidance to the Industrial Relations Council. In the Committee's opinion, since the complainant merely makes a criticism of a general nature, without specifying in

which way the principles of freedom of association are infringed, and that section 25 only specifies successorship rights and obligations by defining them more clearly - without however undermining successorship obligations - this provision does not seem to constitute a threat to freedom of association.

The Committee's recommendations

195. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee considers that several provisions contained in Bill No. 19 on industrial relations are not in conformity with the principles of freedom of association.

(b) The Committee therefore requests the Federal Canadian Government to invite the Government of British Columbia to amend its legislation.

(c) As regards recourse to compulsory arbitration to put an end to a strike, the Committee draws the Government's attention to the need to limit the right of public authorities to have recourse to arbitration to cases and circumstances in which strikes may be limited, or even prohibited, i.e., in the public service involving civil servants acting on behalf of the public authorities and in essential services, whether public or private, in so far as an interruption of these services might endanger the life, personal safety or health of the population.

(d) With respect to the obligation on arbitrators to take account of ability to pay criteria when making awards, the Committee requests the Federal Government to invite the Provincial Government to amend its legislation to encourage and promote the development and use of voluntary collective bargaining procedures between employers or employers' organisations, on the one hand, and workers' organisations, on the other hand, to ensure that working conditions of workers protected by the principles contained in Convention No. 98 are settled by these means.

(e) As regards the determination of minimum services to be maintained in the essential services, the Committee requests the Federal Government to invite the Provincial Government to amend its legislation to restrict such services to operations that are strictly necessary and to guarantee that workers' organisations are consulted along with employers and public authorities in determining the number of workers required to carry out such minimum services.

(f) Concerning the right of employers to discipline any worker refusing to obey a back-to-work order, the Committee requests the

Federal Government to invite the Provincial Government to amend its legislation so that employers may in no case discipline workers as they wish and to limit back-to-work orders to the specific cases mentioned above, i.e. in the event of a strike in the civil service and essential services, in the strict sense of the term.

(g) As regards the legislative ban on including secondary boycott clauses in collective agreements, the Committee requests the Federal Government to invite the Government of British Columbia not to include in its legislation restrictions on clauses which could be included in collective agreements.

(h) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the effects of this legislation on the application of Convention No. 87, ratified by Canada.

ANNEX

Extracts of legislative provisions examined in relation to Case No. 1430

BILL NO. 19-1987

INDUSTRIAL RELATIONS REFORM ACT, 1987

Labour Code

1. The Labour Code, R.S.B.C. 1979, c.212 is amended by repealing the title and substituting the title "Industrial Relations Act".

.....

6. The following section is added:

Secondary boycott agreements prohibited

4.1(1) An express or implied provision of an agreement between an employer and a trade union by which the employer ceases or refrains, or agrees to cease or refrain from handling, using, buying, selling, transporting or otherwise dealing in the products of another employer or to cease doing business with another person is void.

(2) No employer and no trade union shall include in any agreement a provision that is, under subsection (1), void.

(3) A provision of an agreement is not void by reason only that it recognises the right to refuse to cross a picket line.

.....

29. Section 53 is amended:

(a) in subsection (1) by striking out "where a business or part of it or a substantial part of its entire assets are" and substituting "where a business or a substantial part of it is"; and

(b) by adding the following subsections:

(1.1) For the purposes of this section, the skills or abilities of an individual do not of themselves constitute a business.

(1.2) For the purposes of this section there is not a sale, lease, transfer or other disposition of a business by a person (referred to in this subsection as the "former business entity") by reason only of the fact that another person performs similar functions at the location previously occupied by the former business entity.

(1.3) This section does not apply where a business or a substantial part of it is sold, leased, transferred or otherwise disposed of by a trustee in bankruptcy under the Bankruptcy Act (Canada), unless the council is satisfied that there has been an attempt to evade collective bargaining obligations under this Act.

.....

(Section 53 of the Labour Code (previous text) read as follows:

Successor rights and obligations

53. (1) Where a business or part of it or a substantial part of its entire assets are sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Act before the date of the disposition, and the proceedings shall continue as if no change had occurred; and where a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.

(2) Where a question arises under this section, the board, on application by any person, shall determine what rights, privileges and duties have been acquired or are retained, and for this purpose the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.

(3) The board, having made an inquiry or directed a vote pursuant to this section, may

(a) determine whether the employees constitute one or more units appropriate for collective bargaining;

(b) determine which trade union shall be bargaining agent for the employees in each unit;

(c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement;

(d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority rights under it of employees affected by the sale, lease, transfer or other disposition; and

(e) give directions the board considers necessary or advisable, as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining.)

.....

42. Section 80 is repealed and the following substituted:

Votes on strikes and lock-outs prohibited before bargaining

80. A person shall not take a vote under section 81 or 82 on the question of whether to strike or on the question of whether to lock-out until the trade union and the employer, or their authorised representatives have bargained collectively in accordance with this Act.

.....

43. Section 81 is amended:

(a) by repealing subsection (1) and substituting the following:

(1) A person shall not declare or authorise a strike and an employee shall not strike until a vote has been taken, in accordance with the regulations, of the employees in the unit affected as to whether to strike, and the majority of those employees who vote have voted for a strike; and

(b) in subsection (3) by repealing paragraph (b) and substituting the following:

(b) an employee shall not strike unless:

(i) the employer has been given written notice by the trade union that the employees are going on strike;

(ii) the written notice has been filed with the chairman of the Disputes Resolution Division;

(iii) 72 hours, or a longer period directed under this section, has elapsed from the time the written notice was filed with the chairman of the Disputes Resolution Division;

(iv) where a mediation officer has been appointed, 48 hours have elapsed from the time the trade union is informed by the chairman that the mediation officer has reported to him, or from the time required under subparagraph (iii), whichever is longer;

(v) where a fact finder has been appointed, 48 hours have elapsed from the time the fact finder's report has been given to the parties by the chairman, or from the time required under subparagraph (iii), whichever is longer; and

(vi) the trade union which has given written notice is not subject to an order made under Part 8.1 preventing the strike.

.....

(Section 81 (previous text) read as follows:

Pre-strike voting and notice

81. (1) A person shall not declare or authorise a strike, and an employee shall not strike, until a vote has been taken, by secret ballot and in accordance with the regulations, of the employees in the unit affected, as to whether to strike, and the majority of those employees who vote have voted for a strike.

(2) Where, on application by a person directly affected by a strike vote or an impending strike, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1) or the regulations, it may make an order declaring the vote of no force or effect, and directing that, if another vote is conducted, it shall be taken on the terms it considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer or employers' organisation authorised by the employer and the trade union representing the unit affected, where the vote favours a strike

(a) a person shall not declare or authorise a strike, and an employee shall not strike, except in the three months immediately following the date of the vote; and

(b) an employee shall not strike until:

(i) the employer has been given written notice by the trade union that the employees are going to strike;

(ii) seventy-two hours, or a longer period directed under this section, has elapsed from the time notice was given; and

(iii) where a mediation officer has been appointed under section 69, until the trade union is advised by the minister that the mediation officer has reported to the minister.

(4) Notwithstanding subsection (3)(b), the board may, on application or on its own motion, for the protection of:

(a) perishable property; or

(b) other property or persons affected by perishable property,

direct a trade union to give more than 72 hours' notice of a strike.

(5) Where the board makes a direction under subsection (4), the board:

(a) shall specify the length of the written notice required; and

(b) may specify terms it considers necessary or advisable.

(6) In subsections (4) and (5) of this section and section 82(4) and (5) "perishable property" includes property which,

(a) is imminently subject to spoilage; or

(b) may imminently become dangerous to life, health or other property.)

.....

44. Section 82 is amended:

(a) by repealing subsection (1) and substituting the following:

(1) Where two or more employers are engaged in the same dispute with their employees, a person shall not declare or authorise a lock-out, and an employer shall not lock out his employees, until a vote has been taken in accordance with the regulations, of all emloyers, as to whether to lock-out and a majority of those employers who vote have voted for a lock-out; and

(b) in subsection (3) by repealing paragraph (b) and substituting the following:

(b) an employer shall not lock out his employees unless:

(i) the trade union has been given written notice by the employer that the employer is going to lock out his employees;

(ii) the written notice has been filed with the chairman of the Disputes Resolution Division;

(iii) 72 hours, or a longer period directed under this section, has elapsed from the time the written notice was filed with the chairman of the Disputes Resolution Division;

(iv) where a mediation officer has been appointed, 48 hours have elapsed from the time the employers are informed by the chairman that the mediation officer has reported to him, or from the time required under subparagraph (iii), whichever is longer;

(v) where a fact finder has been appointed, 48 hours have elapsed from the time the fact finder's report has been given to the parties by the chairman, or from the time required under subparagraph (iii), whichever is longer; and

(vi) the employer who has given written notice is not subject to an order made under Part 8.1 preventing the lock-out.

.....

(Section 82 (previous text) read as follows:

Pre-lockout vote and notice

82. (1) Where more than one employer is engaged in the same dispute with their employees, a person shall not declare or authorise a lock-out, and an employer shall not lock out his employees, until a vote has been taken by secret ballot and in accordance with the regulations of all employers, as to whether to lock out and a majority of those employers who vote have voted for a lock-out.

(2) Where, on application by a person directly affected by a lock-out vote or an impending lock-out, or on its own behalf, the board is satisfied a vote has not been held in accordance with subsection (1) or the regulations, it may make an order declaring the vote of no force or effect, and directing that if another vote is conducted it shall be taken on the terms it considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer and employers' organisation authorised by the employer and the trade union representing the unit affected,

(a) where a vote is taken under subsection (1) and the vote favours a lock-out, a person shall not declare or authorise a lock-out and an employer shall not lock out his employees except during the three months immediately following the date of the vote; and

(b) an employer shall not lock out his employees until,

(i) the trade union has been given written notice by the employer that the employer is going to lock out his employees;

(ii) 72 hours, or a longer period directed under this section, have elapsed from the time notice was given; and

(iii) where a mediation officer has been appointed under section 69, until the employer has been advised by the minister that the mediation officer has reported to the minister.

(4) Notwithstanding subsection (3)(b), the board may, on application or on its own motion, for the protection of,

(a) perishable property; or

(b) other property or persons affected by perishable property,

direct an employer to give more than 72 hours' notice of a lock-out.

(5) Where the board makes a direction under subsection (4), the board,

(a) shall specify the length of the written notice required; and

(b) may specify terms it considers necessary or advisable.)

.....

45. Section 83(3) is repealed and the following substituted:

(3) An act or omission by a trade union or by the employees shall not constitute a strike where:

(a) it is required for the safety or health of those employees, or

(b) it is permitted pursuant to a provision of a collective agreement by which an employer engaged in the performance of construction work on a construction project agrees that employees within the bargaining unit covered by the collective agreement and employed on the construction project are not required to work in association with persons who are not members of:

(i) the trade union representing the bargaining unit, or

(ii) another trade union contemplated by the collective agreement.

.....

(Section 83 (previous text) read as follows:

Rights preserved

83. (1) This Act shall not be construed to prohibit the suspension or discontinuance by an employer of operations in his establishment, in whole or in part, for a cause not constituting a lock-out.

(2) The burden of proof that operations in his establishment are or were suspended or discontinued for a cause not constituting a lock-out is on the employer.

(3) An act or omission by a trade union or by the employees shall not constitute a strike where it is required for the safety or health of those employees or where it is permitted pursuant to a provision of a collective agreement by which the employer agrees that employees within the bargaining unit covered by the collective agreement are not required to work in association with persons who are not members of,

(a) the trade union representing the bargaining unit; or

(b) another trade union contemplated by the collective agreement.)

.....

46. Section 84 is amended by adding "or the performance of a provision of an agreement prohibited by section 4.1(1)" after "picketing as defined in this Act".

.....

(Section 84 (previous text) read as follows:

Information

84. A trade union or other person may, at any time and in a manner that does not constitute picketing as defined in this Act, communicate information to a person, or publicly express sympathy or support for a person, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by that person.)

.....

47. Section 85 is amended:

(a) in paragraphs (a) and (b) of subsection (1) by striking out "persons" and substituting "employers".,

(b) in subsection (2) by adding ", for the benefit of a struck employer, or for the benefit of an employer who has locked out," after "A person who",

(c) in subsection (3) by striking out "is locked out or lawfully on strike." and substituting "performs work under the control or direction of the employer if the work is an integral and substantial part of the employer's operation and the site or place is a site or place of the lawful strike or lockout.",

(d) in subsection (4)(a) by adding "for the employer's own benefit" after "supply goods or furnish services",

(e) by repealing subsection (4)(b) and substituting the following:

(b) at or near the place where an ally performs work, supplies goods or furnishes services for the benefit of a struck employer, or for the benefit of an employer who has locked out,,

(f) by adding the following subsection:

(4.1) In subsection (4) "employer" means the person whose operation may be lawfully picketed under subsection (3).,

(g) by repealing subsection (5) and substituting the following:

(5) The council may, on application or on its own motion, make an order defining the site or place at which picketing that is permitted by subsection (3), or that is permitted under subsection (4), may take place, and where the picketing is common site picketing the council shall restrict the picketing in such a manner that it affects only the operation of the employer causing the lockout or whose employees are lawfully on strike, or an operation of an ally of that employer., and

(h) by adding the following subsection:

(6) For the purposes of this section, divisions or other parts of a corporation or firm shall, if they are separate and distinct operations, be treated as separate employers.)

.....

(Section 85 (previous text) read as follows:

Picketing

85. (1) In this section "ally" means a person who, in the board's opinion, in combination, in concert or in accordance with a common understanding with an employer assists him in a lock-out or in resisting a lawful strike; "common site picketing" means picketing at or near a site or place where,

(a) two or more persons carry on operations, employment or business; and

(b) there is a lock-out or lawful strike by or against one of the persons referred to in paragraph (a), or one of them is an ally of an employer by or against whom there is a lock-out or lawful strike.

(2) A person who performs work, supplies goods or furnishes services of a nature or kind that, except for a lock-out or lawful strike, would be performed, supplied or furnished by the employer, shall be presumed by the board to be the employer's ally unless he proves the contrary.

(3) A trade union, a member or members of which are lawfully on strike or locked out, or a person authorised by the trade union, may picket at or near a site or place where a member of the trade union is locked out or lawfully on strike.

(4) The board may, on application and after making the inquiries it requires, permit picketing,

(a) at or near another site or place which the employer causing a lock-out or whose employees are lawfully on strike is using to perform work, supply goods or furnish services that, except for the lock-out or strike, would be performed, supplied or furnished at the site or place where picketing is permitted by subsection (3); or

(b) at or near the place of business, operations or employment of an ally, but the board shall not permit common site picketing unless it also makes an order under subsection (5) defining the site or place and restricting the picketing in the manner referred to in that subsection.

(5) The board may, on application or on its own motion, make an order defining the site or place at which picketing that is permitted by subsection (3), or that is permitted under subsection (4), may take place, and where the picketing is common site picketing the board shall by the order reasonably restrict the picketing to the employer

causing the lock-out, or whose employees are on strike, or to an ally of that employer. 1984-24-16, effective 8 June 1984.)

.....

60. The following is added after section 137:

PART 8.1

Disputes resolution

Interpretation

137.1 In this Part,

"arbitration board" includes a single arbitrator, a board of arbitration, a mediator-arbitrator, a final offer selector and a special mediator;

"chairman" means chairman of the Disputes Resolution Division of the council;

"division" means the Disputes Resolution Division of the council;

"fact finder" means a person appointed to act as a fact finder under this Part;

"public interest inquiry board" means a public interest inquiry board established under section 137.92;

"public sector employer" means

(a) the government;

(b) a corporation or an unincorporated board, commission, council, bureau, authority or similar body that has -

(i) on its board of management or board of directors, a majority of members who are appointed by an Act, a minister of the Lieutenant Governor in Council, or

(ii) employees appointed under the Public Service Act.

(c) a municipality, including

(i) a municipality;

(ii) a regional district; and

(iii) an improvement district

as defined in the Municipal Act,

(d) a board of school trustees as defined in the School Act;

(e) a university as defined in the University Act;

(f) an institution as defined in the College and Institute Act;

(g) a community care facility as defined in the Community Care Facility Act which receives funds from another public sector employer;

(h) a hospital as defined in the Hospital Act or the Hospital Insurance Act which receives funds from another public sector employer;

(i) a library board within the meaning of the Library Act; and

(j) an employer named in the Schedule to this Act.

"special mediator" means a person appointed under section 137.98 and includes a mediator-arbitrator.

Duties and functions of division

137.2 (1) It is the duty of the division,

(a) to monitor collective bargaining between employers and bargaining agents;

(b) to provide assistance to employers and bargaining agents to facilitate the making or renewing of collective agreements;

(c) to gather and publish information and statistics respecting labour relations, employment and collective bargaining in the Province;

(d) to administer mediation services provided under this Part; and

(e) to carry out the functions imposed on it by this Part and other functions the council considers necessary to effect the purposes of this Part.

(2) The chairman may authorise a special mediator, a public interest inquiry board, a fact finder or an arbitration board to employ consultants.

Mediation services

137.3 (1) Where,

(a) notice has been given to commence collective bargaining between a trade union and an employer;

(b) either party makes a written request to the chairman to appoint a mediation officer to confer with the parties to assist them to conclude a collective agreement or a renewal or revision of it; and

(c) the request is accompanied by a statement of the matters the parties have or have not agreed on in the course of collective bargaining,

the chairman may appoint a mediation officer.

(2) A person appointed as a mediation officer need not be an employee of the council.

(3) The chairman may at any time during the course of collective bargaining between an employer and a trade union, where he believes that the appointment is likely to facilitate the making of a collective agreement, appoint a mediation officer to confer with the parties.

(4) Where a mediation officer is appointed to confer with the parties he shall, within ten days after his first meeting with the parties or within 20 days after his appointment, whichever is sooner, or where the parties consent, within a longer period of time that the chairman directs, report to the chairman setting out the matters on which the parties have or have not agreed and such other information as the mediation officer considers relevant to the collective bargaining between the parties.

(5) Where either party so requests of the chairman, or where the chairman so directs, the mediation officer shall provide to the chairman and the parties a report concerning the collective bargaining dispute which report may include recommended terms of settlement.

(6) Parties conferring with a mediation officer under this section shall provide such information concerning their collective bargaining as the mediation officer requests.

Strike or lock-out

137.4 (1) Where a strike or lock-out has commenced, the trade union or employer commencing the strike or lock-out shall immediately inform the chairman in writing specifying the date the strike or lock-out commenced.

(2) It is the duty of the commissioner to keep the minister informed respecting strikes and lock-outs that occur or are threatened.

First collective agreement

137.5 (1) Where a trade union certified as bargaining agent and an employer have been engaged in collective bargaining to conclude their first collective agreement and have failed to do so, the commissioner may, at the request of either party and after any investigation he considers necessary or advisable, constitute a panel of the council to inquire into the dispute and, if the commissioner considers it advisable, to settle the terms and conditions for the first collective agreement.

(2) The panel constituted under subsection (1) shall consist of three persons designated by the commissioner.

(3) Notwithstanding the reference in subsection (1) to the panel as a panel of the council, the commissioner may designate as panel members two persons who are not members of the council, and those persons shall, while they are members of the panel, be deemed for all purposes of the panel to be members of the council.

(4) Where the panel settles the terms and conditions for the first collective agreement they shall be deemed to constitute the collective agreement between the trade union and the employer and shall be binding on them and the employees except to the extent the parties agree in writing to vary those terms and conditions.

(5) Where a party to a dispute referred to in this section is a public sector employer and the dispute is referred to a panel under this section, section 137.96 applies.

Terms and conditions

137.6 (1) In settling terms and conditions under section 137.5, a panel shall give the parties an opportunity to present evidence and make representations, and may take into account, among other things,

(a) the extent to which the parties have or have not bargained in good faith in an effort to conclude a first collective agreement; and

(b) terms and conditions of employment negotiated through collective bargaining for comparable employees performing the same or similar functions in the same or related circumstances.

(2) A collective agreement settled by the panel under section 137.5 expires one year from the date that the panel settles the terms and conditions of the agreement, or on an earlier date the panel specifies.

Intervention by the commissioner

137.7 (1) Where an employer and a trade union have commenced collective bargaining, the chairman or a person appointed by him may inquire into the progress of the collective bargaining between the parties, and the parties shall, where requested by the chairman or person appointed, supply to the chairman or his appointee such information as he requests.

(2) Where a strike or lock-out notice has been served, or where a strike or lock-out has commenced or where the chairman considers that a dispute exists between parties, he shall report the matter to the commissioner.

(3) On receipt of the report of the chairman, the commissioner may do any or all of the following as he considers necessary or advisable to facilitate the making of a collective agreement between the parties:

(a) refer the matter to the chairman for appointment of a mediation officer to confer with the parties;

(b) appoint a fact finder to act pursuant to section 137.91;

(c) confer with the parties and make recommendations to them as to how their dispute may be resolved;

(d) refer the matter to a public interest inquiry board.

(4) Before the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of those employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, and where the employer requests that a vote be taken, the commissioner shall direct that a vote of those employees to accept or reject the offer be held in a manner he directs.

(5) Before the commencement of a strike or lock-out, the trade union that is certified as the bargaining agent of the employees in the affected bargaining unit may, where more than one employer is represented in the dispute by an employers' organisation, request that a vote of those employers be taken as to the acceptance or rejection of the offer of the trade union last received by the employers' organisation in respect of all matters remaining in dispute between the parties, and where the trade union requests that a vote be taken, the commissioner shall direct that a vote of those employers to accept or reject the offer be held in a manner he directs.

(6) Where pursuant to this section a vote favours the acceptance of a final offer, an agreement is thereby constituted between the parties.

(7) The holding of a vote or a request for the taking of a vote under subsection (4) or (5) does not extend any time-limits or periods provided for in section 81 or 82.

(8) Not more than one vote in respect of the same dispute shall be held under subsection (4) and not more than one vote in respect of the same dispute shall be held under subsection (5).

(9) Where, during a strike or lock-out, the commissioner considers that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the commissioner may direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith in a manner he directs.

(10) Where, during a strike or lock-out, more than one employer is represented in the dispute by an employers' organisation and the commissioner considers that it is in the public interest that the employers comprising the employers' organisation be given the opportunity to accept or reject the offer of the bargaining agent for the employees last received by the employers' organisation in respect of all matters remaining in dispute between the parties, the commissioner may direct that a vote of the employers comprising the employers' organisation to accept or reject the offer be held forthwith in a manner he directs.

Essential services

137.8 (1) Where the minister, after receiving a report of the commissioner respecting a dispute, considers that the dispute poses a threat to the economy of the Province or to the health, safety or welfare of its residents or to the provision of educational services in the Province, the minister may do either or both of the following:

(a) order a cooling-off period not exceeding 40 days;

(b) direct the council to designate those facilities, productions and services that the council considers necessary or essential to prevent immediate and serious danger to the economy of the Province or to the health, safety or welfare of its residents or to the provision of educational services in the Province.

(2) Where a cooling-off period is ordered under this section, no employee or trade union that is a party to the dispute shall strike, and no employer who is a party to the dispute shall lock out his employees, and any existing strike or lock-out by a party to the dispute is suspended.

(3) Where the council designates facilities, productions or services under subsection (1)(b), the employer and the trade union

shall supply, provide or maintain in full measure those facilities, productions and services and shall not restrict or limit a facility, production or service so designated.

(4) Any order, direction or designation made or given under this section may be amended, varied or revoked and another made in its place, but the minister may not in respect of one dispute order a second cooling-off period.

Return to work

137.9 (1) Where the minister makes an order or gives a direction under section 137.8(1) or the council makes a designation under section 137.8(1)(b), the commissioner shall give notice of the order, direction or designation to the parties, and at the time and in the manner and to the extent ordered by the commissioner,

(a) the employer shall resume the operations of his undertaking, plant, industry or business;

(b) the employer shall call back to work those of his employees who are locked out;

(c) the employer shall not declare, authorise, acquiesce in or engage in a lock-out of employees;

(d) every employee shall resume the duties of his employment with his employer; and

(e) neither a trade union nor any person on its behalf, nor any employee of the employer on whose behalf the trade union is entitled to bargain, shall declare, authorise, acquiesce in or engage in a strike or picketing of the operations of the undertaking, plant, industry or business of the employer.

(2) Where an order, direction or designation referred to in subsection (1) is made or given, the relationship between the employer and his employees shall, while the order, direction or designation remains in effect, be governed by the terms and conditions of the collective agreement last in force between the employer and the trade union.

(3) The council may under section 137.8(1)(b) designate facilities, productions and services operated or provided by employees of the employer who are represented by another trade union that is not involved in a collective bargaining dispute with the employer.

(4) Nothing in this section affects the right of an employer to suspend, transfer, lay off, discharge or discipline an employee for just and reasonable cause in accordance with a collective agreement referred to in subsection (2).

(5) On the giving of a notice under subsection (1),

(a) every person who is authorised on behalf of the trade union to bargain collectively with the employer for a collective agreement shall,

(i) immediately give notice to the employees on whose behalf he is authorised to bargain that,

(a) a notice, declaration, authorisation or direction to go on strike, declared, authorised or given to them before or after the time the order, direction or designation referred to in subsection (1) is made or given, is suspended to the extent and for the period specified in the order, direction or designation, and

(b) any strike and picketing that is, to the extent specified in the order, direction or designation referred to in subsection (1), prohibited, and

(ii) inform those employees of their obligations under subsection (1), and

(b) every employer, trade union or employee affected by an order, direction or designation made under this Act with respect to the dispute shall comply with the order, direction or designation.

(6) No employer or person acting on behalf of the employer shall,

(a) refuse to permit, authorise or direct another person to refuse to permit, an employee to resume the duties of his ordinary employment as required by this Part, or

(b) suspend, discharge or in any manner discipline or authorise or direct another person to suspend, discharge or in any manner discipline such an employee by reason of his having been on strike, but nothing in this subsection affects the right of the employer to suspend, discharge or discipline an employee for just and reasonable cause.

(7) For the purposes of this Act, failure or refusal by an employee, without reasonable excuse, to continue or to resume the duties of his employment as required by or under this section shall be deemed to be just and reasonable cause for disciplinary action.

Fact finding

137.91 (1) The commissioner may appoint a fact finder in respect of a collective bargaining dispute, and he shall give written notice of the appointment to each of the parties to the dispute.

(2) Within seven days after the receipt of the notice of the appointment of the fact finder, each party shall give written notice to the fact finder and the other party setting out all matters the parties have agreed on for inclusion in a collective agreement and all matters remaining in dispute between the parties.

(3) Where a party fails to comply with subsection (2), the fact finder may make a determination of the matters mentioned in subsection (2).

(4) It is the duty of a fact finder to confer with the parties and to inquire into, ascertain and make a report to the chairman setting out the matters agreed on by the parties for inclusion in an agreement and the matters remaining in dispute between the parties.

(5) The fact finder may include in his report his findings in respect of any matter that he considers relevant to the making of a collective agreement between the parties.

(6) Where the parties to the dispute are a public sector employer and a trade union, the fact finder shall, in his report, make findings based on the interest arbitration criteria established by section 137.96 to the extent that the criteria relate to matters remaining in dispute between the parties.

(7) The fact finder shall determine his own procedure under guide-lines established by the chairman and, where the fact finder requests information from a party, the party shall provide the fact finder with the information requested.

(8) The fact finder has the power and authority of a commissioner under sections 12, 15 and 16 of the Inquiry Act.

(9) The fact finder shall submit his report to the chairman within 20 days after the date of his appointment or after a longer period the chairman approves, and on receipt of the report the chairman shall give a copy of it to the parties.

(10) The report of the fact finder is not binding on the parties, and on receipt of the report by the parties they shall endeavour in good faith to make a collective agreement, or to renew a collective agreement as the case may be.

(11) The chairman is not obliged to make public the report of the fact finder, but may make it public if he considers it desirable to do so.

Public interest inquiry board

137.92 (1) Where the commissioner considers it appropriate to establish a public interest inquiry board, he shall give notice to the parties to the dispute either,

(a) that he has established a public interest inquiry board, or

(b) that he intends to establish a public interest inquiry board.

(2) The commissioner shall establish a public interest inquiry board before or within 48 hours after giving a notice to the parties under subsection (1) by,

(a) appointing one or more persons as members of the board, and

(b) if more than one member is appointed, designating one member as chairman of the board.

(3) The commissioner may refer more than one dispute to the same public interest inquiry board.

(4) No person shall be appointed or act as a member of a public interest inquiry board who is directly affected by the dispute in respect of which the board is appointed.

(5) A public interest inquiry board may determine its own procedure and is not bound by the laws of evidence applicable to judicial proceedings in respect of the evidence or submissions it may accept, and a public interest inquiry board may hear evidence and receive submissions from persons other than the employer and the trade union.

(6) A public interest inquiry board has the power and authority of a commissioner under sections 12, 15 and 16 of the Inquiry Act.

(7) Where more than one member is appointed to a public interest inquiry board, the recommendations of the majority of the members of the board are the recommendations of the board, but if there is no majority the recommendations of the chairman shall be deemed to be the recommendations of the board.

Public interest advocate

137.93 Where pursuant to this Part, a public interest inquiry board conducts any hearing or inquiry, the commissioner may appoint a person as a public interest advocate to represent the public interest at the hearing or inquiry.

Duties and procedure of public interest inquiry board

137.94 (1) A public interest inquiry board shall inquire into the dispute between the parties and shall endeavour to effect a settlement.

(2) If a public interest inquiry board is unable to effect a settlement of a dispute within 30 days of the date it is established or such longer time as may be agreed by the parties or fixed by the commissioner, the board shall make recommendations with respect to the dispute in accordance with this section and send them to the commissioner who shall forthwith notify each party to the dispute of the recommendations.

(3) The recommendations of a public interest inquiry board shall have due regard to such interests of the public as it considers are or are likely to be affected by the dispute between the parties and the board's recommendations, and where a party to the dispute is a public sector employer the board shall in its recommendations and report have due regard to the interest arbitration criteria established by section 137.96.

(4) A public interest inquiry board may report what, in its opinion, ought to be done by each of the parties to the dispute to facilitate the making of a collective agreement.

(5) Where the commissioner receives the recommendations of a public interest inquiry board on the matters in dispute pursuant to subsection (2), he shall serve a copy of the recommendations on the parties to the dispute and may publish the recommendations received by him in any manner he thinks fit.

(6) If the parties to a dispute accept the recommendations of the public interest inquiry board, the recommendations are binding on the parties and shall be included in the terms of a collective agreement between them.

(7) Unless a party to the dispute notifies the commissioner and the public interest inquiry board of its acceptance or rejection of the recommendations of the board within 10 days after being served with a copy of the recommendations from the commissioner, the commissioner may at his discretion direct that a vote be conducted on the acceptance or rejection of the recommendations by,

(a) the employees affected by the dispute;

(b) the employers affected by the dispute, or

(c) both the employees and employers affected by the dispute.

(8) A vote under subsection (7) shall be supervised by the Disputes Resolution Division and the parties shall be notified of the results of the vote upon its conclusion.

(9) Where,

(a) the trade union that is a party to the dispute or the employees who vote under this section is or are in favour of the recommendations of the public interest inquiry board; and

(b) the employer that is a party to the dispute or the employers who vote under this section is or are in favour of the recommendations of the public interest inquiry board,

the recommendations are binding on the parties and shall be included in the terms of a collective agreement between them.

(10) If either party to the dispute neglects or refuses to participate in the preparation of a collective agreement as required by subsection (6) or (9), the other party may prepare an agreement giving effect to,

(a) the recommendations of the public interest inquiry board; and

(b) any other matters that are agreed upon by the parties,

and shall submit the agreement to the public interest inquiry board for certification that the agreement accurately incorporates its recommendations.

(11) Where the public interest inquiry board has certified a collective agreement pursuant to subsection (10), the collective agreement is binding on,

(a) the trade union that is the bargaining agent and every employee in the bargaining unit or units on whose behalf the collective agreement was bargained collectively; and

(b) the employer or employers' organisation and each employer on whose behalf the collective agreement was bargained collectively.

(12) If a question arises concerning the recommendations of a public interest inquiry board the commissioner, at the request of the parties, may request the board to reconvene the inquiry for the purpose of expressing an opinion on the question, and where the board is reconvened, the reconvening has the same effect as the establishment of the board under section 137.92.

(13) Where the commissioner considers that the public interest inquiry board has not, in an inquiry involving a public sector employer, had regard to the interest arbitration criteria established by section 137.96 he shall direct the board to reconvene the inquiry on such terms and with such directions as the commissioner considers appropriate, and where the board is reconvened, the reconvening has the same effect as the establishment of the board under section 137.92.

Interest arbitration

137.95 (1) Where a public sector employer and a trade union have agreed to settle a dispute between them by binding arbitration, or are required pursuant to section 137.97 to resolve a dispute by binding arbitration, the parties shall make mutually agreeable arrangements

for arbitration to resolve the dispute by settling the terms and conditions of a collective agreement.

(2) Where a public sector employer and a trade union have agreed to resolve their dispute by arbitration, they shall so notify the chairman.

(3) Where parties referred to in subsection (1) or any other parties bound by an order under section 137.97(3)(b)(iv) fail, within the time allowed by subsection (4), to agree on the constitution of an arbitration board, the chairman shall constitute an arbitration board to hear the dispute and to resolve it by settling the terms and conditions of a collective agreement.

(4) The time allowed for parties to agree on the constitution of an arbitration board is,

(a) a period of ten days after the notification of the chairman in a case where subsection (2) applies, or

(b) in any other case, a period of ten days after the parties referred to in subsection (1) or other parties bound by the order under section 137.97(3)(b)(iv) have been notified of the order.

(5) Where an arbitration is to settle the terms and conditions of a collective agreement, an arbitration board shall not, without the consent of the parties, impose a term of the collective agreement that requires arbitration to be used to settle future collective agreements, and any such term imposed is void.

Factors to be considered

137.96 (1) In an arbitration between a public sector employer and a trade union pursuant to this Part, the arbitration board shall, in settling the terms and conditions of a collective agreement, have regard to the respective merits of the positions of the parties and to,

(a) a comparison of overall terms and conditions of employment with similar occupations in the relevant community in the Province outside the employer's employment;

(b) the need to maintain an appropriate relationship between occupations or classifications within the employer's employment;

(c) the skill, effort and responsibility required of the employees and the nature of the work performed;

(d) the cost and impact of the parties' proposals including increments where appropriate; and

(e) such other factors not inconsistent with this subsection as the arbitration board considers relevant to the dispute between the

parties, having allowed the parties adequate opportunity to make submissions in that regard.

(2) Where the ability to pay of the public sector employer is in issue, then, notwithstanding subsection (1), the ability of the public sector employer to pay shall be the paramount factor.

(3) An arbitration board shall not,

(a) to the extent that the employee compensation and benefits under the collective agreement are subject to the regulations and guide-lines under the Compensation Stabilisation Act, make an award inconsistent with the requirements of those regulations and guide-lines, or

(b) otherwise make an award inconsistent with the employer's ability to pay.

(4) For the purposes of this Part "ability to pay" means the current ability of a public sector employer to pay based on existing revenues, requirements of any fiscal policies to which the public sector employer is subject and the impact of increased costs on the maintenance of existing levels of public service.

(5) Where arbitration is ordered under section 137.97, the arbitration board may, with the approval of the commissioner or shall, when so directed by the commissioner, apply the dispute resolution method known as final offer selection or mediation arbitration in respect of any or all of the terms of the collective agreement that is in dispute between the parties.

(6) Where arbitration has been preceded by the recommendations from a public interest inquiry board and final offer selection is applied, the recommendations of the public interest inquiry board to settle matters in dispute between the parties shall be considered for final selection by the arbitration board in addition to the positions proposed for selection by either party, but the arbitration board shall consider for final selection the recommendations of a mediator only where no public interest inquiry board has been appointed.

(7) The Commerical Arbitration Act does not apply to an arbitration under this Act.

(8) Sections 99(1), 101, 102, 105 and 107 apply to an arbitration under this Part.

(9) Where it is shown to the satisfaction of the arbitration board that the arbitration board has failed to deal with any matter in dispute or that an error is apparent on the face of the decision, the arbitration board may, on application by either party to the dispute within ten days after the effective date of the decision or award of the arbitration board and after giving the parties an opportunity to make representations, amend, alter or vary the decision or award.